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COUNCIL OF
THE EUROPEAN UNION

Brussels, 8 March 2002

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RESTREINT

EVAL 8
ELARG 41

REPORT

From :	the General Secretariat
To :	the Collective Evaluation Working Party
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Subject :	Draft revised country report on Romania

I. INTRODUCTION

In its analyses the Working Party has dealt with the progress made by each acceding country and has examined shortcomings which still have to be eliminated in order to catch up with the EU Acquis in the field of Justice and Home Affairs.

The first series of country reports pointed out the precise areas where the most serious shortcomings existed and where substantial efforts by the candidate country were still needed, while at the same time acknowledging progress already made and refraining from a final judgement, thus helping Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

The point of departure for the present second series of country reports, whose structure has been

refined, is to identify exactly where in the process of alignment the candidate country finds itself and what remains to be done, focussing on operational conclusions. The key elements of this new structure, reflected in each chapter, are:

- adoption of the "acquis", including shortcomings,
- administrative capacity, including an assessment of structure, staff, resources etc. and
- implementing performance, covering issues such as quality, efficiency and independence.

The conclusions drawn at the end of the report are the result of extensive discussions within the Collective Evaluation Working Group on the basis of the information presented.
In line with this approach, all other relevant background information can be found in the thematic analyses-documents constituting the basis of these reports.

As the process of alignment and the collection of relevant data is a continuously evolving and ongoing process, the findings and conclusions in the present report cannot be considered final or exhaustive. Updates will therefore continue to be presented on a regular basis.

II. OVERVIEW OF DEVELOPMENT

A. Border Security

The situation in the field of border security is still very bad in Romania, but there has been a remarkable improvement of the quality of border management, as well as of the capacity of the Romanian Border Police to perform its tasks since the previous report, and there are ongoing plans to address the remaining huge deficiencies in the near future. The challenge is very big and recent trends as well as experts' opinions show that Romania is a transit as well as a source country of illegal migrants, drugs and other forms of cross-border crime towards the European Union. It is important to develop a strong border security system along all of Romania's borders and not only the EU's future external borders. Romania aims to become an EU-member in the beginning of 2007 which still levaes some time to develop Romania's national capacity in the field of border security.

1. Formal acquis

The Romanian State Border Law 56/1992 and its modifications are the main legal bases for the work of the Romanian Border Police. Two emergency ordinances issued by the Romanian

Government are also of uttermost importance[1]. the Emergency Ordinance regarding the State Border of Romania and the Emergency Ordinance regarding the organisation and functioning of the Romanian Border Police. These ordinances were drafted together with EU experts and they are very much in line with EU requirements. The powers entrusted to the Border Police are to a large extent in accordance with its missions. Although the ordinances are in force, they have not yet been accepted by parliament and therefore do not have the status of law. It is necessary to grand these important ordinances a legally binding status as soon as possible.

The aforementioned ordinances require further development through methodological norms, which must be compatible with other relevant legislation such as the pending Police Status Law. This will still take some time. A major problem is the delay in obtaining parliamentary approval of the Police Status Law, since untill a final text is known there is great uncertainty about the validity of regulations already adopted and about other norms still pending. As long as the Police Status Law is not adopted, the Ordinance on the organization and functioning of the border police continues to be subordinate to the Law of Military Staff. New regulations should be elaborated to comply with the new status regime of the Border Police personnel, different from that of the Army Forces, on issues such as the disciplinary regime.

The Romanian Criminal Code and the Criminal Procedure Law (Code) stipulate that a person leading the investigations and presenting the evidence to the judge or to the prosecutor, must be officers or border policemen who hold a law degree. This considerably reduces the number of those qualified by law to act as agents of judicial police.

At the moment the BP's powers are territorially limited covering a 30 km wide area from the border inland. Due to territorial power limitations and poor co-ordination with the police, the BP is not capable of carrying out its tasks in the most effective way. The border police is also not allowed to check passenger cars without the presence of customs meaning that they have no powers to carry out border checks according to Schengen requirements.

