091531/EU XXV.GP
Eingelangt am 28/01/16

EUROPEAN
COMMISSION

Brussels, 27.1.2016
SWD(2016) 16 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(2016) 41 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

I 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 follow developments in Romania through a permanent presence,[2] as well as via contacts between the various Commission services and 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 written questionnaires, as well as during frequent meetings with Commission services. The Commission also benefits from invaluable assistance from independent experts from other Member States in its work and 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. The information contained in this report remains the responsibility of the Commission services.

The Commission also supports the efforts of Romania in achieving the CVM objectives through funding under the European Structural and Investment Funds. In the 2007-2013 period, Romania has implemented a number of projects in the anti-corruption and judicial reform area. The total amount of funding from the European Social Fund (ESF) is EUR 16 million. The main beneficiaries have been the Ministries of Public Administration, Justice, Education and Health. European Regional Development Funds (ERDF) were invested in actions relating to integrity control projects (including PREVENT)[3], capacity of public procurement agency for a budget of about EUR 15 million. In the 2014-2020 period, the Administrative Capacity Programme (ESF) will provide funding of about EUR 103 million for judicial reform projects, including 35 million specifically for anti-corruption, and EUR 35 million to support improvements in public procurement. ERDF resources up to EUR 15 million will be invested in capacity building and technical assistance in public procurement, in fraud prevention for Management Authorities and in the Fight Against Fraud Department (DLAF).

II 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 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, and the transparency and accountability of the judiciary

2.1 Judicial independence

Judicial independence is essential for the rule of law and the justice system to work. The legal guarantees for judicial independence should not only be recognised in law but also be 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 system, if the work of the prosecution is hindered or if court decisions are ignored. In addition, attacks on judicial institutions and on individual judges and prosecutors can have direct negative effects on the independence and the impartiality of the judiciary. Political interference in senior appointments is recognised as a key risk factor with regard to judicial independence.[4]

---

2 The Commission has a CVM resident adviser in Bucharest.

3 IT system for ex-ante checks of conflicts of interest (see section 3.3)

4 The Venice Commission has drawn particular attention to the prosecution in this regard: "*It is important that the method of selection of the general prosecutor should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession*." Report on European standards as regards the independence of the judicial system – Part II: The prosecution service, CDL-AD(2010)040

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

Checks and balances at work

Throughout 2015, the judiciary (represented by the High Court of Cassation and Justice and the Superior Council of the Magistracy) and the Constitutional Court have continued to play a central role in judicial independence as institutional actors contributing to the balance of power.

Increasingly, this role has been shown through a public profile, notably through setting out the positions of the judicial institutions during parliamentary discussions on relevant legislation. Examples where parliamentary committees have invited the judicial authorities to give their views are the discussion on a draft law on the liability of magistrates and the adoption of the draft law creating the National Agency for the administration of seized assets. However, in some cases the judicial authorities were asked to give an immediate on-the-spot opinion, which would not have afforded the possibility to consult with the bodies they represent.

The Constitutional Court (CCR) has an important role in the rule of law and in the consolidation of an independent justice system. Pursuing the work undertaken in 2014,[5] CCR rulings have sought to provide solutions linked to the balance of powers and respect for fundamental rights that could not be solved by the justice system alone.

The CCR ruled on a conflict between the Senate and the judiciary after the Senate had refused the request of DNA for preventive arrest of a former Minister and current Senator: [6,7]

- In a first decision, the Court recognised a constitutional conflict between the Senate and the judiciary, and ruled that the Senate has an obligation to enact the decision by publishing it in the Official Journal. Although the request received 79 votes in favour and 69 votes against, the Senate's quorum had not been met (i.e. the agreement of a majority of all Senators was needed according to Senate's rules for lifting of immunity) and no decision was formally noted.[8] Following the CCR ruling, the decision of the Senate was published rejecting the prosecutor's request on the procedural grounds that a quorum for voting was not reached.
- In a second decision, the CCR ruled that the decision of the Senate was unconstitutional as a legitimate vote on the substance was required. [9]

In May, following a referral by the President of Romania, the Court annulled a law allowing Mayors and County representatives to participate in the Board of Interregional associations pursuing a public interest (IDA).[10] This law had been the subject of controversy on adoption in 2014.[11] The law has been however in the end promulgated by the President in December 2015: all legal means to oppose it had been exhausted (already sent back twice in Parliament). In the course of 2015, the CCR took 19 decisions concerning the provisions of the new Criminal Code and Code of Criminal Procedures. A majority of these decisions aimed at reinforcing respect for fair trials and rights of the parties in line with ECHR case-law (See Section 2.2.1).

[5] COM(2015) 35 final, p4.
[6] Decizia nr. 261 of 08.04.2015; Decizia nr. 341 of 06.05.2015;
[7] See also section 3.3
[8] Before the Constitutional Court examined the referral, the Senate modified its internal rules and the Statute law to allow voting decisions on lifting of immunities by a majority of members present, in line with Constitutional provisions.
[9] The Senate had the choice to accept the March result or re-organise a vote. The latter solution was chosen and the Senate refused the arrest of the Senator on 5 June
[10] Decizia nr. 442 of 10.06.2015**.** The law was annulled on procedural grounds.
[11] COM(2015) 35 final, p9; SWD(2015) 8, p25. The law had been criticised by the National Integrity Agency as undermining the integrity framework.

The decisions of the High Court of Cassation and Justice (HCCJ) on the interpretation of the law also play an important role in the institutional checks and balances (See also section 1.3). For example, the HCCJ issued two important preliminary rulings on doctors in public hospitals: clarifying that doctors employed in public health units are civil servants; and then that as a result, they cannot receive any supplementary payments or donations from patients (which is allowed in principle by the law establishing patients' rights).[12] These decisions addressed a previous ambiguity and provided a clear ruling to exclude informal supplementary payments, recognised as a major source of corruption in the public health system.

Threats to the independence of the judiciary

The successful prosecution and conviction of many prominent politicians in Romania is a sign that the underlying trend of judicial independence is positive. But as CVM reports have shown, there has also been a reaction to this trend: criticism of magistrates and judicial institutions is frequent.[13] The risk is that such criticism undermines public confidence in the judicial system as a whole, especially when it comes from government or Parliament.[14] The 2015 CVM report recommended that: "the Code of Conduct for parliamentarians [should] include clear provisions so that parliamentarians and the parliamentary process respect the independence of the judiciary".[15]

This year there has been more requests to defend the independence of justice, following attacks in the media and by politicians, including in response to statements from the Speaker of the Senate and the Prime Minister.[16] The latter included criticism of the judicial system as a whole and of the Heads of both the National Anti-Corruption Directorate (DNA) and the High Court of Cassation and Justice (HCCJ).[17],[18]

An investigation is under way involving four members of the Constitutional Court (CCR) regarding facts surrounding the Court's decision invalidating the referendum to impeach the President of Romania in 2012 (more precisely the issuance by the CCR of an errata clarifying the legal basis for the decision).[19] The CCR voiced concern that this was a way of putting pressure on the Court, although they decided to cooperate with the investigation (citing the need to avoid any disrespect to the HCCJ, which leads the procedure). The CCR also reported pressures on the court in the context of the resignation of one judge investigated for corruption.[20]

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. In 2015, the SCM has taken 16 decisions defending the independence of justice and 10

---

12. Decizia ICCJ nr. 26/2014 and Decizia ICCJ nr. 19 of 4/6/2015
13. COM(2012) 410 final, COM(2013) 47 final, COM(2014) 37 final, COM(2015) 35 final.
14. Council of Europe Recommendation CM/Rec (2010)12 on judges: independence, efficiency and responsibilities, §18: *If commenting on the judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary*.
15. COM(2015) 35 final, p 13.
16. http://www.csm1909.ro/csm/linkuri/22_06_2015__74737_ro.docx; http://www.csm1909.ro/csm/linkuri/22_06_2015__74733_ro.doc; http://www.csm1909.ro/csm/linkuri/06_10_2015__76356_ro.doc
17. "*The only problem the country has is an obsessed and completely unprofessional prosecutor who is trying to make a name for himself by inventing facts and lies from ten years ago*" PM Ponta wrote on his Facebook page when the charges were brought against him.
18. In a public letter to the President of Romania, the President of the Senate, referring to a case of a person acquitted in first instance but in preventive arrest for 6 months, requested the revocation of the President of the HCCJ and of the Chief Prosecutor of DNA accusing them of "*deliberately and in bad faith violating the fundamental rights of a citizen*" and abuse of power.
19. In parallel, the Chamber of Deputies requested its Legal Commission to reanalyse the nomination of one of the CCR judges.
20. Press statement 4 February 2015: CCR notes that the resignation took place against the background of pressure on the Court, in connection with the exercise of its powers under the Fundamental Law.

decisions defending the professional reputation, independence and impartiality of magistrates.[21]

The procedure in place since 2012, involving investigation of the facts by the Judicial Inspection (JI) and a decision by the SCM plenum, is now well established. Usually within a few hours of the public statements the SCM seizes the JI on the case in question and issues a first press release. Following the report of the JI, the SCM takes a decision and issues a press release providing information on the case and the conclusion reached. The deadlines are kept as short as possible and are still being reduced with regard to previous years: the average reaction time is 31 days compared to 54 in 2014. In several occasions where the case was clear, the SCM issued a decision in a few days.

The SCM's role as defender of the independence of justice is now well-established. The majority of the requests for defence of the independence of the justice system are initiated by the SCM itself, without a request from the magistrates concerned. The SCM explained that since some of the criticism has been directed at institutions or the justice system in general, the decision to trigger action should not be left to the magistrate alone – in particular when cases are still ongoing. The SCM's role has also been supported by other institutional actors: one request for defence of the independence of justice was made after a unanimous vote of the general assembly of prosecutors in DNA and another was made by the Minister of Justice.[22] The SCM seeks to publicise its actions in this area through issuing press releases. The difficulty in securing an equivalent level of coverage for the SCM press statements compared to the initial criticisms was noted in the 2015 CVM report.[23] Although the decisions of the SCM are always transmitted to the National Audio-Visual Council, this has not resulted in effective redress or corrections in the media that launched or relayed the attacks.[24] It can be noted that some other Member States have legal obligations for "right of reply" to appear with a comparable level of prominence, in line with the positions of Council of Europe and case law of the European Court of Human Rights.[25]

In Romania, few magistrates seek redress in court. There is no support from the SCM to back up a decision of the SCM on the substance with financial or legal help for magistrates in such situations (there are cases in other Member States where magistrates receive advice and financial support for launching an injunction or a criminal complaint), or to take on a case on its own behalf. Proceedings are long and uncertain. The Chief Prosecutor of DNA sued "Antena 3" for allegations made in a television programme, requesting 1 million Lei for damages and judicial costs. In October 2015, the Bucharest Tribunal sentenced "Antena 3" to communicate the decision on the TV station and the journalists to pay damages worth 250,000 lei. The decision is not final.

Another approach taken in other Member States has been to invest in media training for journalists or to appoint judges/prosecutors as trained spokespersons for each institution. Few such steps have been taken in Romania so far.

Appointments

In line with international standards,[26] CVM reports have underlined the importance of transparent and merit-based selection procedures for the appointment of leading positions. In view of the appointment of a new Chief Prosecutor of DIICOT in 2015 and a number of important appointment procedures expected in 2016 (including the General Prosecutor, the DNA Chief Prosecutor, as well as the

---

21 In 2014, the SCM took 11 decisions defending the independence of - justice - and 19 decisions defending the professional reputation of magistrates.

22 http://www.csm1909.ro/csm/linkuri/18_09_2015__76005_ro.doc; http://www.csm1909.ro/csm/linkuri/13_08_2015__75616_ro.doc

23 COM(2015) 35 final, p 4.

24 The National Audio-Visual Council has itself been the subject of criticism by NGOs and in Parliament: its President is also the subject of an ongoing DNA investigation.

25 Council of Europe resolution of the Committee of Ministers on the "right to reply", resolution (74) 26; Factsheet on balancing Article 10 ECHR – freedom of expression - with Article 8 ECHR _ privacy; Case-law on Freedom of the press, the media and journalists.

26 Council of Europe Recommendation CM/Rec(2010)12; Venice Commission report on European standards as regards the independence of the judicial system; Consultative Council of European Prosecutors, Opinion No.9 (2014) on European norms and principles concerning prosecutors.

President of the High Court of Cassation and Justice (HCCJ)) the Commission had recommended in its January 2015 report to "Ensure that the nomination of the new chief prosecutor of DIICOT takes place in accordance with a transparent and merit based procedure and to Conduct a global review of appointment processes for senior positions in the magistracy, with a view to having clear and thorough procedures in place by December 2015". 2016 will also see elections for a new composition of the Superior Council of the Magistracy (SCM).

For the appointment of the *Chief Prosecutor of the Organised Crime and Terrorism Department (DIICOT),* the established 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.[27] The circumstances surrounding the end of the term in office of the previous Chief Prosecutor of DIICOT gave the appointment a particular sensitivity.

In the 2015 procedure, there seem to have been a number of additional steps taken in terms of transparency in particular. The Minister of Justice introduced a number of steps (publication of the post, criteria publically defined, names of candidates published) which were not legal obligations, but practical steps to improve the procedure.[28] The Minister of Justice chose a nomination from amongst six candidates, and undertook informal pre-cooperation with the SCM, so as to draw on the experience and well defined criteria of the SCM in appointing prosecutors. The procedure was finalised through appointment by the President and had been conducted with little controversy.

The nomination procedure for the Chief Prosecutor of DIICOT also applies to all senior prosecutors, their deputies and includes the level of heads of sections in the Public Ministry and the DNA.[29] The *General Prosecutor and DNA Chief Prosecutor posts* are up for renewal in May 2016. All deputy posts of the GP, DNA and DIICOT as well as the heads of section will also be renewed in 2016.[30] In total, this means that there are 15 prosecution posts to be chosen by the Minister of Justice this year. As pointed out in the previous CVM report, this procedure includes a strong political element in terms of the role it gives to the Minister of Justice, and no criteria are set at legislative level for ensuring the highest level of professional skills and integrity.[31] Past appointment procedures have been the subject of considerable controversy.[32] Recommendations and opinions from the Venice Commission and the Consultative Council of European Prosecutors have emphasised the importance of appointments procedures for the independence of the prosecution services, as well as a procedure which encourages the highest ethical and professional standards – although the Venice Commission has also noted that it "is reasonable for a Government to wish to have some control over the appointment, because of the importance of the prosecution of crime in the orderly and efficient functioning of the state".[33]

The SCM has proposed to align the legal framework for nominating top prosecutors on the law governing the appointment of the President of the HCCJ. As such this would remove the role of the Minister of Justice in choosing the candidate, except insofar as the Minister is a member of the SCM.