Border crossing procedures are not yet in line with the EU requirements. There are special crossing points for Yugoslavians and Ukrainians living near to the border where it is possible to cross the border with a special document. A special permit is not a proper travel document when crossing the EU external borders.

[1] Both ordinances were adopted by the government 27 June 2001 (EO 105/2001 and EO 104/2001)

Co-operation with neighbouring countries' border authorities varies from country to country. Co-operation with Hungarian and Bulgarian authorities is better than with FRY, Ukraine and Moldavia. Ground level (work-floor) co-operation is almost non-existent and there is no permanent and systematic exchange of intelligence.

2. Administrative capacity

As of 1 July 1999, the General Inspectorate of the Romanian Border Police, which falls under the Ministry of the Interior, has been responsible for border management at all borders (land, sea and border crossing points) in Romania. This organisation was a result of a merger of the former Border Police Division, the Naval Transportation Police and the Headquarters of Border Troops[1]. The latest organisational modification took place 1.6.2001, when the current structure came into force creating a more coherent commanding structure and chain of command. As a result there is an independent Border Police organisation in Romania. This process is, naturally, not yet complete in terms of implementation.

Today some elements of a national strategy exist but no real medium or long-term and comprehensive strategy or policy planning exists. This deficiency manifests itself in personnel policy, in the internal distribution of resources, including equipment, insufficient risk analysis and in the lack of an integrated border management strategy. The internal planning, commanding and controlling system is still rather unorganised. Due to continuous structural changes, an old management and planning system and poor computerisation, the administrative structures are not yet fully in place.

Current staff (23 000 posts of which 17.867 are fulfilled) is a colourful combination of police officers, military officers with different backgrounds, gendarmes, "professional" sergeants[2] and conscripts. It is not possible yet to consider that the staff consists of specially trained professionals. It takes a long time before these individuals with their varied background, training and mentality form a solid border police staff. The number of female border police is very low, partially due to the recruiting system. There is a continuous and long-term need to improve employees' skills in order to achieve better results in the future. Especially better language, investigation, risk assessment and

[1] The Government's Emergency Decree No 80/1999

[2] In accordance with the Emergency Ordinance regarding Organisation and Functioning of the BP, the militaries on labour contract (sergeants) must disappear in two years, to be substituted by professional border policemen.

document examination skills are needed. Modern management skills are also recommended for the managerial level.

The sergeants' role being guardians of the green border only, is very narrow. Also, the powers of sergeants seem to be de facto limited compared to border police officers. Since areas between crossing points are guarded mostly by sergeants and conscripts, it is possible to conclude that border surveillance is not carried out by specialised trained professionals. It is necessary to continue work towards achieving full and real professionalism. Currently an important stumbling block in the professionalisation process is the fact that the Law on the Police Status, applicable also to the Border Police, has not yet been approved by Parliament. This means that Emergency Ordinance 104/2001 on the functioning of the BP cannot be properly implemented or further developed. The Police Status Law will de-militarize the Border Police, which is currently covered by the Law of Military Statute 80/1995. At present there is neither a professional profile nor a career model in the Border Police, due in part to the lack of a legal basis. This shortage of a career model leads to lack of professional motivation, particularly for the personnel belonging to the category of officer.

Intelligence - gathering and - analysis requires further improvement. There is a lack of police skills in obtaining, processing, analyzing and disseminating information, as well as in undertaking investigations. This problem should be addressed by increasing the number of theoretical and practical classes, specifically related to police work and investigating methods.

Co-operation between border police and customs at crossing points is not very visible. Both organisations carry out their tasks independently and without closer co-operation. Customs and border police have not concluded any kind of co-operation agreements or protocols and there are no joint action plans for border crossing points. Authorities do not make joint risk assessments and they do not have access to each others' databases. There are no combined radio channels for co-operation. It seems that there is a negative rivalry between the National Police and the Border Police and that the latter is somewhat looked down upon by the former.