This proposal is still the subject of debate. In discussions with the Commission in September, the Minister agreed that the Minister of Justice should not be involved in the appointments of Heads of Sections or even deputies. However, he argued that there was a legitimate role for the Minister with regard to the nominations of the General Prosecutor and Chief Prosecutors of DNA and DIICOT, on the basis that he represents the common interest and would be clearly accountable for the result. At the same time, he also noted the importance of more transparency and clearer criteria in the procedure (as shown in the DIICOT appointment procedure). In October, the SCM consulted general assemblies of

[27] Art. 54. alin.1-2 din Legea nr. 303/2004.
[28] The only criteria in the law is to have a minimum length of 10 years of experience as judge or prosecutor
[29] See footnote 26
[30] May 2016: GP, Head of DNA, 2 deputy posts GP, 1 deputy post DNA, 1 deputy post DIICOT
July 2016: 2 head and 2 deputy head of section posts GP, 1 deputy post DNA, 1 head of section post DNA
November 2016: 2 head 1 deputy head of section posts DNA
[31] COM(2015) 35 final, p 3.
[32] COM(2015) 35 final; COM(2014) 37 final; COM(2013) 47 final; COM(2012) 410 final.
[33] Venice Commission, CDL-AD(2010)040; CCPE opinion N°9 (2014)

magistrates on its draft and concluded that there was a strong majority of magistrates in favour of transferring the responsibility for proposing a nomination for the General Prosecutor and Chief Prosecutors of DNA and DIICOT to the President from the Minister of Justice to the SCM. The SCM confirmed its position in a legal proposal.[34]

The term of the *President of the HCCJ* will end in September 2016. The appointment procedure involves a selection process by the SCM and the appointment by the President of Romania. The 2014 CVM report noted that the 2013 process was conducted professionally, anticipating the procedure in order to avoid an interim gap at the end of the mandate.[35] It will be for the SCM to determine the procedures to be followed to govern the selection process.

The appointment process of a new *leadership for the Judicial Inspection* took place before summer, as part of the periodical renewal. These appointments are based on open competitions organised by the SCM and the Judicial Inspection among judicial inspectors already in function. The organisation and final appointments did not raise any controversy.

For *other magistrate positions*, including leading positions in courts and prosecutors' offices, posts are filled through open competitions organized by the SCM and the NIM. These competitions are organised for entry into the magistracy, promotions to higher level courts and appointments in leading positions. Each year more than 100 judges and prosecutors are accepted into magistracy or promoted to a higher court. The entry into the magistracy includes two years training in the NIM. The competition based system is often linked to an increased independence and professionalism of the Romanian magistracy. The competitions for entry into magistracy are also open to lawyers with at least five years of professional practice.

In order to improve the management of magistrates' careers, the SCM is modifying the *evaluation and promotion system*. As part of proposed amendments of the law on the statute of magistrates, [36] the SCM is suggesting a number of changes on the seniority conditions for promotion - raising the duration for promotion of judges to higher courts and for those who apply for occupying a leading position within local courts, tribunals and courts of appeal; on correlating the evaluation of judges to some of the efficiency and quality indicators for the activity of the courts; on re-entry into the profession – allowing magistrates with very good professional qualification and more than 10 years of experience to re-enter the magistracy after an interruption without competition.

Another proposed change was to allow lawyers with at least 18 years of professional practice to enter the magistracy without competition (based only on an interview of the relevant SCM section).[37] This proposal provoked strong criticism from inside the magistracy. More than 1500 magistrates signed a petition, requiring the SCM to consult all magistrates on the proposed draft. Concerns included a lack of clarity as to the scale of the potential entry, and which posts such new entrants might take up, as well as a watering-down of the competition-based approach. However, after the consultation process showed a clear majority of magistrates opposed to the change, the SCM decided to drop this proposal.

The National Integrity Agency (ANI) is not part of the judiciary, but it is an autonomous administrative body with investigative and sanctioning powers over public officials. Its integrity mandate inevitably makes the independence of its management and staff of particular public interest. The management of the ANI is appointed by the Senate on the basis of an open competition organised by the National Integrity Council (NIC). The post of *President of ANI* became vacant in March 2015 following the resignation of the previous President. In May, the Senate acknowledged the resignation, allowing the NIC to open the post for competition. The NIC made efforts to ensure that the procedure was transparent and impartial. However, a first competition round did not lead to a result, as all

[34] This law is part of a package to change the status of magistrates with regard to appointments, evaluations and promotions. http://www.agerpres.ro/justitie/2015/10/30/peste-70-dintre-magistrati-in-favoarea-numirii-procurorului-general-si-a-sefilor-dna-si-diicot-la-propunerea-csm-16-21-05

[35] SWD(2014) 37 final, p18.

[36] Law 303/2004

[37] Magistrates leaving the profession could also become practicing lawyers without passing the Bar exam.

candidates failed. After a second competition, the NIC proposed a candidate to the Senate for appointment. The Senate appointed the candidate on 14 December.

Reform of the Constitution

The debate on the reform of the Constitution was very prominent in the first part of 2014, as set out in the 2015 CVM report.[38] A few sessions of the parliamentary committee overseeing the process were organised, in which the Superior Council of Magistracy participated on issues related to the independence of justice. No further parliamentary sessions and debates seem to have been organised, and no progress has been reported in 2015. The topic of reform of the Constitution largely faded out of public debate.

The Ministry of Justice and the Faculty of Law of the University of Bucharest finalised the CODEX Constitutional, a translation into Romanian of all EU Member States' Constitutions, designed to feed the debate on any future amendment to the Romanian Constitution. It was presented to the Members of Parliament and the President in July.

2.2 The new Codes

Legal systems periodically need to update the Codes that are the basis of the judicial process in 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, 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 would normally be based on a strong consensus and 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.

Criminal codes: stability of the legal framework

The new Criminal Code and Code of Criminal Procedures entered into force two years ago, on 1st February 2014. Overall this major reform step is seen as a success by the judiciary, as well as by civil society. In the January 2015 CVM report, the Commission recommended to "Finalise the necessary adjustments to the criminal codes as soon as possible, in consultation with the SCM, the HCCJ and the Prosecution. The goal should then be to secure a stable framework which does not need successive amendments." A number of developments have called into question the stability of the Codes.

Since the entry into force of the Criminal Code and the Code of Criminal Procedures, the Constitutional Court has taken 5 decisions on the Criminal Code and 20 decisions on the Code for Criminal Procedures which have declared provisions unconstitutional. On the Criminal Code, the main decisions taken in 2015 were to annul a provision criminalising the conflict of interests based on commercial relations, on the grounds that the concept of commercial relations of the new Criminal Code lacks clarity and predictability; and to rule that the extended confiscation is not applicable for assets acquired before the entry into force of the law in 2012. [39] On the Code of Criminal Procedures, the main decisions concerned the need for a time-limit with respect to preventive judicial measures, such as custody or house arrest; the deadline for the prosecution to request an extension of pre-trial arrest; procedures at the stage of the preliminary judge, ensuring the rights of the parties to be present or to appeal; procedures for reopening cases and subpoenaing parties; extraordinary appeals and the presence of parties; and the separation of judicial functions and incompatibilities of judges having to serve in the preliminary chambers and the judging court.[40]

The decisions of the CCR have had important consequences for the courts and the prosecution: these decisions impact the working arrangements (council rooms, allocation of judges to cases, deadlines), the workload and also the substance of certain cases (notably on conflict of interest). In response to the

[38] COM(2015) 35 final, p5.
[39] Decision n°603 of 6 October 2015; Decision n°11 of 15 January 2015
[40] The CCR also took a decision annulling the possibility of the prosecution to drop charges when the public interest is not served in prosecuting, but motivation of the decision is still waiting.

CCR rulings, the judiciary has adapted very quickly to the organisational changes, through proposals for legal amendments, and pragmatic steps to apply the rulings even before revised legislation is in place. This reflects a desire in particular to respect the ECHR and the case-law of the Court in Strasbourg on the right to a fair trial and the rights of the parties in all aspects of the Criminal Codes. Nevertheless, in the interim before amended legislation is in place, there is an increased risk of diverging interpretations and practice. The Ministry of Justice has also reacted swiftly to the CCR decisions either by adding additional amendments to the drafts already pending in Parliament or by adopting government executive ordinances, where there was an urgent need to establish legal certainty. The Romanian Constitution sets a limit of 45 days for the implementation of Constitutional Court rulings. Passed this deadline the provisions deemed unconstitutional are annulled.

However, the Parliament has not yet adopted any of the draft amendments to the Criminal Code and the Code of Criminal Procedures proposed by the Government in consultation with the judiciary. These include government proposals from February 2014 and two proposals from January and June 2015 to adopt government executive ordinances amending the Code of Criminal Procedures following the rulings on judicial control and house arrest, as well as a series of technical amendments coming from the judicial system.

The parliamentary debate led to a variety of additional amendments being put forward, several of which triggered negative reactions from the judicial authorities invited by the Parliament to comment[41]. The judicial authorities criticised the amendments on the grounds that they would harm the fight against corruption and reduce the capacity of the prosecution and judges to investigate or sentence corruption crimes. Some of these amendments were put forward by MPs themselves under investigation or convicted for corruption.[42] The debate also led to criticism of some amendments by NGOs and several Member States' embassies.[43] Some draft amendments were rejected, others adopted by the Senate in spring 2015. One of these would have replaced the provision that "*preventive measures may be ordered if there is evidence leading to a reasonable suspicion*"[44] by "*preventive measures can be ordered if solid evidence is available*". The public debate on this amendment was confused by an impression that the status quo was that no evidence was required (as opposed to "evidence leading to reasonable suspicion"). On all these additional amendments, the government, in line with the positions of the Superior Council of the Magistracy, the High Court of Cassation and Justice and the National Anti-Corruption Directorate, gave a negative opinion.

All amendments of the Government and the Parliament need again to be considered by the Chamber of deputies as decisional chamber. In the light of the controversy, discussions in the Parliament were adjourned until after summer recess. Since then, the debate has not resumed, though new amendments continue to be tabled. The result is that government proposals to introduce refinements identified in the weeks after the entry into force of the legislation remain pending, almost two years after entry into force, while problematic amendments are still on the table.

In a meeting with the Committees for Legal Affairs of the Chamber and the Senate in November, MPs stated to European Commission representatives their willingness to adopt only amendments which could secure a reasonable consensus, including the support of the judicial system. Transparency of the process improved as all draft legislation was uploaded in an electronic repository which is publically available. It is now possible to see the amendments and the stage at which they are, the results of the vote in the other chamber as well as the position of the government.

---

[41] http://www.hotnews.ro/stiri-esential-20221493-presedintele-inaltei-curti-livia-stanciu-presedintele-csm-marius-tudose-prezenti-sedinta-comisiei-juridice.htm

[42] Pl-x nr.574/2015; Amendments proposed by 9 MPs, 4 of them under investigation or convicted for corruption (G. Marian, convicted in May 2015 for abuse of service; M. Manolache, investigated since October 2013; P. Florin-Costin , convicted in March 2015 for conflict of interests; R. Catalin-Marian, indicted in April 2014).

[43] http://stiri.tvr.ro/lunea-neagra-la-senat-suspiciunile-rezonabile--inlocuite-cu-probe-temeinice-la-arestul-preventiv_60252.html

[44] Article 202 (1) of the Romanian Criminal Procedure Code, *translation in English provided by a project of the Ministry of Justice together with the Government of the Netherlands*.

Implementation of the Criminal Code and Code for Criminal Procedures

The difficulties in getting to a stable legal framework should not overshadow the efforts of the judiciary in the implementation of the codes. The 2015 CVM report noted the success of the judiciary's implementation efforts. [45] The judicial institutions, judges and prosecutors, and court clerks, continue to make an effort to make the reform work. They have been supported also by thorough training programmes by the National Institute of Magistracy and the National School of Clerks.[46]

The HCCJ, the General Prosecutor, the SCM and the Ministry of Justice have continued to offer intensive support to all courts and prosecutor offices targeted on helping the transition and tackling obstacles, for example quarterly meetings to discuss inconsistent practices, or meetings to identify and solve managerial problems, or central service in the Public Ministry answering questions from prosecutors. The Minister of Justice has continued to take steps to supplement the number of positions, in particular court clerks and investigators.

Judges and prosecutors have expressed their satisfaction with the new codes. The preliminary chamber, which is a very new concept in the criminal code, still raises questions from a number of judges, especially as several CCR rulings have already modified its functioning. However, others have pointed to its advantages to deal with problems relating to exceptions and evidence before entering in the trial phase.

The Public Ministry has analysed the application in 2014 of the new procedures such as plea bargains, renunciation to criminal investigation, and restitutions. On this basis, the General Prosecutor has issued guidelines to promote good practices and ensure coherent application in all prosecutors' offices. The guidelines define in particular criteria which should be taken into account when deciding to drop the criminal investigation.[47] The General Prosecutor has recognised that close monitoring would also be needed, as the possibility of dropping the criminal investigation may also be a risk area for corruption.

The SCM has set up a working group to analyse the impacts of the four new codes. The Group produced an extensive analysis of the implementation of the Codes including the efficiency of the courts, the activity of the prosecutors' offices, the activity of the High Court, human resources, the application of the preliminary chamber, and the social impact of the legal provisions. The report provides some preliminary conclusions and recommendations, some of them being far reaching and also controversial inside the judiciary. At this stage, it is not clear how the recommendations will be followed up, particularly as they were not pre-consulted with other key institutions including the Ministry of Justice and the HCCJ. The inter-institutional group created by the Ministry to discuss the impact of the criminal codes only met once (in May 2015). The SCM plans a new evaluation in 2017. The statistics regarding the efficiency of courts suggest that the average duration of cases in 2014 increased in all degrees of jurisdictions with regard to 2012 and 2013 (see below).

Respect of fair trial rights

Respect of fair trial rights in line with ECHR case law is an essential element of the criminal codes and the criminal judicial proceedings. Trust in the respect of fair trial rights in another country are the basis for judicial cooperation in criminal matters.

The issue of respect of fair trial rights in criminal proceedings has come up several times in the public debate this year. The criticism has been voiced in cases relating to the activity of the prosecution and has been cited as one of the justifications for amendments to the Code of Criminal Procedure presented in Parliament (*see above*). Criticism included the use of preventive arrest measures, the use

[45] SWD(2015) 8 final, p8; COM(2015) 35 final, p6.

[46] 27 e-learning courses were completed in 2015 in the field of new codes and were taken by 100 magistrates (each magistrate having taken an average of 6-7 e-learning courses).

[47] The CCR annulled this provision of the Code of Criminal Procedures on 20 January 2016.

of handcuffs, and the access of the media. Although there are no specific rules in place for people arrested for alleged corruption crimes,[48] it was these cases which attracted comment.

The use of preventative measures by prosecutors are authorised and controlled by a judge. The decisions can be appealed, while judicial control measures are regularly reviewed. Regarding high level corruption cases, throughout 2015 and previous years, there are examples of HCCJ and appeal court decisions refusing requests of DNA prosecution. So, judicial control and checks are in place.

Regarding the media, DNA's policy is that press releases are issued only after the defendant is informed about the steps the DNA is taking against him and the presumption of innocence of the defendant is clearly affirmed.[49] As an additional control within the system, the Judicial Inspection can also be seized if someone believes that a prosecutor or judge did not respect the procedures, but this does not appear to have been the case over the past year. The DNA informed the Commission that it had received no complaints about its press statements since 2013.

More generally, the issue of fair trial rights has been an important theme in the rulings and statements of the Constitutional Court (CCR), the HCCJ, the DNA and the judiciary in general. It is an important theme of the new Codes – introducing the "rights and liberty" judge that will examine and control the demands of the prosecution, in terms of search and arrests. Since the introduction of the new criminal codes, the CCR has ruled on several "open" issues or has annulled provisions, in view of re-enforcing respect for fair trials in line with ECHR case law: application of the most favourable law, deadlines for judicial control, and rights of the parties in the preliminary chamber. In all these cases, the judiciary has been quick to adapt and the Minister of Justice has put forward necessary laws accordingly.

Judges and prosecutors in Romania seem to be well aware of ECHR case-law, with many complaints against Romania in the European Courts of Human Rights. In 2014 there were 87 judgements of the ECHR against Romania, with 74 finding at least one violation, and more than 3000 cases pending (Romania is on the 5th place among 47 on the number of pending cases).[50] The majority of these cases concern prison conditions and the ineffectiveness of the mechanism for restitution or compensation for properties nationalised during the communist period. The Council of Ministers of the Council of Europe is monitoring the implementation by Romania.

Civil codes

The new Civil Code entered into force on 1 October 2011. The new Code of Civil Procedure entered into force on 15 February 2013, with some provisions to become operational on 1 of January 2016.[51] The transition towards the application of new Code of Civil Procedure is now coming to an end with the large majority of cases in courts now falling under the new code (this begins to be felt even at Constitutional Court level, which is starting to receive more cases concerning the new civil codes). This greatly facilitates the work of the judges, clerks, parties and lawyers.

The Constitutional Court has ruled on several provisions of the civil codes, in particular the CCR annuled in December an amendment to the Code of Civil Procedure transferring the powers on the writs of execution from courts to bailiffs.[52] This amendment had been promoted by the Superior Council of Magistracy and the Ministry of Justice to diminish the workload of courts.

In meetings with the Commission, judges have expressed their satisfaction with the new procedures. Overall there are fewer cases per hearing day and more material decisions taken within the courts of first instance. Although the date of first hearing is set much later than under the old code – and some lawyers have expressed concern that some of the first instance hearings are set within more than one

[48] For example, rules on the use of handcuffs are a matter for the police under the authority of the Ministry of the Interior.

[49] There have however been problems of leaking to the press before the defendant is heard by the DNA, but it has not been established who might be responsible.

[50] http://www.echr.coe.int/Documents/Stats_pending_2014_ENG.pdf

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

[52] Decision of 17 December 2015, provisions of art.666 of the Civil Procedure Code are unconstitutional

year[53] – this seems to have a beneficial impact as the cases are now much better prepared. The preliminary phase also allows filtering out cases that are poorly prepared: some lawyers have also argued that certain judges are too keen to reject cases, though the SCM has now issued guidelines for a uniform application of the provision. A majority of cases can be concluded in a single session, whereas previously only 15 to 20 per cent of cases were actually solved the same day.

This major reform is thus nearly finalised, except for the implementation of some provisions which should have entered into force in January 2016. These provisions refer to solving cases in council chamber, preparing files in appeal phase by the court that pronounced the ruling that is appealed, and changing the value ceiling for jurisdiction of cases. The Ministry of Justice together with the SCM had launched in the beginning of 2015 an exercise to evaluate the readiness of all courts to apply these provisions. However, this exercise has not progressed as planned and by the end of November 2015, there was no clear assessment, except that some courts do not have sufficent council rooms. Whilst a comprehensive picture is not available, it seems clear that the intention to use the delay to adapt the physical infrastrcutre of courts to the new requirements has not been realised. It has therefore been decided to postpone the entry into force of the new provisions until 1 January 2017 and a chapter in the Action Plan will detail the steps required to ensure effective implementation.

The inter-institutional committee discussing the implementation of the Civil Codes meets regularly. The members of the committee which drafted the codes usually attend these meetings, in order to ensure continuity with the original philosophy of the codes.

2.3 Consistency of jurisprudence and predictability of the judicial process

The consistency of jurisprudence has been used as a term to describe the need for consistent judicial decisions on similar cases taken by different courts and judges. This is important for the quality and predictability of the judicial process, supporting the accountability of the justice system towards the society it serves.[54] Inconsistency of judicial decisions affects public perceptions of the judicial system.[55] If the same justice system, using the same legal instruments, may render two evidently different decisions in two similar cases, this causes uncertainty, and can even fuel suspicions of corruption.

Different elements contribute to the consistency 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 and in the CVM process.

In line with its constitutional role, the High Court of Cassation and Justice (HCCJ) has the main responsibility in the consistency of jurisprudence and interpretation of the laws. An increasing part of the HCCJ's work is dedicated to enforcing uniform interpretation and practice. The HCCJ fulfils this role through defined legal mechanisms and meetings with lower level courts.

Legal consistency mechanisms

The HCCJ has two legal mechanisms at its disposal for unifying jurisprudence and providing a unitary interpretation: the preliminary ruling and the appeal in the interest of the law. The "preliminary ruling procedure", introduced by the new procedural codes, 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. Appeals in the interest of the law can be used to resolve the interpretation of the law when facing inconsistent judgements.

[53] From the Romanian Bar Association, Bucharest Bar and Timisoara Bar

[54] ECtHR has found that under certain conditions divergences in case-law lead to violation of Art.6 ECHR, §211-215 http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf

[55] Practical guide to Art. 6 ECHR, civili limb, § 214, http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf

The number of requests for preliminary rulings continues to increase. In criminal matters, there were 35 preliminary questions lodged and 33 settled compared with 31 questions lodged and 28 settled in 2014. There is a strong increase in civil matters, including administrative and tax matters: there have been 51 questions lodged and 47 settled in 2015,compared with 17 questions lodged and 13 settled in 2014.. This shows that the mechanisms work well and that judges in lower courts make use of it.

An increasingly important share of the work of the HCCJ's sections is dedicated to the solving of preliminary questions. The solution of a preliminary question involves a panel of at least nine judges, when restricted to one area of law, but can go up to eighteen judges when several areas of law are concerned. The deadlines for solving the question are very strict (maximum three months from receipt) and the HCCJ has set up a comprehensive reporting method for each panel, ensuring thorough legal analysis and debate as well as the strict respect of the deadlines. The HCCJ has also created a new department of assistant magistrates specialising in preliminary rulings, supported by a government decision to provide 4 extra posts of assistant magistrates and 6 posts of court clerks.[56] All questions and rulings are posted on the HCCJ website on the same day. Within thirty days after the ruling, the motivation is also published in the Official Gazette and the interpretation of the HCCJ becomes obligatory for all courts. When relevant, the Prosecutor-General or Courts of Appeal also provide their opinion on the question.[57]

Examples can illustrate the importance of the interpretative rulings of the HCCJ.[58] In criminal matters, the HCCJ solved the question on persons exercising the profession of lawyer but not belonging to the official Romanian Bar. This issue dates back since 2000, and has given rise to contradictory case-law and diverging practice, as well as confusion for citizens. It was raised with the European Commission by other EU countries. The interpretation now clearly states that a person exercising the activity of lawyer which is not recognised commits the crime of unlawfully exercising the profession.[59] In civil matters, the HCCJ solved a question relating to the method of calculating the salary of employees of public institutions, following a change in the law. The ruling clarified the situation for all categories of employees concerned and thereby solved thousands of outstanding cases in courts.[60]

The efficiency of the mechanism to solve problems of inaction by the administration is also demonstrated through a second ruling on the environmental stamp. In 2011, an ECJ decision ruled illegal the environmental stamp collected by the Romanian authorities.[61] This led to a surge of court cases from citizens asking for reimbursement, which the administration fought up to the level of appeal in all cases. Following a first ruling by the HCCJ, the government took a decision that citizens should be reimbursed. This created another rush of cases regarding interest to be paid or limitation periods. In September 2015, the HCCJ ruled on a preliminary question on this issue and thereby solved many thousands of cases in courts and in the administration. These examples illustrate how the solving of preliminary questions has helped to resolve repetitive administrative cases which are a burden on the courts and which are often reported to be the source of contradictory rulings.

The other unification mechanism, appeals in the interest of the law, continues to provide a substantial contribution to unification. In 2015, 18 appeals were lodged and 19 were settled in civil matters; 6 appeals were lodged and 7 were settled in criminal matters. A recent decision has helped to solve contradictory judgements on tax evasion, concerning the civil part on damages to the state. This mechanism can also be used for procedural questions, which is not the case for preliminary rulings.[62]

[56] Government Decision N° 486 of 30 June 2015

[57] In the preliminary ruling procedure, HCCJ requested a point of view of the Prosecutor general on 30 Cases in criminal matter and one in civil matter. On the appeal in the interest of law, 3 were filed by the PG.

[58] See also the rulings on the status of doctors in public hospitals mentioned in section 2.1

[59] Decizia ICCJ 15/2015; reports say the practice still exists (e.g in Tulcea County)

[60] Decision of 19 October 2015, case nr. 1329/1/2015

[61] Judgment of the Court (First Chamber) of 7 April 2011, Case C-402/09, Ioan Tatu v Statul român

[62] In Civil matters, the preliminary ruling request can also address procedural questions if these are related to the merits of the case.

Management action for consistency

With many new procedures, the entry into force of new procedural codes is a potential source of diverging interpretations and practice, which cannot easily be addressed by the legal unification mechanisms (essentially limited to the interpretation of substantive law). As a result, the onus falls rather on the management of the judicial system to encourage coherent practices. The judicial system has put in place and continues to develop different managerial actions to unify the interpretation and the practice, in particular concerning the Code of Criminal Procedure and the Code of Civil Procedures.

Regular meetings and discussions take place at national level with representatives of HCCJ, the courts of appeal, the SCM, the NIM on the basis of a list of topics with divergent interpretations – eight such meetings were held in 2015. When common solutions are found, guidelines are provided for all courts to follow.

The HCCJ, the courts of appeal and lower courts also use monthly or quarterly meetings within their courts to reach "agreement in principle" on potential diverging interpretations. The consensus or a majority position is then distributed as guidance to all judges in those courts. A Commission visit to the courts in Timisoara in 2015 confirmed the regularity of these meetings and their utility for judges. Meetings with judges in Bucharest and Timisoara highlighted also an increased recognition amongst judges concerning their responsibility to ensure consistency of decisions.

The coherence of court decisions and judicial practice is also part of the training of judges and prosecutors in the National Institute of Magistracy. In the Public Ministry, a special service for guidance and analysis also issues guidelines for unifying practice at prosecutorial level. The SCM has also set up online wiki for unifying jurisprudence, where courts can upload the results of its internal discussions and a forum were judges throughout the country can discuss cases of non-unitary practice. A common interpretation can also emerge from these discussions. Through its thematic inspections in courts and prosecutors office, the Judicial Inspection also contributes to unification by making relevant recommendations when there are diverging practices or procedures.

Publication of jurisprudence

The availability of on-line open and searchable access to all court decisions has been a recommendation of successive CVM reports, as one of the means for magistrates and all parties to refer to similar cases and decisions.[63]

The HCCJ continues to publish its decisions on its website. It publishes summaries of key decisions as well as the full texts of all decisions. The result is that there are now with over 4,600 summaries and over 117,000 (anonymised) full texts, including the decisions concerning preliminary ruling requests, all available online.

The ROLII project (Romanian Institute for legal information) to publish all court decisions online, under discussion for some years and referred to in previous CVM reports,[64] has finally been developed in a public private partnership: ROLII (SCM, Romanian Bar Association and Association of Notaries) and a publisher. The ROLII portal was launched on 16th of December 2015.

Obstacles to the consistency of jurisprudence

Despite these concrete measures to encourage consistency and signs of a cultural shift in favour of consistency, inconsistent decisions are still frequently reported. Whilst some issues relating to the new Codes should be resolved through the passage of time, others suggest more structural problems.

Previous CVM reports have identified a number of obstacles to the consistency of jurisprudence. Some of these are broader issues, such as of the quality of legislation and the risks inherent in widespread recourse to instruments such as Government Executive Ordinances.[65],[66] The importance of

[63] COM(2015) 35 final, COM(2014) 37 final.
[64] COM(2015) 35 final, SWD(2015) 8 final, COM(2014) 37 final, SWD(2014) 37 final.
[65] COM (2015) 35 final, SWD(2015) 8 final, p14.

the uniform application of the law and the uniform implementation of court decisions by the public administration has also been noted. A planned reform of public administration[67], with the support of EU funds, could help to promote a consistent approach by public administration towards the judicial system. This reform adopted by the Government one year ago is still awaiting implementation. Cooperation between the judicial leadership and the Bar – as seen in the ROLII project – can also help in terms of coherence and a clear explanation of apparent divergences. Others questions relate more specifically to the judicial system.

Whilst every case has its own specificities, the motivation of the decision can be used to explain cases where there is an apparent divergence from precedents or jurisprudence from higher courts.[68] This points to the importance of training in drafting motivations, as well as the need for sufficient time to be given to this aspect of a case – judges, particularly in lower level courts, have commented to the Commission that they do not have sufficient time to write their decisions within the legal deadlines while keeping their standards of quality. This issue of efficiency is further developed below.

2.4 Structural reforms

Structural reforms to the administration of justice have been shown to have a direct impact on the effectiveness of justice. Issues like the efficiency 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.

In the 2015 CVM report, the Commission made several recommendations in this area: on an action plan to implement the strategy, on the need for management information tools, on finding pragmatic solutions as an alternative to a law on small courts, and on the follow-up of court judgements. The design and implementation of structural reforms is a shared responsibility of the judicial management, in particular of the Minister of Justice and of the SCM. The Presidents of the Courts and the Chief Prosecutors also contribute.

The Strategic framework

At the end of 2014, the government adopted a Strategy for the Development of the Judiciary 2015-2020, setting out a vision for the judiciary and the key steps.[69, 70] This document draws heavily on CVM recommendations, and studies developed with the World Bank, in particular the *Functional Analysis of the Romanian judiciary*. The strategy document is a high level description of vision and objectives, to be backed up by an action plan on further details on actions and deadlines. 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.

An action plan prepared by the Ministry of Justice in consultation with all judicial institutions has been technically ready since summer, but was only launched as a public consultation in November. The action plan will be updated at the start of 2016 in the light of the comments, also to follow the priorities of the new government. No budget has yet been earmarked for the implementation of the

---

[66] For 2015, the Ombudsman reports raising 7 exceptions of unconstitutionality including 2 concerning Government Executive ordinances and filing 3 requests for appeals in the interest of the law.

[67] http://www.mdrt.ro/userfiles/strategie_adm_publica.pdf

[68] Divergence of case law among last instance courts or where a supreme court departs from its own case law can lead to a violation of Art 6 §1 ECtHR Guide on Art. 6, § 193

[69] The Strategy for the Development of the Judiciary 2015-2020 was approved by Government Decision no. 1155/23.12.2014.