3. Implementation performance

Implementation performance suffers heavily from the lack of professionalism, equipment, corruption and money. However, it is worth noting that there is a good and growing tactical understanding of border management within the Romanian border police.

The commanding system suffers heavily from the lack of a functional radio network and radios. Most radios used by patrols are old and batteries sometimes do not even last for one shift. Radio transmission is not encrypted and it easy to listen in and jam with very simple equipment. The new system is a step towards a more effective and modern means of communication - unfortunately neither the system nor the radios are available yet for all patrols.

At present, no on-line connection is available with border crossings. Each crossing point has its own database, with limitations in terms of processing and storing capacity. Equipment for detecting documents' authenticity is quite modest. The basic idea of and equipment for second level border checking does not exist at all crossing points. Outdoor surveillance at the crossing points and their immediate vicinity is rather limited. Camera surveillance systems are not in place. It is obvious that it is possible to avoid border checks easily, especially for pedestrians and at night. Cars are not checked properly since the boot is not always opened. Crossing points do not have specialised staff for investigation and analysis of traffic.

Night vision capacity is very limited or non-existant. There is some old night-vision equipment available to patrols, but this equipment is far from modern and their functional value is almost zero. Some modern equipment is in use but not enough and very often there are no reserve batteries available. There is no integrated modern equipment or portable surveillance system for green border surveillance.

Mobility is only theoretical. Stations have some old vehicles but most of them are not serviceable anymore. Restricted fuel usage means that cars mostly stay (put) at the stations. Airborne surveillance and national rapid reaction capacity in case of emergency is totally lacking since the Romanian Border Police do not have any aircraft at its disposal and the two helicopters of the Interior Ministry are not very often available.

Regarding sea border surveillance, all vessels are very old, in a very bad condition and not suitable for their tasks. These vessels are, in practice, no longer seaworthy. Due to very strict fuel restrictions these boats mostly stay in harbours. The Border Police do not have real reaction or identification capacity. Border authorities do not have a real, if any, maritime picture available. Situational awareness is extremely poor, almost non-existant. The current radar system does not cover much more than just the immediate vicinity of the Constanza harbour. Information from this

radar is provided to the border police by phone. Communication systems between different authorities and even within the border police is very poor. As a result, there is no functional sea border surveillance system.

4. Summary

The Romanian border security system is very much on the right track. Many important and necessary decisions have been made during the last couple of years. The Border Police are now a national law enforcement authority with responsibility for all national borders. It looks as though there is a good basic structure, but many of the necessary elements are not yet in place or are seriously underdeveloped. The lack of a logical and comprehensive long-term development plan of action is a problem. It is crucial for the future to finalise the structural merger and implement efficiently the new emergency ordinances as well as improve national capacity to fulfil all requirements of the border security system. This is not possible without clear and stable political support and the granting of means from the state budget accordingly.

The implementation of the border security system suffers heavily from the lack of modern means of communication, mobility and night vision capability. New tactical solutions adopted recently are ineffective since there are no means to implement them. Results achieved are still very modest when compared to the numbers of illegal migrants as well as drugs coming via or from Romania to the EU.

Strictly speaking, sea border surveillance does not really exist. Sea border surveillance lacks all necessary elements: strategy, surveillance capacity, detection capacity, identification means and reaction capacity. A positive element is that sea border surveillance has now been integrated in the general border security system, meaning that it is possible to develop this part of the system in a more coherent manner.