[70] 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.

action plan: multi-annual programming will also be needed for the national funding in the context of the use of EU funds for justice projects.

The fact that the Action Plan has not yet been adopted has not stalled all progress in judicial reform. A number of actions have been initiated and pursued, notably regarding efficiency of justice and criminal asset management.

Resources

The Ministry of Justice has continued to support the reform of the justice system through securing budget for the justice system[71] and providing additional posts, in total 390 additional positions: 60 anti-fraud specialised personnel (5 DNA, 10 DIICOT, 45 prosecutor's offices); 4 assistant-magistrate and 6 clerks for the HCCJ; 20 positions of judge and 70 positions of clerk for courts; 10 positions of IT specialists for the Ministry of Justice; 60 positions of clerk for the Public Ministry; 50 positions of prosecutor and 55 positions of clerk and administrative personnel for DNA; 45 positions of clerk and administrative personnel for DIICOT; 10 positions of probation personnel for the National Probation Directorate.

In the past two years, the number of posts of court clerks has been increased: from about 5800 in January 2014, the number now reaches more than 6000. Most of the vacant positions will be occupied by the graduates of the National School of Clerks (NSC). The NSC has received support to train more court clerks, but the numbers passing through the Institute do not appear to be enough to fill the vacancies in all courts. As an exception, the law allows for entry into profession through a local competition organised by the Court of Appeal. However, the NSC reported that the entry into profession through local competition has become widespread and therefore expressed concerns about insufficient professional training for these court clerks.

The Superior Council of the Magistracy (SCM) is developing a more pro-active human resources management through a better overview of the staffing situation and the staffing needs, in conjunction with a better monitoring of the workload and efficiency of the courts and anticipation of future needs. The SCM has also proposed a change in the evaluation and promotion system of magistrates, as part of the amendments to the Law 303/2004. The draft law was transmitted to the Minister of Justice in November 2015.

Structural reform of the justice system also needs to be accompanied by the modernisation of the buildings and IT systems. A series of construction or rehabilitation works in courts financed through World Bank loans are still ongoing. As already noted, the need for more Council rooms to accommodate the preliminary stages in the Civil and Criminal Procedure Codes do not seem to be met in all courts, in particular the courts with high workloads.

The HCCJ faces logistic difficulties in terms of offices and council rooms, and these problems were made more complicated by the ruling of the Constitutional Court that the preliminary chamber phase should be in the presence of the parties, requiring a council room. The HCCJ is now using the council rooms of the military court of appeal, while the economic department has been moved to a wing in the Parliament building. The HCCJ has benefited from an important increase in judges, assistant judges and court clerks in the last years, but still has a serious shortfall in office space.[72] As a long-term solution, the former Minister of Justice had initiated the plan for building a Justice District in Bucharest with the support of the World Bank.

Management tools, efficiency and quality of the judicial process

The SCM has continued the development of tools for monitoring and managing the activities of the courts: as well as the *ROLII* project (see above), *electronic case file application* has been introduced in some Courts of Appeal, also supported by the local Bar associations. The *EMAP portal* is used by the SCM for interconnection of information available in different courts and for managing various

[71] From beginning 2013 to end 2015, the budget increased by 46%.

[72] Some offices hold up to 13 assistant magistrates or 6 judges. The archiving of files all over the HCCJ building and the physical handling of files in trial phases is particularly difficult.

administrative and human resource activities, while the *STATIS* system monitors the activity of the courts in handling cases and is now installed in all courts.

The STATIS monitoring, based on five indicators relating to efficiency, is also linked to performance standards and helps to identify areas in need of improvement, both for individual courts and for the court system as a whole. At the end of every statistical year, the SCM's Department of Judges and the Judicial Inspection will analyse courts which have a "satisfactory" or "inefficient" efficiency level. The result of the analysis will be discussed with the management of the courts in question and the immediately superior courts to develop measures to address the inefficiencies.

The STATIS tool has been used for analysing the impact of the new codes on the activity of the courts and developing court-crossing conclusions for 2014. At Judicatorie (district court) level, the number of cases has increased both in civil and in criminal matters. The increase of the number of cases in civil matters seems to be due to cases of forced execution. At Tribunalele level, there has been a decrease of cases in non-criminal matters, but a substantial increase of newly registered criminal cases. The SCM report explains that the latter is linked with the new competence of the tribunals to judge in first instance the cases investigated by DNA and DIICOT (see section 0). As for Court of Appeal level, there is a decrease of files in non-criminal matters and an increase of files in criminal cases. The analysis also shows an increase in the average duration of settlement of cases in all degrees of jurisdiction both in non-criminal and in criminal matters. A similar conclusion was reached in the *courts performance index for 2015*, a research conducted by the Romanian NGO Funky Citizens, analysing the impact of the new codes onto the legal system.[73]

As stated by the SCM report, the causes for the average lower performance in 2014 are not clear and a further analysis will have to be performed. Importantly, the SCM and court managers now have the tools to monitor the situation and are taking corrective actions. As an example, when the Commission visited the Court of Appeal in Timisoara – where an analysis of the STATIS results had shown that one of the main causes of delay was to acquire evidence and receive reports from experts – the Court and experts agreed to set deadlines.

Balancing the workload

The analysis of the SCM confirms earlier findings that the workload is unbalanced between courts. In the big cities, judges report very high workloads and complain that the pressure to comply with the legal deadlines for finalising a case can sometimes compromise quality standards, in particular in writing motivations.

The draft bill to close some courts and public prosecutors' offices was rejected by the Senate in May 2015. The SCM and the Ministry of Justice are pursuing an alternative solution for the redrawing of the judicial map which consists in reassigning certain localities in the territorial competence area of courts within the same court of appeal, by way of a Government Decision. The SCM made a first proposal in September 2015 of reassigning the jurisdiction localities within the area of jurisdiction of the Court of Appeal of Cluj. The decision was approved by the Government in October. At prosecution level, the Prosecutor-General has proposed to regroup prosecutors at Tribunal (2nd instance) level and close prosecutors' offices at first instance, noting that some offices are too small or have low workload and finalised an impact study in December 2015 to be consulted with the system.

Another element which has an impact on the workload of courts is the issue of repetitive cases, mostly cases of citizens against the public administration. This has already been mentioned in previous CVM reports and in the context of consistency of jurisprudence above,[74] but it also has consequences in terms of efficiency. This is also a matter of cooperation between the public administration and the judiciary – for example, some Member States operate systems of pilot or test cases which once ruled on by the courts, serve as the standard reference for the administration. There were no reports of such steps being taken, although the HCCJ gave a mandatory interpretation in at least two such cases (See section 2.3). Access of state agencies to the ROLII database on decisions will help as well, as they

[73] http://www.onoratainstanta.ro/indicele-de-performanta.html
[74] SWD(2015) 8 final, p15.

could get information on court practice in similar factual situations even before litigation. In the courts, identifying equivalent cases can also be a support role for clerks with legal training; however, the draft law that would modernize the status of clerks and create a new category of clerks, the judicial clerk that could take over administrative tasks from judges could not be agreed in 2015.[75]

Enforcement of court decisions (civil, administrative and criminal)

The enforcement of court decisions is often cited as a continuing problem, though statistics on the effective enforcement are not available. Amendments to the civil code of last year by which court judgments can be enforced directly by bailiffs and aiming at speeding up the procedure, has been annulled by the Constitutional Court in December.[76] Further, there has been an increase in workload in non-litigious enforcement cases relating to other enforceable titles, for which bailiffs have to obtain a court enforcement order. A national statistic system is one of the elements for ensuring quality control of enforcement proceedings.[77] Furthermore, introducing an ICT system for processing debt recovery could lower the enforcement costs and speed up enforcement proceedings. More actions are planned in the draft Action Plan of the Strategy for the Development of the Judiciary 2015-2020.

Regarding claims against the state (central or local authorities) or moneys that need to be recovered by the State, there remains no global view on effectiveness.[78] A legal framework on enforcement of final court decisions against public authorities in Romania is in place. [79],[80] As a rule it requires that public authorities cooperate voluntarily and promptly to ensure the implementation of final court decisions. In case of failure, the claimant can resort to execution proceedings in the court with the involvement of bailiffs, while the non-compliant public authority can be subject to sanctions. In practice however effective enforcement seems difficult to obtain. Enforcement of judgements such as confirmation of invalid building permits remains problematic.[81]

Issues in this area have also been addressed in the framework of the Council of Europe following a number of cases at the European Court of Human Rights.[82] The government has had frequent exchanges with the Council of Europe on different aspects of non-enforcement or prolonged non-enforcement of court decisions against public authorities in Romania.[83] The Romanian authorities have recently established an intergovernmental working group with the task of collecting statistics, identifying the necessary legislative and administrative measures for effective enforcement, and collecting comparative law information in this area.[84]

Further, local authorities are often reluctant to start court proceedings to recover proceeds of crimes, e.g. fraud or corruption. There has been some progress in the role played by the Court of Accounts in

---

75 SWD(2015) 8 final, p18.

76 This expected reduction of cases was also mentioned as a positive development in the report of last year (SWD(2015) 8 final, p20).

77 European Commission on the efficiency of justice CEPEJ, Guidelines for a better implementation of the existing Council of Europe Recommendation on enforcement, CEPEJ(2009)11REV2 of 17 December 2009.

78 There is no central authority competent to monitor and coordinate the implementation of final court decisions by all public authorities. Each ministry or public authority is responsible to recover or honour its own claims. It seems also that potential claims against the administration are not always budgeted to allow for these claims, if they materialise, to be paid within a reasonable time.

79 Government Ordinance No 22 of 30 January 2002

80 Law 544/2004 on administrative proceedings; New Code of Civil Procedure, Articles 622, 626 and 617

81 Source: civil society, public administration, complaints received by the Commission

82 The cases include the *Sacaleanu* group of cases concerning failure or delay of the administration in enforcing final domestic court decisions; The *Ruianu* group of cases which concerns failure of domestic authorities to assist the applicants in enforcement of final court decisions placing various obligations on private parties; The *Stungariu* group of case which mainly concern failure to enforce final court decisions ordering the applicants' reinstatements in their posts in public bodies.

83 The Romanian authorities have submitted Action Plans and additional information on the *Sacaleanu* group of cases in 2012-2014; on the *Ruianu* group in 2011- 2015 and the *Stungariu* group in 2012

84 Note d'information Group d'affaires Sacaleanu c Roumanie, DH-DD (2015)14

monitoring better the recovery of debts from administrative or criminal proceeds, with examples of launching investigations against the public authorities for failure to start proceedings to recover.

Relationship with the Bar

Discussions between the Commission and the National Bar of Romania, the Bar of Bucharest and the Bar of Timisoara report an improvement in the institutional relations with the SCM, the courts and the Ministry of Justice. There have been 15 regional conferences between judges and lawyers, to discuss practical issues regarding court organization and proceedings. Judges and prosecutors from the SCM have participated in the Bar councils and the Bar Association has been involved in National Institute for the Magistracy seminars on ethical issues. Lawyers have been given access to IT court systems with a password.

Integrity within the judiciary

Integrity within the judiciary is a particularly important test of the management of the magistracy. The judicial management is aware of the risks of corruption, the reputational damage and the importance of dissuasive action.

Since January 2015, DNA has indicted 5 judges, 1 Chief Prosecutor (DIICOT) and 7 prosecutors.[85] The Courts ruled final conviction decisions against 6 judges (including 1 member of the SCM, 1 judge of the HCCJ and 2 presidents of a court) and 11 prosecutors (including 3 DIICOT prosecutors, 1 prosecutor from the Prosecutor's Office attached to the HCCJ, and 4 chief prosecutors).

DNA reports that there had now been a reduction in the number of complaints and new cases of corruption in the judiciary. Given the overall trend of increased signals to DNA as a whole, they considered that this implied fewer examples of corruption in the magistracy, and a reduced tolerance for corruption within the system (with an increase in the number of cases of judges reported by their colleagues). DNA also noted that cases were now more likely in areas where legal uncertainty offered scope for less obvious forms of corruption.

The SCM is responsible for ensuring that there are no obstacles to the criminal investigation of magistrates. It has a policy of "zero tolerance" against corruption within the judiciary and this has become a consistent feature in the SCM's public statements. The SCM approved preventive measures regarding magistrates, such as pre-trial detention, search and custody – the numbers show a slight increase on 2014. SCM suspended from duty in 2015 11 judges and 12 prosecutors.

In this respect, studies point to the importance that the judicial hierarchy is attentive to any risk of integrity for judges and prosecutors, and that magistrates receive proper guidance with regard to impartialities, conflicts of interest or incompatibilities. Studies have concluded to the need for better management systems (integrity standards, clear codes of conduct and compliance management) to encourage the prevention of corruption and promote professional ethics in the magistracy.[86] Even if the legislation generally provides a sound legal framework, the operational mechanisms in the system are limited to the disciplinary procedure and periodic assessment.[87] The studies pointed to a lack of clarity in the regulations (notably surrounding incompatibilities, but also the definition of concepts such as "affecting the good reputation of the judiciary"), as well as in the approach taken between and within the Judicial Inspection, the SCM, and the HCCJ. The recommendations included strong and ongoing ethical training involving case studies, and the availability of ethics counsellors. Ideally, such measures might also extend to judicial assistants and clerks.

---

[85] In 2014, DNA indicted 23 judges (including 4 from the HCCJ), 6 Chief prosecutors and 6 prosecutors for corruption within the judiciary. Amongst them 7 judges and 13 prosecutors were convicted.

[86] *Criminological study on corruption causes in Romania* (2015, Romanian Ministry of Justice and the Ministry of Foreign Affairs of the Netherlands), and *Consolidation of the judicial system integrity* (2015, Superior Council of Magistracy and the Judicial Council in the Netherlands).

[87] The integrity of a magistrate is part of the periodic evaluation report and the results on the whole judicial system are usually approaching 99%. This method has attracted some criticism from civil society.

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. Since 1 January 2015, from 6550 referrals on disciplinary offences registered, the Judicial Inspection carried out 53 disciplinary actions. The reports of the Judicial Inspection are forwarded to the respective SCM sections, who issued 41 decisions concerning judges (accepting 29 cases and rejecting 12) and 8 decisions regarding prosecutors (with 5 acceptances and 3 rejections).

The SCM imposed 32 sanctions to judges and 6 to prosecutors. The sanctions applied are similar to last year (warning, decrease of monthly salary, suspension from office, moved to another court and exclusion from magistracy). Decisions were appealed in 70 pc of cases, most of which which are pending at the HCCJ.[88]

The Judicial Inspection analyses the disciplinary cases and identifies the main causes for disciplinary actions in order to help defining preventive measures. For the judges the main causes were poor case management, resulting in delays in writing decisions; failure to take into account incompatibilities; inappropriate behaviour in private life; and excessive workload.