B. Migration

1. Formal acquis

As regards visa policy, recent progress was made ,[1] but FRY, FYROM, Moldova, Russia, Turkey

[1] Introduction of visa requirements for a number of CIS-countries and for Bosnia (on 1 January 2002) and

and Ukraine, are still not subjected to visas. In these countries, which are essential as far as illegal stay and transit in Romania is concerned, Romania plans to gradually introduce visa requirements from 2002 on, and to submit Moldova to this regime as from the date of EU accession.
In addition, a large number of countries of America, Asia and Europe are still visa required for entry in Romania while it is not the case in the EU. Finally, where holders of diplomatic and official passports are concerned, despite the fact that there is no binding EU acquis, it is worth noting that Romania, contrary to all Schengen States, does not require visas from holders of diplomatic and service passports of e.g. China, Cuba, Iran and North Korea.

As regards provisions on admission, progress was made through the new Law on the Regime of Aliens of 2001 and through several "Emergency Ordinances". However, legislation is still very vague and laconic on important issues such as access to long term residence[1] and to family reunification.[2] This is contrary to the principle of the rule of Law and to the acquis.[3] In addition, provisions on work permits and on changing of status require adjustments, since conditions of prior checking of the national workforce are not formally established, and since students and independent workers currently have free access to work. Finally, there is a need to clearly distinguish between visa on the one hand, and permit to stay on the other hand[4]. Some of these required amendments are already planned.

As for detention before expulsion, it can be ordered by administrative decision, for unlimited periods, without intervention of the judiciary, contrary to ECHR.[5]

introduction of passport requirements for nationals of Moldova, notably. Romanian Government is partly financing these new Moldavian passports.

[1] The Law merely states that "Establishing the residence is subject to the authorisation by the Ministry of Interior", defines the places of application, and for the rest refers to purely governmental regulations. The so called "establishment" is actually the single long term permit, since all other cases of legal stay are dealt with visas valid for six-months and renewable. These renewable visas are all the more precarious since e.g., for workers whose stay is based on work permits, "the Ministry of Labour and Social Solidarity cancels the validity of the work permit on the employer's request, following his initiative to put an end to the alien's labour contract."

[2] the principle itself is rightly laid down, what is lacking is the procedure and the details on what happens in case of divorce/death, the possible conditions of income/housing etc...

[3] The acquis often refers to "legislation" and not merely regulation. See notably the Council Resolutions of 1993 on family reunification and of 1996 on the status of long-term residents.

[4] Admittedly, legislation already connects the entry with the prior reception of the relevant authorisation (for students, workers...).

[5] Despite Constitutional provisions setting a maximum term of any detention at 24 hours, the Law merely establishes the principle of administrative and judicial expulsion, while the governmental implementing decision sets up a time limit of three months, extendable, without intervention of justice. In practice, foreigners are simply detained up to the next charter.

2. Administrative capacity

Consular procedures are close to the Schengen ones, with the important exceptions that all decisions are still taken at the central level, and that the principle of personal attendance of applicants applies only for risk-countries. The situation is different when it comes to material means. The on-line connection between consulates and Bucharest is in a pilot stage only, and equipment for detecting false documents is insufficient. The visa sticker is not in line with the EU standards. (A new one will be introduced by the end of 2002.) Above all, the majority of visas is still issued at the borders, - for non risk countries, admittedly:[1] Romania, issuing visas at the border for a number of countries, and still letting Russians, Ukrainians, Yugoslavs and Turks enter without visa, necessarily issues far less consular visas than it will have to cope with in the future. Indeed, the number of the consular personnel abroad is relatively few:145 persons.

New secure passports are issued since the end of 2001, but the date the former ones, easy to falsify, will disappear, is still unclear.

Romania has no readmission agreements with Turkey, the Ukraine and FRY, and the agreement with Moldova is not yet ratified, all this hampering considerably the return of illegals caught.[2]

Lack of co-ordination of information between Border Police and Police inland hampers the fight against organised networks. The staff at the local Offices for Aliens and Migration is insufficient in number, and dramatically lacks of material means. Reportedly, the illegals detained at the border having not any money, the staff have to buy food and drinks out of their private money. It is by phone that central headquarters regularly send the updated list of unwanted persons. Non modern databases are available at central and county level, but not at police stations.[3] Data protection is starting only.[4]

3. Implementing performance

[1] In the year 2000, 94 867 visas have been issued at the diplomatic and consular representations, and 599 128 visas at border crossing points. During the first eight months of the year 2001, 11,644 visa have been granted at consulates, and 79.324 at the border.