2.5 Key institutions

Superior Council of Magistracy

The Superior Council of the Magistracy (SCM) plays a central role in the Romanian judicial landscape. It brings together both judges and prosecutors. In 2016 there will be SCM elections. These are planned in autumn with the new team taking office from January 2017, but it is not clear whether the elections will renew all members or only those that finished their six years mandate. Magistrates who would like to run for elections can openly campaign, while the SCM is responsible for organising the election process. There are 14 elected members chosen by the judges and prosecutors throughout the country for six years and representing all levels of courts. There is a system of rotating presidency (one judge and one prosecutor) with terms of one year. There are also two members of civil society chosen by the Senate, though it is not clear whether these members have any specific contact with civil society active in judicial reform.

The SCM's role in defending the independence of the judiciary is its first task under the Romanian Constitution.[89] As well as direct intervention in specific cases (see above), the SCM's responsibilities for appointments and disciplinary proceedings have a direct bearing on judicial independence. The SCM has also a representation role and a managerial role, through which it plays a key role in driving judicial reform.[90] CVM reports have noted the SCM's development in its roles, taking on more responsibility and leading more initiatives. The SCM has also developed transparency through the web-streaming of the plenum meetings and the publication of its decisions. However magistrates, civil society and professional organisations have expressed concerns that there is a lack of direct communication with the SCM on its policies and decisions. Only after judges launched a petition, eventually signed by more than 1000 magistrates, did the SCM organise a consultation of all general assemblies on its project to modify the appointment, evaluation and promotion conditions of magistrates. Another example is the preparation of the *report on the impact of the new codes*: courts and other institutions complained that they were not consulted on the drafting or the conclusions.

National Institute of the Magistracy and National School of Clerks

The National Institute of the Magistracy (NIM) has played an important role in the development of the Romanian judiciary. Since 2005, half the entrants into the magistracy have undergone the initial training of the NIM. The Institute also undertakes ongoing training: 70% of magistrates participated to

[88] HCCJ ruled on 7 cases: 4 decisions were maintained and 3 modified with a less severe sanction
[89] Article 133 (1)
[90] SWD(2014) 37 final, p19.

at least one training in 2014, with many courses targeted at helping the entry into force of the four new codes and supporting the unification of jurisprudence and practice. In 2015, NIM has organised 269 in service seminars for 6.232 participants namely, judges, prosecutors, personnel assimilated to magistrates and assistant magistrates. The National School of Clerks (NSC) received additional funding in 2015 so that it could provide initial training for 260 clerks instead of 120.[91] The NSC intensified its continuous training, especially on the new codes.[92] The NSC organised trainings on ethics based on an analysis of disciplinary case-law against clerks, and seminars with the Judicial Inspection on random allocation of cases.

Judicial Inspection

The Judicial Inspection is operationally independent and inspectors are independent in their activity, although the Inspection reported some pressure to revert to the former situation of stronger dependence from the SCM. Its role goes beyond defending the independence of justice and the professional reputation of magistrates or investigating professional misbehaviour. For example, it can identify structural shortcomings or potential improvements, through horizontal substantive inspections in courts and prosecutor's offices.[93] Such inspections contribute to identifying diverging practices, to improving management of courts and management of cases. Over the past year, this has included: Looking at the implementation of the legal provisions of the preliminary chamber in courts of appeal and the unification of administrative practice in this field; administrative and judicial practice in the application by judges of deprivation of liberty; verification of the management of the DIICOT; control of cases where prosecutors have decided not to pursue a case; and an inspection on cases concerning fraud against EU funds. Some of these, including the last case, led to disciplinary procedures.

III INTEGRITY FRAMEWORK AND THE NATIONAL INTEGRITY AGENCY

Romania has a comprehensive framework for integrity for public officials, and an independent institution to help the application of these rules and to apply sanctions (which can be challenged in court). The integrity framework defines incompatibilities between official positions and situations of administrative conflict of interest. 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. ANI continued to initiate a substantial number of cases in terms of conflicts of interest and incompatibility issues, many of them concerning local politicians.[94] The legal framework on incompatibilities and the implementation of its reports, even when confirmed by court decision, have continued to be questioned: though ANI has also been the subject of increasing interest from other Member States interested in developing their own integrity framework.

In its 2015 CVM report, the recommendations covered ensuring that court decisions requiring the suspension from office of parliamentarians are automatically applied by Parliament; implementing the ex-ante check of conflict of interests in public procurement by ANI. Ensure closer contact between the prosecution and ANI so that potential offences linked to ANI cases are followed up; and exploring ways to improve public acceptance and effective implementation of incompatibility rules and prevention of incompatibility.

---

91 The NSC also provides distant learning for clerks recruited via local competitions.

92 More than 1000 clerks attended centralised courses and more than 2600 local courses.

93 The Judicial Inspection numbers some 50 magistrates and 40 other staff. A request for 10 extra staff in 2014 was not granted.

94 In 2015, 84% of incompatibility cases, 66% of administrative conflicts of interest cases and 66% of criminal conflicts of interests cases concern mayors, deputy mayors, local councillors or county councillors.

3.1 The National Integrity Agency (ANI) and the National Integrity Council (NIC)

Institutional capacity

The President of the National Integrity Agency (ANI) resigned in March.[95] The Vice-President acted as interim President: at the end of the year he was appointed as President of ANI following a competition organised by the National Integrity Council (NIC) (see also section 2.1). ANI presented its Annual Activity Report to the NIC in spring. This report is then transmitted to the Romanian Senate. There is also an annual external audit report on the spending and management activities of the agency, and this year's report noted the effective implementation of most of the previous recommendations. The NIC adopted the audit report without recommendations.

ANI employs 104 people, with an increase of four this year. There are 44 integrity inspectors, with an average caseload of 60 files. The number of files finalised by the agency has increased this year and amounts to more than 1,500 files. ANI has reported increased cooperation with institutions dealing directly with its files: the Wealth Investigation Commissions, the High Court of Cassation and Justice (HCCJ), and the General Prosecution. ANI also benefited from support of the Superior Council of Magistracy (SCM) in improving its handling of cases in court.

National Integrity Council (NIC)

The National Integrity Council is the oversight body for ANI. The mandate of the Council expired in November 2014. The constituent meeting of the new Council took place in February 2015 and it elected the representative of civil society as its President. Other members include the President of the association of Romanian communes, a representative of public officials and representatives from the major political parties. Membership of the NIC is a part-time function. The main task of the NIC in 2015 has been the selection process of the new ANI President. The NIC will now have to launch another competition for a new Vice President.

As in previous years, the NIC monitored the management activity of ANI, and also intervened to defend the legal framework for integrity and to request the application of final decisions.[96] Compared with previous years, the NIC reported that it had been called upon less frequently to respond to media and political pressure on the agency.

Track record – conflict of interest, unjustified wealth, incompatibility

In 2015, ANI's track record was stable compared to 2014. ANI finalised 1910 files and found 229 cases of incompatibilities, 124 cases of administrative conflicts of interests, 63 cases of criminal conflicts of interests, and 30 cases of significant differences between incomes and assets. The cases include 135 mayors, 114 local counsellors, 71 deputy mayors and 48 Members of Parliament. ANI notified the prosecution of 25 cases of solid suspicions on committing criminal offences or corruption offences. The Agency communicates its activity by publishing on its internet page press releases informing the public about definitive and irrevocable decisions.[97] With the support of the SCM, as well as judges from the administrative section of the HCCJ and from the Wealth Investigation Commission, ANI has also been working at improving the quality of ANI reports.

A high percentage of ANI decisions are challenged in court – ANI has about 3000 files to defend in court – but the confirmation rate of ANI decisions in court is still above 80%. ANI's six legal advisers focus their efforts on cases before the HCCJ, (the Administrative Section of the HCCJ is responsible for many first instance or appeals in ANI cases) and before the Court of Appeal in Bucharest. The administrative section of the HCCJ pursued its efforts to speed up the treatment of ANI files (which represent some 10% of its workload) and has reduced the deadlines for solutions from 18 to about 9

[95] The former President of ANI has been indicted in a case of abuse of office when he was a member of the Commission for Restitution of Properties. The case is not linked to his mandate at the National Integrity Agency. He resigned immediately after the start of the investigation.

[96] www.integritate.eu/Comunicate.aspx?Action=1&Year=2015&Month=10&NewsId=2034&M=NewsV2&PID=20;

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

months. Quicker decisions and a coherent jurisprudence should result in swifter enforcement of incompatibility decisions (sanctions can only be applied when the decision is final and irrevocable).

One challenge faced by the Agency is the implementation of final court decisions regarding unjustified assets or conflict of interests and incompatibilities. Last year ANI set up a monitoring system for final decisions to assist implementation. Final decisions are communicated to competent authorities for appropriate follow up, such as asset confiscation, removal from public offices or the application of other types of sanctions in the case of persons for whom unjustified assets, incompatibilities or conflicts of interests have been established.[98] ANI also started to apply contravention fines or even notify the prosecution in cases where authorities or institutions refuse or unduly delay the application of decisions and sanctions.[99] As a result ANI reports that there is a small progress in the implementation of final decisions.

Regarding criminal conflicts of interest, ANI has further developed the cooperation with the General Prosecution. Experts from ANI have participated in several regional meetings of prosecutors to help streamlining investigations and exchanging information on conflicts of interests in which cases and jurisprudence of the HCCJ were presented and discussed. The guidance service of the General Prosecutor's Office regularly draws analyses of the typology of the conflicts of interest cases sent to trial. These analyses help the prosecution to identify priority investigation areas. In 2015, prosecution services solved 222 cases of conflicts of interests – 36 cases were sent to court.[100] Twelve final judicial decisions were reached: eight defendants were convicted, the court renounced enforcing the penalty against two defendants, and two defendants were acquitted.

3.2 Legal Framework and jurisprudence on incompatibilities

The philosophy of the rules on incompatibilities is preventive: avoiding conflicts of interests and lowering the risk for corruption in the first place. This implies that the law should be clear to everyone and that sanctions for incompatibilities and conflict of interest are predictable. In the past there have been clear examples of inconsistent court decisions undermining its effectiveness.[101]

The High Court of Cassation and Justice (HCCJ) plays a key role in setting jurisprudence in incompatibility cases, with hundreds of decisions on incompatibility and conflict of interests cases since 2008. The Administrative section of the HCCJ, recognising that there were problems of non-unitary interpretation at the level of the HCCJ itself, has set up mechanisms to remedy this: central classification and monitoring of all cases, early detection of incoherence and discussion to agreeing on a common interpretation. This analysis of all past cases has been made available to the ANI and will be published on the website of the HCCJ. ANI reported that the result was there were no recent cases of incoherent decisions in the HCCJ, though inconsistency continued as a problem in lower courts.

The work of the HCCJ has contributed to improved understanding of legal provisions by ANI. In 2015, there were a number of important court cases concerning the interpretation of the incompatibility laws, in particular regarding incompatibilities of mayors. ANI's integrity inspectors are kept informed, and ANI further intends to make a compendium of all jurisprudence on incompatibility decisions. The Ministry of Justice also works closely with ANI on the interpretation of the law and on bringing together all laws relating on incompatibilities together on a dedicated website.

The Ministry of Justice and ANI share the opinion that the difficulties of divergent interpretations of the law will be more effectively addressed through work on a unified jurisprudence than through a modification of the legal framework. One reason is that integrity legislation in Parliament continued to be subject to the same uncertainties as mentioned in previous CVM reports.[102] Although none of the discussions have led to the adoption of amendments, some have been adopted by one of the two

[98] SWD(2015) 8 final, p 23
[99] ANI imposed 596 administrative fines, the majority for failure to submit timely assets declarations.
[100] Concerning 42 defendants, among them 16 mayors, 1 local counsellor, 1 hospital medical manager.
[101] COM(2015) 35 final, SWD (2015) 8 final.
[102] COM(2015) 35 final

Chambers of Parliament.[103] These include amendments which would annul the general three-year election ban after being found incompatible, restricting it to a ban to be elected in the same function for which the official was found incompatible: this would constitute a major reduction in the effective sanction. In a meeting between the Commission and representatives of the Legal Committees of the Senate and the Chamber of Deputies in November, Parliamentarians stated that the parliamentary debate will involve the institutions who have to implement the laws and that any amendments would need the support of the Minister of Justice, ANI and key other institutions.

A law removing from the scope of incompatibility the circumstance of mayors sitting on the board of Inter-community Development Associations, adopted by the Parliament in 2014 against the opinion of ANI and the Minister of Justice, was promulgated by the President in December following a series of legal challenges.[104]

3.3 Ex ante checks and prevention activities

The electronic system PREVENT aims at automatically detecting conflict of interests in public procurement before the selection and contract award procedure. If the system detects that such a conflict exists, it issues a warning to the contracting authority and prevents the contract from being awarded until mitigation measures are in place. The first step is an electronic check alone, but in a second step a more thorough verification of how the conflict of interest situation has been resolved can be triggered by the Agency. The success of the system depends on whether the contracting authorities have the obligation to feed in the system the data that is then subject to the electronic check. In the draft law approved by the Government, contracting authorities are obliged to submit such data and failure to do so automatically generates a warning and must be rectified. PREVENT would apply first to public procurement involving EU funds, but its application would extend rapidly to all public procurement procedures run via the Electronic Public Procurement System (SEAP). The draft law was adopted by the government in September and is being discussed in Parliament.

The system is designed to detect potential conflicts of interest as defined currently 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%) involve concluding public contracts with companies linked to or owned by family members of local officials. According to the draft law, PREVENT will cover all contracts within its scope rather than operate via sampling like other ex-ante or ex-post existing control mechanisms do. The draft law has been coordinated with other institutions responsible for public procurement, consistent with broader cooperation between the Romanian authorities and the European Commission on improving the system of public procurement. PREVENT should be ready to start operating as soon as the law is adopted. A budget of 23 million Lei (€5.1m), partially funded through EU funds, has been foreseen. ANI plans to prioritise on disseminating the relevant information about PREVENT and organising trainings for the contracting authorities.

The development of the PREVENT tool does not remove the need to check and verify more complex cases of conflict of interests. Equally, if the system does not detect a conflict of interest situation, it does not mean that other ex-ante and ex-post controls are not needed. According to the National Anti-Corruption Directorate (DNA), and also shown by cases brought to light in 2015 in several municipalities, whilst conflict of interests checks such as PREVENT can be a real help in preventing corruption, there is also a risk of displacement to other, more sophisticated means of corruption.

ANI developed prevention and information activities in 2015. As well as the FAQ on their website, ANI issued more than 1200 opinions (compared with 700 in 2014) providing legislative interpretations on a case by case basis, to allow people to avoid potential problems (these opinions, anonymised, are made public). ANI is also upgrading its incompatibility guide according to the recent jurisprudence, and plans to make a codex with all jurisprudence on incompatibility decisions.

[103] Two proposals modifying art 25 of Law 176/2010 were tacitly adopted by the Chamber of Deputies in May and December 2015, and one concerning art 85 of Law 161/2003 was adopted by the Senate in June.

[104] See Section 2.1

3.4 Integrity and the Romanian Parliament

The automaticity with which Parliament implements final court judgments which have upheld decisions of the National Integrity Agency (ANI) is an issue that has been regularly raised in previous CVM reports.[105]

Article 7 of the Statute of Senators and Deputies regulates how the Parliament should proceed when a member has been found incompatible. Although the termination of office is automatic on the date the decision of incompatibility becomes final and irrevocable,[106] other steps are needed to put this into effect. The President of the Chamber has to take note of the termination of the mandate of the Deputy or the Senator, and puts the question to the vote of the plenary session of the Chamber by which the place of the Deputy or Senator shall become vacant.[107]

ANI continues to report problems with the follow up of its incompatibilities decisions by the Parliament. In 2015, there were two cases of incompatibility of Deputies. In the first case, The decision of ANI had been final since the beginning of January 2015 (it had not been challenged in court). Following several unsuccessful requests by ANI to the Chamber of Deputies to take a decision, ANI applied a fine of 2000 RON (€500) to the members of the Legal Committee. Whilst this sparked strong public criticism of ANI by some MPs, the Chamber of Deputies did take the decision to declare the mandate of the incompatible Deputy vacant in February 2015. In the second case, despite several requests of ANI, the Chamber of Deputies has not taken a decision to declare vacant the mandate of the incompatible Deputy, although the decision of ANI has been final since the HCCJ rejected the appeal on 23 March.[108] The incompatible Deputy announced on 16 December that he will resign.

3.5 Challenges ahead

In 2016 ANI will have to process the wealth declarations of all candidates in the local elections (June 2016) and Parliamentary elections (November 2016). ANI plans to have meetings at local levels with those responsible for dealing with wealth declarations, and to provide guidance and information on recurring errors. ANI also intends to step up its awareness campaigns so that all candidates are well aware of potential incompatibilities and conflicts of interest.

The new electoral law expressly states that persons excluded from election through a judicial decision cannot stand in elections.[109] Candidates are also required to present a statement that they fulfil the legal requirements for being nominated. Subsequently, there are checks and the possibility for legal challenge for the electoral committees, for the political parties and for the citizens.

IV. TACKLING HIGH-LEVEL CORRUPTION

Corruption is a deep-seated societal question with consequences for both governance and the economy. It is widely recognised as a major issue in Romania, as also evidenced by several perception surveys.[110] Corruption was central to the public demonstrations in the wake of the tragic fire in a

---

[105] COM(2015)35 final

[106] Act No 96 of 21 April 2006 on the Statute of Deputies and Senators, Article 7 (2): *The termination of office of Deputies or Senators due to incompatibility occurs:….c) on the date of the final and irrevocable judgement dismissing the appeal against the National Integrity Agency report stating the incompatibility; d) on the expiry date of the term stipulated in Act No 176/2010 on the integrity in the exercise of public functions and dignities, […], from the date of taking knowledge of the evaluation report of the National Integrity Agency, unless within that period the Deputy or Senator disputed the report at the administrative litigation court. Acknowledgement shall be done by signing the receipt of the National Integrity Agency report by the Deputy or Senator concerned or, if they refuse its receipt, by the announcement made by the President of the plenary session of the Chamber to which they belong.*

[107] Act No 96 of 21 April 2006 on the Statute of Deputies and Senators – Article 7 (4).

[108] The same Deputy is also the subject of a DNA case.

[109] Art.6 of Law 115/2015. The provisions cover all types of judicial procedures which could lead to such a ban.

[110] Flash Eurobarometer 428: Businesses' attitudes towards corruption in the EU , available at http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2084 ;

Bucharest night club, which resulted in more than 60 deaths, amidst suspicion that corruption had contributed to insufficient safety standards. Civil society have also played an important part in highlighting corruption: A new initiative from civil society in the wake of the demonstrations involved listing all elected officials investigated for corruption per city and political party, including MPs.[111]

Recent CVM reports have been able to point to a growing track record in terms of investigating, prosecuting and deciding upon high-level corruption cases. Investigations of the National Anti-corruption Directorate (DNA) and corruption trials have shown that public figures and politicians of all parties are involved in corruption crimes.

The investigations of the last three years have revealed important political corruption at local level. In 40 out of the 110 major cities, the mayors are under investigation or have been sentenced for corruption. For example, in Bucharest, the mayor of Bucharest and the mayors of the 1th, 4th and 5th districts are under investigation for corruption, while the former mayor of the 6th district was sentenced to eight years of prison in 2014. More than half of the Presidents of the County Councils (24 out of 41) are under investigation for corruption.[112] Examples of the kind of transgressions involved are abuse of public function, by-passing public procurement rules, and obtaining favours.

4.1 Legal framework

As mentioned in last year's CVM report, the new Criminal Code and Code for Criminal Procedures provide a clearer framework for fighting against corruption.[113] This has also been confirmed by a report adopted in April 2015 by the Group of States against Corruption (GRECO). GRECO published the *interim* evaluation of Romania that assesses the implementation of past recommendations with regard to incrimination of corruption crimes in line with the standards established by the Council of Europe anti-corruption instruments.[114] The report concludes that the entry into force of the new criminal codes has meant that four out of seven recommendations have been satisfactorily met, with three on the incrimination of corruption crimes are only partially addressed.[115] The fourth GRECO Evaluation Round took place in 2014 about the themes of integrity of the members of parliament and integrity of judges and prosecutors.[116]

The issues with the stability of the Criminal Code and Code for Criminal Procedure Codes described in section 2.2 also apply to the legal framework for the fight against corruption. Some of the amendments discussed in Parliament were criticised by the anti-corruption authorities as weakening the effectiveness of the fight against corruption. However, such amendments have not passed in Parliament.

4.2 High Court of Cassation and Justice (HCCJ)

According to the new Code of Criminal Procedures, the High Court of Cassation and Justice (HCCJ) is competent for first instance and appeal trials for offences committed by Senators, Deputies, Government members, judges of the Constitutional Court, members of the Superior Council of Magistracy, judges of the HCCJ and prosecutors of the Prosecutor's office attached to the HCCJ. In final instance, the HCCJ judges appeals against the Court of Appeals' decisions for offences committed (among others) by councillors, public notaries, bailiffs, public auditors, judges of Judicatorie, Tribunalele and Courts of Appeal and prosecutors from offices attached to these courts.

---

111 http://initiativaromania.ro/demisia/corupti/primarii-si-consilii-judetene?oras_id=403

112 http://stirileprotv.ro/special/cj-a-ajuns-sa-nu-mai-insemne-consiliu-judetean-ci-judecat-harta-sefilor-de-judet-cu-probleme-penale.html

113 SWD (2015) 8 final, p28

114 Council of Europe Criminal Law Convention on Corruption (1999) and its Additional Protocol (2003); Guiding Principle 2 of the observance of the Guiding Principles for the Fight against corruption as adopted by the Committee of Ministers of the Council of Europe on 6 November 1997.

115 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/2nd%20RC3/Greco%20RC3%282014%2922_Romania_2ndRC_EN.pdf
The interim report published in December 2015 confirms this conclusions as regards incriminations: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2015)13_Interim_Romania_EN.pdf.

116 http://www.coe.int/t/dghl/monitoring/greco/default_en.asp

Institutional Capacity

A consequence of the new criminal codes is that there is a decrease in the number of cases reaching the HCCJ, with the intention that the HCCJ can thereby focus on its constitutional role of cassation and interpretation of the law. This is also the case for the criminal section, but if there are fewer small cases, the complexity of the high-level corruption cases is huge, often involving a high number of witnesses or several defendants. The first instance decisions are taken by three-judge panels in the criminal section, and appeals are decided by five panel judges (judges from the criminal section plus the President of the HCCJ or the President of the Criminal Section). The preliminary court phase, judge of rights and liberties and the preliminary chamber, is also taken care of by the criminal section judges. The criminal section has 35 judge posts, but about 5 are vacant. Early in 2015, the HCCJ had difficulties in organising sufficient participation given the different roles of the judge in the preliminary chamber and in the trial phase, but found a solution.

Track record

The HCCJ track record on tackling high-level corruption cases has been maintained throughout 2015, with a scale of cases for 2015 comparable to previous years. In 2015 the Penal Chamber settled, at first instance, 11 high-level corruption cases and the panels of five judges settled, as final instance, 11 high-level corruption cases. Even in cases with a high number of witnesses and complex evidence, the HCCJ judges have underlined their efforts to ensure respect of procedural rights for all parties. Proceedings have also been kept relatively short: the majority of cases were registered in 2014 and 2015, while the oldest case goes back to 2011. Amongst the high profile defendants convicted were those who had served in the positions of Ministers, Members of Parliament, Mayors, judges and prosecutors.[117]

4.3 The National Anti-Corruption Directorate

The National Anti-corruption Directorate (DNA) investigates high and medium level corruption.[118] Because of its consistent non-partisan track record, DNA continues to enjoy a very high support in public opinion.[119]

Institutional capacity

The number of DNA cases continues to increase. DNA registered more than 7000 new cases in 2015.[120] In 2014, DNA finalised 4500 cases but at the end of the year there were still 3500 cases pending. There is an obligation to deal with all cases; prosecutors cannot invoke the opportunity principle because there is a public interest in fighting corruption. The use of plea bargaining is limited by law, as it can only be used in cases involving small amounts of money. Therefore the workload per prosecutor is very high: about 100 cases per prosecutor in team with two police officers.

In 2014, the government budget financed 50 more posts for DNA judicial police officers: DNA reported that this had been particularly valuable in the identification of criminal assets. In 2015, the government also reinforced DNA with 50 additional posts of prosecutors and 55 additional posts for support staff.[121] Although the Public Ministry budget for 2016 has been reduced overall by 10 %, DNA's share will increase: an extra €1million euro for equipment and support to move into another

[117] 2 Ministers, 1 MP, 1 Mayor, 4 judges, 8 prosecutors, President of RO Chamber of Commerce

[118] The law establishes three criteria for medium and high level corruption: the amount of bribes or undue benefits exceeds €10,000; the damage caused exceeds €200,000; corruption offenses are committed (regardless of the amount) by people who occupy important positions such as Deputies, Senators, members of Government, State Secretaries, prosecutors and judges, officers, admirals, generals, mayors and deputy mayors, presidents or deputies of county councils, county councillors, prefects and sub-prefects.

[119] Polling of November 2015 shows 61% very high to high confidence in DNA http://adevarul.ro/assets/adevarul.ro/MRImage/2015/12/21/56782d9f37115986c6ad7682/orig.jpg

[120] DNA reports that 85 to 90 % of cases originate from citizens' complaints, 5 to 10% are ex-officio or complaints from other institutions and less than 5% of cases originate from notification of the intelligence services. The Number of signals from citizens increased by 14% in 2015.

[121] Government Decision 486 of 30 June 2015

building. Both DNA and the Prosecutor General report that the collaboration is good. Regularly, files initiated by a prosecutor's office are transferred to DNA if it is found that they fall under DNA competence. The Prosecutor General supports DNA in requests to Parliament for preventive measures against MPs or (ex-)ministers. Cooperation with other government agencies is varied.[122]

The activity of the DNA territorial structures has increased, with more investigations of important local figures. During a Commission visit to Timişoara, the DNA local branch presented examples of serious cases of corruption based on complex networks, involving both illegal political party funding and personal enrichment and resulting in a substantial number of convictions of high ranking local officials.

The DNA does not have its own capacity for wiretapping or surveillance measures. For this it relies on the technical support of the Romanian Intelligence Service (SRI), as acknowledged in DNA press releases. When performing wiretapping for DNA, the SRI personnel works under the authority of a prosecutor, in turn under the control of a judge. The SRI does not itself gather evidence for DNA cases.[123] Nevertheless this situation has been the source of public concern: the creation of an autonomous capacity in the prosecution for wiretapping and surveillance was one of the demands of civil society in the November demonstrations.

Track record

DNA maintained its track record on conducting investigations of high and medium level corruption cases throughout 2015. In 2015, 357 cases were sent to trial, regarding 1258 defendants.[124] Despite the high workload, DNA completed investigations within reasonable deadlines, with many cases started in 2015 and sent to trial the same year. Amongst the high profile defendants, DNA has indicted the Prime Minister, 17 Members of Parliament (including two former Ministers), two former Ministers, one Constitutional Court judge, 4 State Secretaries, 21 mayors and 7 deputy-mayors, 11 presidents of county councils and 23 local councillors, the President of the National Audio-Visual Council, the President of the National Agency for Food safety, the President of the Chamber of Commerce and Industry, the President of the National Integrity Agency and the President of the National Authority for the Restitution of properties, 37 directors of public agencies, authorities and companies. Five judges have been indicted as well as two Chief prosecutors and six prosecutors.[125]

In order to recover the damages caused by the offences or to ensure the confiscation of the proceeds of corruption crimes, DNA prosecutors ordered interim seizures measures in the cases sent to trial for money and goods worth about €452 million. In four cases DNA made use of extended confiscation, but in accordance with a Constitutional Court ruling of January 2015, those procedures cannot be applied retroactively and can only cover assets obtained after 2012.[126]

The high-level corruption cases are judged by the High Court of Cassation and Justice and the Courts of Appeal, as described above. For all other corruption cases investigated by DNA, the Tribunalele (tribunals) are the competent first instance court, unless assigned by law under the jurisdiction of a higher court. This means that the large majority of DNA corruption cases are judged by Tribunalele (first instance) and Appeal courts (final instance). During the reference period, 302 final conviction decisions were ruled in corruption cases against 973 defendants (a little less than in 2014)[127]. DNA has secured convictions in a high proportion of cases (the acquittal rate is about 10% for DNA cases).

[122] DNA reports that very few notifications were received from the agency controlling public procurement.

[123] Art 102 of the Code of Criminal Procedure states that evidence obtained unlawfully and evidence directly derived from it cannot be used in criminal proceedings.

[124] 59 of these defendants were indicted with plea bargain agreements.

[125] The approval of the Superior Council of Magistracy is necessary for search and arrest: it has been granted in all cases.

[126] Decision n°11 of 15 January 2015

[127] 351 punishments with execution (36%), 222 punishments with the conditioned suspension of execution (23%), 389 punishments with suspension under surveillance of execution (40%), 11 punishments with the postponing of enforcement of the punishment during the surveillance term (less than 1%)

In the cases with final conviction decisions during the reference period, the courts ruled the confiscation of the total sum of approximately €29.6 million, as well as of a large number of movable goods. Compensation ordered to civil parties amounted at €177 million, with €160 million of this for public authorities and state owned enterprises. DNA has started a closer monitoring of the follow-up of confiscation decisions and has as yet found no improvement in the effective amounts recovered. In one major case where a final decision had been ruled in January 2015, by November no action had been taken yet by the Fiscal Administration (ANAF) with regard to the three buildings that the court had ruled should be seized.