[2] Cooperation with Moldova - a major neighbouring state as far as illlegal migration and transit are concerned - is confined to returning a few people or informing the Moldavian authorities that illegal migrants have been detected.

[3] Except for the Registry of Population (Romanian citizens.)

[4] "The Law on the protection of data of 2001 will be applied starting from March 12, 2002.

The performance of consulates cannot be seriously assessed, as long as the major countries concerned in the future are not yet visa required.

Inland, the procedures for extensions of visas (almost exclusive way of management of legal migrants in Romania: 56.000 holders of six-months visas, to be compared with 1500 holders of permanent permits) were deemed not always transparent in 2000, but the situation is improving, although rumours of corruption persist. Above all, the fight against illegal migration and trafficking in human beings still requires all efforts. Of course progress has been made, expulsion is not uncommon[1], more illegal entries are detected (which is an evidence of activity), entry refusals have increased, a significant and even showy campaign against illegal work has been organised in 2001,[2] the national airline (TAROM) is now trained to detecting false or forged documents, the Border Guard points out that the number of arrested facilitators has doubled from 2000 to 2001 (200 arrests), a "national coordinator to combat trafficking" has been appointed, an interministerial commission is expected to draft an "anti-trafficking law", and intelligence services and law enforcement agencies demonstrate a willingness to co-operate with Member States.

However, the size of the issue may loom from estimations that 40,000 aliens illegally transit through Romania each year, while the IOM estimates that 20,000 women are trafficked from Romania each year.

Evidence of weak fight against illegal migration, is clear. Specific sanctions against illegal entry have been established only very recently;[3] the practice of mere exit visas is still predominant; at the (important) port of Costantza only ten illegal migrants were arrested in 6 months of 2001; readmission to Romania (20 000 per year), is still twenty times the number of readmission from Romania (875 in 2001)[4], the entry refusals (60 000) are mainly related to customs regulations, and Romania has to date made little headway in identifying and prosecuting criminal networks: while NGOs stress on the role e.g. of the orphanages, helped by corrupted local police in trafficking of women, while all reports insist on the organised character of illegal transit through Romania, the repression of these phenomenon seem to be starting only.[5]

[1] According to Romanian authorities, 2000 to 3000 expulsions occur yearly - although recently decreasing.

[2] With very important numbers of employers controlled (69,889) and employees controlled (1,530,881). As a result, 13% out of the total controlled employers and 2% out of total employees controlled were breaching legislation on work, but not a single case of breaching the provisions on work permits for aliens was detected. This may be partly related to the relative easiness to obtain a work permit (see above, formal acquis).

[3] The Aliens Law contained sanctions against the alien who was already undesirable. An Emergency Ordinance created in 2001 sanctions against (first) illegal entry.

[4] Up to the point that IOM considers that illegal stay in Romania, of aliens readmitted to Romania and not yet readmitted easterly, is somehow a novelty for the authorities to cope with.

[5] According to information from the Ministry of Interior, during the year 2001 and January of 2002 three files dealing with trafficking of persons were solved and 9 persons were arrested. During the same period twenty-three persons working in travel agencies have been arrested and investigated for their involvement in the trafficking of

Finally, the question of illegal entry of Romanian nationals in the EU has been addressed. Sanctions were increased and prevention measures were taken, even on the edge of breaching the Constitutional provision applying to freedom of circulation. A number of passports are withdrawn, a number of persons are banned for exit, and sufficient means of subsistence are required at the exit. However, it is still too early to assess the effects of the visa lifting with EU States. Before the lifting, the number of asylum applications filed by Romanians in the EU, as well as the number of Romanian nationals repatriated from Member States, was rather stable.[1] Cooperation for repatriation is active, Romania has agreed to accept the return from Germany of a large number of "stateless" persons of Romanian origin, and the question of legal provisions on giving up Romanian citizenship have been clarified.

4. Summary

FRY, FYROM, Moldova, Russia, Turkey and Ukraine, are still not subjected to visas, while a large number of countries of America, Asia and Europe belonging to the EU positive list are still visa required for entry. The abolition visa list for holders of diplomatic and service passports is longer than the Schengen one.

The Law on the Regime of Aliens of 2001 constitutes a significant step, but legislation is still very vague and laconic on access to long term residence and to family reunification, and provisions on work permits, on changing of status, and on detention before expulsion require amendments.

Consular procedures are close to the Schengen ones, but all decisions are still taken at the central level, personal attendance of applicants is exceptional, the on-line connection, equipment for detecting false documents and secure visa stickers are not yet in place. The number of consular visas is still very low. Romania has no readmission agreements with Moldova, Turkey, the Ukraine and FRY. Lack of co-ordination, lack of staff and above all lack of material means at police stations hampers the fight against illegal migration, which still requires all efforts. Of course progress has been made in this field, but the signs of weak fight against illegal migration, are clear. Readmission to Romania is still twenty times the number of readmission from Romania, and Romania has to date made little headway in identifying and prosecuting criminal networks.

Finally, the question of illegal entry of Romanian nationals in the EU has been addressed through sanctions and other prevention measures. However, it is still too early to assess the effects of the

human beings.

[1] Around 6000 asylum applications per year, and 20 000 repatriations. Of course the number of asylum applications is an improper tool for assessing the trends.

visa lifting with EU States. Cooperation for repatriation of Romanians from EU countries is active.

C. Asylum

1. Formal aquis

Legislation in force (Law of 2001 approving the "Ordinance on the Status and Regime of Refugees" of November 2000) is compliant with the acquis.

It should be noted, however, that the time limits set up in the normal procedure are unnecessarily ambitious,[1] and therefore are not respected at all. In addition, the nature of the residence permit issued to the refugee requires clarification,[2] subsidiary protection and temporary protection are provided for but require to be further formalised,[3] and the fact that accelerated procedures have been introduced in case of "threat to public order" is debatable, or worded too extensively.[4]

2. Administrative capacity

At the National Office for Refugees within the Ministry of Interior, modern communication systems (notably with territorial units) are still to be set up, in 2003 in principle, and the Documentation Centre for Countries of Origin will be finalised in 2004.

Due to the relatively low number of applications (1000 to 1500 per year, but 2380 in 2001) current capacity at the Ministry of Interior, at the Courts and in the reception centers (where housing is not compulsory if the applicant can afford to live outside) is sufficient, considering also the fact that first decisions are taken within several months - contrary to the letter of the Law. It should be of course dramatically insufficient in case of future application of the Dublin convention by Western neighbours.

Border Guards need more training.

[1] In the "normal procedure, the Ministry of the Interior takes the decisions within 30 days, the decision may be challenged within 10 days, the court "has to provide a solution for the case within 30 days", the judgement may be challenged within 5 days, and this second judicial appeal is to be judged within 30 days.

[2] The refugee is entitled to stay, to obtain documents and to work, but it is also stated that "depending on the extent to which he/she has been integrated into society, the Ministry of the Interior may rule on the establishment of that person's domicile in Romania, in the conditions set out by the Aliens Law in Romania", the Aliens Law being actually silent on this issue.

[3] E;g. on possible entitlements to socio-economic assistance and other benefits.

[4] One could verge to consider that mere illegal entry or illegal stay constitutes a threat to public order, and as a result the majority of applications should be processed in an accelerated procedure. None of the EU resolutions on asylum, nor the draft directive on the minimal norms, cite "public order" as a reason for an accelerated procedure.