To ensure a consistent approach in court, DNA has changed its internal organisation so that the same prosecutor attends a given panel. DNA reports that relations with the High Court and the Court of Appeal in Bucharest are good. In some other Courts of Appeal or tribunals DNA has encountered problems, in part due to a lack of experience with difficult or complex cases. One difficulty during the trials reported by DNA is that it cannot use in-house DNA experts. The Code for Criminal Proceedings makes it mandatory to order an independent expert report, which DNA considers unnecessarily increases costs and time.[128]

4.4 Parliament and the fight against high-level corruption

The parliamentary procedures for the lifting of immunity with respect to starting investigations, search, arrest and detention measure has been an issue raised in previous CVM reports.[129] 2015 also saw examples of apparent inconsistencies in the response given to requests from the prosecution to lift the immunities of MPs. The criteria on which requests are accepted or rejected remain unclear and are not communicated to the prosecution. In most cases, the Parliament respected the deadlines for taking a decision.

During 2015, DNA prosecutors made 14 requests to the Parliament for pre-trial detention on corruption grounds (regarding 6 Deputies, 2 Senators and 1 judge of the Constitutional Court): 9 were admitted (4 by the Senate, 5 by the Chamber of Deputies); 4 were denied (3 by the Chamber of Deputies, 1 by the Senate); 1 request becamee void after the resignation of the Deputy. Nine requests were also made for approval to start investigations on corruption grounds, concerning the incumbent Prime Minister, one Minister and 3 former Ministers: 6 were admitted (4 by the Chamber of Deputies, 2 by the Senate); 3 were denied by the Chamber of Deputies (including the request concerning the incumbent Prime Minister).

In some cases, the refusals of lifting of immunity created considerable controversy, sparking comments both in Parliament and outside (notably, by the President of Romania). There was also a referral to the Constitutional Court (see section 2.1) which did not change the result of the vote but required the Senate to change its rules on voting.

The Venice Commission issued a Report[130] on the scope and lifting of parliamentary immunities in which it notes "*that inviolability against arrest, detention, investigation and prosecution in cases where there is an alleged criminal offence is the most problematic and controversial part of the concept of parliamentary immunity*". The Venice Commission considers that "*national rules on parliamentary inviolability and its lifting should be subject to critical review and reassessment. Such rules may still be legitimate, but they are not a necessary part of a well-functioning modern democracy, and they can be misused in ways that may undermine democracy, infringe the rule of law and obstruct the course of justice. To the extent that national rules on inviolability are maintained, they should therefore be regulated in a restrictive manner, and it should always be possible to lift such immunity, following clear and impartial procedures. Inviolability, if applied, should be lifted unless when this is justified with reference to the case at hand and proportional and necessary in order to protect the democratic workings of parliament and the rights of the political opposition"*.

[128] An amendment of this provision is part of the package pending in Parliament.
[129] COM(2015)38 final, COM(2014) 37 final, COM(2013) 47 final
[130] CDL-AD(2014)011 of 14 May 2014

A second issue that has been raised previously is 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.[131] In the aftermath of the Presidential elections, there were proposals from two main political parties in spring 2015 to modify the party status sanctioning members that are involved in corruption proceedings.[132]

V TACKLING CORRUPTION AT ALL LEVELS

5.1 The extent of corruption

The fourth CVM benchmark invites the Romanian authorities to take further measures to prevent and fight against corruption, in particular within local government. Medium and low-level corruption is widely perceived to be endemic and affects everyday life of all social classes, with consequences for the economy and for governance. Some cases are on a large scale, with significant financial and societal damages (but without necessarily involving high ranking politicians or office holders). Corruption represents a reputational risk for the country and, as other forms of corruption, acts as a deterrent for foreign investment. A recent Eurobarometer targeting businesses found that 74% of business representatives consider that corruption is a problem for their company when doing business in Romania, while 70% say that patronage and nepotism are a problem.[133] The recent fire in a Bucharest nightclub was also seen as revealing the potentially tragic consequences of local corruption,[134] and sparked widespread street protests.

There is also an increasing recognition by public institutions that corruption is widespread and is affecting Romania's development.[135] It played a major role in the election campaign of the President of Romania in 2014. In a recent interview, the Prosecutor-General reiterated that corruption is widespread.[136] To underline the priority given to the fight against corruption, the Prosecutor-General has organised a yearly national competition concerning the fight against corruption, gathering prosecutors from courts around the country. The need to step up preventive measures has also been highlighted by the Chief Prosecutor of the National Anti-corruption Directorate, who emphasised that prosecution alone cannot resolve the problem.

As evidenced in previous CVM reports, the fight against general corruption relies on a mix of robust prevention measures, education to change the perception that bribes or "informal payments" are the only way to obtain a service, and effective controls, as well as dissuasive and enforced sanctions.

5.2 Corruption prevention

National Anticorruption Strategy (NAS)

The previous CVM report recommended using the National Anti-Corruption Strategy (NAS) to better identify corruption-risk areas and design educative and preventive measures, with the support of NGOs and taking advantage of the opportunities presented by EU funds.[137] The NAS 2012-2015 was

[131] COM(2015) 35 final, p10; SWD(2015) 8 final, p26
[132] PSD and PNL
[133] Flash Eurobarometer 428: Businesses' attitudes towards corruption in the EU , available at http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2084
[134] The investigation following the tragedy at the "Collectiv Club", where 63 people died in a fire, relates to possible corruption in relation to the attribution of the operating licence.
[135] For example, in its 2014 annual activity report, the Romanian Intelligence Service noted the economic cost of corruption and the particular issues faced by public administration. http://www.cameradeputatilor.ro/bp/docs/F-362277298/RaportSRI2014.pdf
[136] He noted in particular the risks to local administration, with particular reference to public procurement or the attribution of permits (for example building), underlining that this was not unique to Romania. http://internacional.elpais.com/internacional/2015/11/03/actualidad/1446582315_502527.html
[137] COM(2015) 35 final, p13

designed to set up corruption prevention measures in all public institutions; each participating institution identifying its own corruption risks and its own corruption prevention measures. The measures and their implementation were reviewed through a peer review process, with specific recommendations and best practices identified. The Ministry of Justice coordinates at national level and is supported in the peer review process by NGOs, and by the Anti-Corruption Directorate General (DGA). In 2015, the activities under the NAS have continued as scheduled, with regular reporting, peer review missions in public institutions and meetings of the cooperation platforms.

At the Ministry for Regional Development and Public Administration (MRDAP), initiatives have been taken to define measures aimed at assisting local government in the implementation of the NAS, at increasing the capacity to implement preventive measures, at raising corruption awareness at local levels and at strengthening integrity, efficiency and transparency.[138] Nevertheless, the NAS evaluation results suggest that progress is slow. At the level of local administration knowledge about relevant anti-corruption, conflict of interests and incompatibilities legislation is poor and preventive and control administrative procedures are largely missing.

A general review of the NAS performed in view of extending the strategy beyond 2015 shows that the strategy has started to produce positive results and has stimulated a reflection on the drivers of corruption and the exchanges of best practices. However it also concludes that, if the corruption prevention measures have been put in place, their application is more piecemeal, due to insufficient capacity of the institutions, lack of knowledge and expertise of the staff, and lack of political will from the top of the institutions. Prevention and education are still lagging behind the record of law enforcement institutions in combating corruption. The review therefore recommended maintaining the approach and pursuing it for another two years (until 2017), but focusing efforts on achieving better results in terms of prevention and education, and on establishing on establishing effective control bodies inside public institutions with the necessary human and material resources, with a focus on local public administration. Other areas highlighted to be strengthened are the application of whistleblower protection rules to encourage whistleblowing and a more effective oversight of how "revolving doors rules" are being applied.

The Ministry of Justice will conduct in the first quarter of 2016 inter-institutional consultations and public debates to assess the impact of the NAS so far. The result will be a new policy document to be adopted by the Government and endorsed by main stakeholders such as Parliament, Judiciary, businesses, civil society and local administration. The expected timeframe for adoption is first half of 2016. The new policy will seek to preserve best practices and focus on national priorities such as implementation of PREVENT system, establishment of the new National Agency for the Administration of Seized Assets and seek to address the shortcomings identified during the review process.

Anti-corruption General Directorate (DGA)

In 2015 the Anti-Corruption General Directorate (DGA) within the Ministry of Internal Affairs (MoIA) has been active in promoting preventive measures such as anti-corruption information activities,[139] prevention and informing training sessions,[140] guides for the citizens,[141] and research studies. The DGA has a specialised department that analyses all cases of corruption in order to define

[138] The project "*Strategic approach in the field of anticorruption at the level of the MRDPA*", implemented in partnership with the Association for Implementing Democracy, co-financed from the European Social Fund.

[139] One activity was about elaborating and disseminating the *Best practice Guide for preventing and countering corruption*, within a project funded by the European Commission "United against corruption", aiming at preventing and countering corruption in Romania, Bulgaria and Latvia

[140] DGA organised over 3,500 prevention and informing training sessions for MoIA personnel. In 161 cases DGA was notified, by MoIA officers, of bribe attempts they had experienced, and there were 70 cases raised where MoIA colleagues had allegedly been involved in corruption deeds.

[141] A recent information guide for citizens on the MoIA provides lists of documents necessary to obtain an administrative act and details the types of corruption crimes that could be committed both by public officials and citizens: http://www.mai-dga.ro/downloads/engleza/Prevenire/Ghid_informare_en.pdf.

measures to be taken to prevent similar cases. On this basis DGA further defines new training and control measures. Over the years DGA has built an expertise in corruption prevention and control which DGA could share with other institutions in view of reinforcing the NAS.

Role of civil society

CVM reports have constantly recognised the importance of civil society in documenting and highlighting corruption problems and in providing support and expertise to concrete anticorruption projects. Examples in 2015 include analysis of the National Anticorruption Strategy;[142] projects around the country to prevent corruption in public administration and public procurement;[143] looking at the re-use for social purposes of confiscated assets in context of discussions on the draft law for the new Asset Management Agency[144]; and corruption in healthcare.[145] Specialised NGOs closely monitored the process for the appointment of the Chief Prosecutor of the Directorate for Investigation of Terrorism and Organised Crime (DIICOT),[146] and have made clear their intention to scrutinise the key appointments due in 2016. Other issues of concern raised by NGOs have been risk areas for corruption such as urban planning (licences for building), and state-owned-enterprises.

5.3 Investigation – prosecution and court practice

General corruption cases are investigated both by the National Anti-corruption Directorate (DNA) (medium-level) and by the General Prosecution (low-level).[147] There is not always a clear separation between high-level, medium-level and low-level corruption. Isolated cases of small bribes may appear as low level corruption but taken together with other similar cases in the same administration might bring up patterns of well organised schemes feeding into high-level corruption. The General Prosecution and the DNA collaborate so that cases initiated as low-level corruption are later transferred to DNA if it appears during the investigation that these fall within DNA competence. In 2015, 785 cases were re-attributed to DNA and in 470 of those, the DNA competence appeared after the prosecutors had already taken the investigation a long way.

Prosecution services throughout the country

The Prosecutor-General has made the fight against corruption a priority. In 2015 the General Prosecution dealt with a large number of low-level corruption cases: 2321 cases were resolved, out of which 344 files involving 903 defendants were sent to court (310 bills of indictment and 34 plea bargains).[148] These cases cover a large spectrum including education,[149] health,[150] police,[151] local and central public administration and state owned companies.[152] The guidance service of the Prosecutor General makes an analysis of the typology of those corruption cases, in order to prioritise the prosecution work and provide guidance in risk assessment.

In 2015 the General Prosecution was reinforced with anti-fraud personnel, though in 2016, the DNA's recruitment of 50 prosecutors will naturally draw on experience in the General Prosecution, and there is a risk of lost expertise. In 2015, the Prosecutor's Office attached to the High Court of Cassation and Justice organized four professional regional meetings, under the title "*Investigating crimes of corruption and the crime of conflict of interests*", where prosecutors have presented relevant cases

[142] The NGO "Funky Citizens": http://www.onoratainstanta.ro/analize.html
[143] Freedom House and Expert Forum – see for example http://www.justitiecurata.ro/
[144] Centre for Legal Resources
[145] Association for the Implementation of Democracy
[146] 5 NGO s (Grupul pentru Dialog Social, Freedom House Romania, Expert Forum, Institutul pentru Politici Publice,Centrul Roman pentru Politici Europene) have sent an open letter to the Minister of Justice asking for a transparent procedure, with clear and public selection criteria.
[147] See previous section for DNA's competence.
[148] An slight increase compared to 2014
[149] Professors, Teachers, headmasters, school inspectors
[150] Physicians, hospital managers.
[151] Police workers, border police agents, and also 12 mayors.
[152] Results obtained in the prosecution of criminal conflicts of interests are detailed in Section 0.

solved by all territorial structures. The purpose of such meetings is to exchange experience about the investigation of corruption cases. All cases presented at the regional and national anti-corruption competitions underlined the importance of teamwork amongst law enforcement authorities.

The General Prosecution does not have its own judicial police. The Prosecutor General has set up a few teams in which the judicial police and anti-fraud inspectors worked closely with the prosecutor. These experiences have led to better results in terms of investigation and assets confiscation, and Prosecutor General has concluded that a dedicated judicial police would bring added value. The Romanian Police has established as a priority the prevention and fight against corruption in all fields, acting mainly in the areas of health, education, public administration, as well as in the investigation of public procurement fraud linked to corruption. The Police also works with ANI to identify and investigate cases of conflict of interests, usually under the supervision and coordination of prosecutors within the Prosecutor's Offices attached to the Courts of Appeal.

In countering corruption, DGA judicial police officers conducted investigations and forwarded to the Prosecution a total of 3000 penal files, out of which 1,467 were initiated ex-officio. Criminal pursuit was initiated in 2,471 penal files, indictments were issued in 403 files and admission of guilt statements were concluded in 41 files. The Prosecution issued 3,399 delegation ordinances for DGA's judiciary police officers to conduct investigations.[153] The DGA and the Prosecutor General issued a new edition of the *Best practices Guide for Investigating Corruption Offences*.

Court practice

According to the General Prosecution, 242 final court decisions were issued in corruption cases (the number of final court decisions doubled compared to 2014), with 313 defendants convicted and 7 defendants fully acquitted – though the figure for suspended sentences remained high at 86%. The number of cases solved by using plea-bargaining at the prosecution stage also increased by more than 20%. The number of convictions has doubled for bribe-taking cases.

Inconsistencies in sentencing are still often reported, although it is not possible to ascertain this without a thorough analysis. In view to reinforce the deterrent effect of the convictions and the penalties, the Prosecutor General has recommended as a general policy line for prosecutors to check consistency of penalties with similar cases and to appeal the decision when the sentence appears too low, especially when the accused person is a representative of a public authority (e.g policemen, public official in the mayor office, professor or management level in the health or educational sector).

The Minister of Justice had announced steps to modify the law allowing a reduction of sentence for intellectual work undertaken in prison. A number of high-profile figures convicted for corruption have benefited from this law, amid accusations of plagiarism and ghost-writing of the works they produced. These steps did not crystallise into a concrete proposal.

Confiscation and asset recovery

As 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.[154] The Romanian authorities have acknowledged that the system needs to be improved. The 2015 CVM report recommended to improve the collection of statistics on effective asset recovery and ensure that the new Agency can improve the management of frozen assets and work together with ANAF to improve effective recovery rates.[155]

The amounts seized during prosecution and confiscated by final court orders continued to increase in 2015. The DNA reports seizures for cases sent to Court during 2015 of a total amount of approximately €452 million. The confiscated amounts ruled by a final Court decision during the same reference period for DNA cases were of €29.6 million and a large number of movable goods. The

[153] 614 from the National Anti-corruption Directorate, 122 from DIICOT and 2.663 from other structures of the Public Ministry.
[154] COM(2012) 410 final; SWD(2015) 8 final
[155] COM(2015) 35 final, p13

General prosecution (including DIICOT) ordered provisional measures for more than €460 million in tax evasion and money laundering, with in addition one special case of money laundering where provisional measures up to €2 billion were ordered. Extended confiscation can be used for assets acquired after 2012 only and is relatively rarely used by courts, the DNA noting four cases and the Prosecutor's Office attached to the HCCJ one case in 2015. The possibility to introduce non-conviction based confiscation is under analysis.

It remains difficult to have a view on the effective recovery rate to ensure that decisions of the courts with financial consequences lead to gains for the public purse, as no reliable statistics are available. According to a report of the Ministry of Justice, the value of seized assets was of €434 million in in 2013, but that of the assets effectively recovered reached only €7.6 million. Estimates of effective recoveries are often very low, at about 10%. A national registry of seized and confiscated assets is in view but it will take time to set it up and feed the data. As of January 2016, ANAF will have a new directorate general in charge of recovering confiscated assets, tasked with coordinating enforced recoveries across the country.

In June the government adopted a draft law to set up a National Agency for the Administration of Seized Assets,[156] which will be responsible for managing frozen assets and for cooperation between institutions to ensure the effective recovery by the State of the confiscated assets decided by the courts. The law was adopted by Parliament in November and promulgated in December.

The law aims to provide the necessary support to judicial bodies both regarding the management of seized assets and their sale, where the law allows for the sale of property before conviction. The agency will be headed by a director general (a magistrate or a judge) nominated by the Minister of Justice. The main institutions concerned (Ministry of Justice, Fiscal administration (ANAF), Ministry of Internal Affairs (MoIA), DNA, DIICOT, Superior Council of Magistracy) and some NGOs will have strategic oversight over the agency. The agency can propose that confiscated assets may be donated for social re-use to local administrations and NGOs. Funds resulting from the sale of seized assets will be distributed to institutions involved in fighting and prevention crime. Funds resulting from the sale of seized assets will be allocated to the Ministry of Education and the Ministry of Health; to the Ministry of Internal Affairs and the Public Ministry to civil society organisations and relevant universities.[157] The agency will also sell non-monetary seizures.[158]

According to the implementation plan, the agency should hire 35 persons in its first year, start initial operations mid-2016 and become fully operational by the end of 2017. Once its IT system becomes operational, the new agency should be able to provide data on the rate of executions of confiscation and all recovery of damages by ANAF and local administrations and all compensations to victims. Today the statistics suggest that 80% of seizures come from DNA cases, in spite of the fact that these are a small proportion of cases overall.

The new agency will also take over the Asset Recovery office (ARO) competencies from the Ministry of Justice. The exchange of data and information with ARO's counterparts in other Member States continued throughout 2015, with 140 incoming requests and 119 outgoing requests (an increase compared to the first 11 months of last year). The Romanian ARO was accepted as a member of the CARIN (Camden Assets Recovery Interagency Network) Steering Group.[159]

[156] The draft law is in part a response to Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

[157] 20% each to the Ministry of Education and the Ministry of Health; 15% each to the Ministry of Internal Affairs, the Ministry of Justice and the Public Ministry; 15% to civil society organisations and relevant universities

[158] This will require work on catalogues and instructions for objective evaluation of assets and the proper housing of seized assets.

[159] It will also assume the presidency of the network in 2019.

5.4 Tackling corruption in different sectors

Healthcare

Corruption in the Romanian health care system has been recognised as a particular problem and one faced by many Romanian citizens. The main problems relate to public procurement, fraud and passive corruption relating to issuance of certificates and the practice of informal payments. Existing anticorruption projects[160] in this sector came to an end in 2015, though a "diagnosis report"[161] regarding corruption in the Romanian healthcare system has been prepared. Last year's report mentioned the establishment of ethics councils within public hospitals[162] and a patient feedback mechanism.[163] The sustainability of these anticorruption measures for the future will depend on the allocation of resources: the planned increases in staff for the integrity department in the Ministry appear not to have taken place, and the department's findings have not been used to elaborate and implement a comprehensive anti-corruption sectorial strategy. In addition, these structures and the transparency requirements they bring does not cover the work of the national insurance structure (CNAS), the key financial decision-maker in healthcare, and the National Agency for Drugs, which is in charge of a series of key processes concerning drugs.

A portal for monitoring public procurement contracts in public health units is under way and part of the procurement contracts for goods have been centralised at Ministry level,[164] which generates budget savings and may result in a better control and monitoring. The system of feedback from patients is meant to help identify cases where informal payments are requested but the use of the system seems to be limited so far. The High Court of Cassation and Justice has clarified that medical personnel are public servants,[165] facilitating the potential prosecution of medical personnel for soliciting or taking bribes. The government has also increased salaries of medical personnel by 25% with the aim of doubling them within 2 to 3 years, partly motivated by the need to tackle informal payments.

The use of the electronic health card that registers all consultations and prescriptions has become mandatory in September 2015. This tool also helps to deter abusive/fake consultations or prescriptions and reduce the opportunities for social insurance fraud.[166] An analysis from the General Prosecution indicates that certain fraudulent patterns[167] are recurrent and need more attention on both the preventive and the repressive side. Since last year, on the basis of this analysis, prosecutors have targeted more systematically this type of corruption and have prosecuted similar cases.

---

[160] "Good Governance through Integrity and Accountability in the Romanian Healthcare System" – implemented together by AID (Association for Implementing Democracy) with the Ministry of Health and financed from the European Social Fund

[161] According to this report, 68% of patients consider that the level of corruption within the public health system is high or very high, with similar figures amongst those working in county Public Health Directorates (67%), and hospitals (57%).

[162] Following the approval of ministerial order 145/2015 for approving the structure and responsibilities of Ethics Councils functioning within public hospitals in February 2015, all public health hospitals (349 hospitals) have established Ethics Councils. Some private hospitals have also established Ethics Councils.

[163] Five hospitals are now piloting the patient's feedback mechanism, which gives patients the opportunity to express their opinion and address complaints to the Ethical Councils.

[164] Though a wide range of goods are not covered by the centralised procurement unit.

[165] See Section 2.1.

[166] A case that won the prosecutors' national competition on anticorruption in 2015 revealed that doctors practiced plastic surgery at the capital's Emergency Hospital; the plastic surgery was then reimbursed by CNAS falsely claiming an emergency.

[167] Such patterns include illegal discounts of medical analysis, medication or medical treatments, or issuing forged medical documents that entitle patients to undue benefits of social insurance funds (e.g. forged prescriptions, false diagnoses, certificates, etc.)

In addition, civil society has criticised the lack of transparency as regards hospital budgets.[168] Data such as overall reimbursement flows from CNAS per geographic region or per specific treatments/medicines are not made available, even on request. This limits the ability for outside scrutiny to identify where abnormal patterns point to a potential problem.

Education

The Ministry of Education has undertaken number of measures in order to prevent corruption. A methodology for assessing the risk of corruption was approved and a Strategy for preventing corruption in education for 2015-2017 will also develop the component of higher education and scientific research. The Ministry has also signed protocols with the Anti-corruption General Directorate (DGA) to inform teachers and pupils on corruption issues. DGA elaborated in cooperation with the Public Ministry a *Study on education*[169] aimed at providing measures for better prevention of corruption.

Several important and complex cases[170] relating to baccalaureate fraud this year and last year were taken forward by the prosecution.[171] In response to such cases, it was decided that starting from school year 2014-2015, the papers from the national baccalaureate exam shall be assessed in another county than the one where the exam took place. The papers, according to the approved procedure, are gathered in the county exam centre and sent to the county appointed for assessment, sealed and guarded by gendarmes. The papers are assessed in rooms that have video and audio surveillance. In addition, starting from the school year 2015-2016, video and audio surveillance equipment will be installed in all examination rooms. Such tools – camera surveillance of the exams rooms, external examination, counteracting the recycling of old theses – are considered to be improving the situation in the education sector, as well as a number of successful prosecutions in 2015. However, the professional ethics of the professors and teachers is recognised as remaining the most important factor concerning corruption in the education system.

Public procurement

Last year's CVM technical report noted persistent shortcomings in public procurement related to capacity of the degree of expertise of staff dealing with public procurement procedures, at both national and local level, the lack of stability and the fragmentation of the legal framework, the institutional system and the quality of competition in public procurement.While some steps have been taken at the level of institutional design and draft legislation, corruption in public procurement remains an area of concern. At the level of perceptions, over half of the companies that participated in a public procurement procedure over the past three years believe that corruption prevented them from winning a public tender or public procurement contract. Tailor-made (59%) or unclear (54%) specifications (59%), conflict of interests in the evaluation of bids (53%) and collusive bidding (57%) are cited among the most widespread corrupt practices in public procurement. Bribes and kickbacks (58%) and funding political parties (39%) in exchange of public contracts or influence over policy making are also perceived to be widespread by businesses operating in Romania.[172]

---

[168] A monitoring portal for the spending of public funds by public health units was created and resulted in targeted analyses and controls. But monitoring does not include private medical service providers , despite the fact that these services are also partly reimbursed by public funds from the CNAS.

[169] The Study "*Relevant aspects on corruption within Romanian educational system*" analysed the indictments and Court decisions concerning personnel under the Ministry of Education and Scientific Research sentenced for corruption between 2012-2014 and studied the rules and procedures in the areas of the education system where corruption occurred.

[170] 169 persons were sent to trial in 8 cases for having committed the offences of bribe-taking, trading in influence, buying influence, misuse of office, offence assimilated to corruption.

[171] In one case in Buzua county, a headmaster sent to trial together with the chief secretary, for trading in influence with the teachers grading the papers. In Giurgiu county, fraud of the baccalaureate exam of 2013 led to a case where 64 defendants were sent to trial, including two headmasters, a school inspector, and 31 teachers.

[172] Flash Eurobarometer 428: Businesses' attitudes towards corruption in the EU

Prosecution of corruption cases linked to procurement continued in 2015, revealing recurrent practices of kickbacks for attributing public contracts and releasing public payments which involve sizeable networks of civil servants and elected and appointed public officials in local and county administrative structures. The Prosecution in 2015 highlighted as risk areas direct award or manipulated tender procedures, artificial splitting of contracts for circumventing thresholds, involvement of bidders in writing the tender specifications, over-pricing, and payments made despite a lack of execution.

Efforts are being made to improve the prevention of corruption in public procurement, but their effectiveness remains to be proven. Guidelines for procurement practitioners such as the those elaborated in the framework of the project "Fighting public procurement criminality"[173] address the phenomenon from a practical and multi-disciplinary point of view, guiding the practitioners through the various stages of the procurement lifecycle, including analyses of real cases of fraud and corruption. The work of the prosecution offers an opportunity to reach conclusions to be fed into prevention policy in public procurement.

Important efforts have been made to improve the institutional setting in 2015 and new procurement legislation is expected for January 2016. A new public procurement strategy and action plan were developed in view to tackle the systemic deficiencies of the public procurement system and implementing the EU procurement directives and includes the objective to adapt the institutional structures and internal mechanisms to the relevant anticorruption requirements of the new EU legal framework. One positive step in the strategy is to set up a monitoring and supervisory function that integrates corruption and conflict of interest risks in the ex-ante control approach to public procurement. As such the strategy will require some important changes in the procurement system – including addressing fundamental issues identified in the past, like the fragmentation of ex-post controls and a tendency to rely on blanket ex-ante checks focusing on formal aspects of the procurement process without assessing objective quality considerations and without targeted controls. In order to ensure compliance with the obligations of the new EU public procurement Directives, further efforts will be needed to put in place appropriate legislative and institutional arrangements to ensure that verifications apply to all possible decision makers prone to conflicts of interest, in line with the definition of conflicts of interest in the Directives.[174] Moreover, the relevant institutions should be empowered by law to effectively prevent the signature of contracts in case of suspicion of conflict of interests.

A new public procurement institution has been created, the National Agency for Public Procurement (ANAP). It combines the functions formerly carried out by the National Authority for Regulating and Monitoring Public Procurement (ANRMAP) (legislation, advisory and operational support, ex-ante verifications of tender documentation, ex-post control, monitoring and international coordination) and the Unit for Coordination and Verification of Public Procurement (UCVAP) (ex-ante control at the level of tender evaluation). Poor coordination between these functions had been identified as a problem in the past. ANAP will also take over responsibility for public procurement policy-making, including integrating corruption risks and preventing corruption in procurement-related policy decisions, such as the allocation of funds for procurement. As the single agency for procurement in charge of all major functions, ANAP has the potential to strengthen the non-criminal side of fighting corruption in public procurement, by a better control, prevention and supervision function.

[173] http://www.freedomhouse.ro/ISEC/en/index.php/about/the-project

[174] Article 24 of the Directive 2014/24/EU on public procurement "Member States shall ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators…..The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure".

The authorities involved have recognised the importance of good cooperation with the National Integrity Agency (ANI) and potential benefits of the PREVENT system[175] . This will become the main prevention tools for conflict of interest before signature of the contract and ANAP will have a special structure dedicated to collaboration for instance with ANI, DNA and the other anti-corruption institutions.

On the prosecution side, the project *Fight against crime related to public procurement*, funded by the European Commission,[176] brought together key investigative and judicial bodies to enhance the institutional capacity for the prevention and combating criminality in public procurement, through aligning operational practices, training, and links with European counterparts. Fraud in public procurement is in the remit of the Prosecutor general's office for cases not involving European funds. But it seems there can be difficulties with accessing information and technical expertise support from other bodies.

Management of EU funds

Fraud against EU funds lays in the remit of the DNA. The Chief Prosecutor has underlined the priority of cases involving EU funds and the increase in the number of cases.[177] . In 2015, there were 57 indictments cases involving 138 defendants and 49 convictions against 106 defendants. In cooperation with Transparency International and funded by EU funds, integrity pacts[178] have been introduced, obliging contracting authorities and companies to comply with best practice rules and existing legislation in respect of public procurement procedures. Romania is involved in three such pilot projects. If successful, these experiences will be shared and disseminated further. In order to support the fight against corruption and incompatibilities, the Ministry of European Funds issued a Framework Plan[179] concerning the improvement of the administrative capacity and seeking to address risk areas for its employees.

[175] See section 0.

[176] Prevention of and Fight against Crime ISEC Programme.

[177] http://www.expressen.se/nyheter/longread/darfor-kommer-tiggarna/en/hon-leder-kampen-mot-rumaniens-myglande-makt

[178] http://www.transparency.org.ro/stiri/comunicate_de_presa/2015/20martie/index_en.html

[179] The main goal of the Framework Plan is "to increase the absorption rate of EU structural funds based on the principle "Simplify what is legal and prevent what is illegal".