Free interpretation, information in a known language and legal assistance rely almost entirely on UNHCR's funded NGOs.

3. Implementing performance

On the whole, implementation of the legislation is satisfactory. The wide definition of " accelerated procedures" and the theoretical short time limits in all procedures had raised fears that the non-*refoulement* principle would not be fully respected, but this doesn't seem to be the case.

The evolution of the recognition ratio requires monitoring, since it has significantly dropped in 2001 (to 2,5%), following the relative increase of applications.

In a few cases, asylum seekers were kept in the transit zone up to 6 months despite legal provisions, and were only released upon UNHCR's intervention.

4. Summary

Legislation in force is compliant with the acquis, but the time limits set up in the normal procedure are unnecessarily ambitious, the nature of the residence permit issued to the refugee requires clarification, subsidiary protection and temporary protection require to be further formalised, and the grounds for an accelerated procedure are worded too extensively.

With the prospect of future modern communication systems and a Documentation Centre in 2003 - 2004, current administrative capacity is sufficient, but this is related to the relatively low number of applications, which would not be the same in case of future application of the Dublin convention by Western neighbours. Border Guards need more training.

On the whole, implementation of the legislation is satisfactory.

D. Police and Customs

This chapter will follow at a later date

E. Justice

1. Formal acquis

In both criminal and civil matters, Romania has ratified a large number of the *acquis* Conventions, including on terrorism. Romania has not yet ratified the 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Besides the fact that the relevant Conventions have been ratified, three laws have been adopted in 2001 related to extradition, mutual assistance in criminal matters and the transfer of persons convicted abroad. The Constitution does

not allow extradition of Romanian citizens. Full alignment with several Joint Actions[1] is still ongoing. There is no information on alignment with the Joint Action making it a criminal offence to participate in a criminal organisation. So far, no amendments to the Criminal Code or Criminal Code of Procedure have been adopted to align with the Directive on racism and xenophobia. Romania has signed but not yet ratified the 1995 Agreement on illicit traffic by sea, implementing Art. 17 of the UN Convention against illicit traffic in narcotic drugs and psychotropic substances.

The Constitution[2] provides that international conventions to which Romania is party have direct applicability. In all other cases, Law No.105/1992 offers solutions related to international private law. The Law is harmonized -to a great extent- with the provisions of the Brussels and Lugano Conventions. It is further harmonized with the provisions of the Convention regarding the law applicable to contractual obligations. In the field of bankruptcy, an Ordinance was adopted in 2002 amending and completing the Law on the Judiciary reorganisation procedure and bankruptcy. In the third part of 2002, a law on transnational bankruptcy will be adopted.

In order to facilitate the application of the conventions to which Romania is party, both legal acts with a general and a special character will be elaborated and adopted by the end of 2002. Also by then, ratification is foreseen of the European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. Finally, the internal formalities for the adoption of 3 Hague conventions on private international law[3] will be completed this year.

Romania will follow the development of the *acquis* in the field of judicial co-operation in civil matters and take the provisions of the Regulation replacing the Brussels Convention into consideration by the end of 2002 when national regulations on recognition and enforcement of judicial decisions in civil and commercial matters are completed and modernised.

The 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data has been ratified in February 2002 and will enter into force on 1 June. With regard to data protection, concern has been voiced about unauthorised use of wiretaps by the Romanian secret

[1] e.g. trafficking in human beings and sexual exploitation of children, combat of child pornography on Internet, witness protection

[2] Article 11§2

[3] on Taking the evidence Abroad in Civil or Commercial Matters, 1970, on the Service Abroad of Judicial and Extra judicial Documents in Civil or Commercial Matters, 1965, on International Access to Justice, 1980

services and of inappropriate legislation on this issue. The Data Protection is in the process of being set up Agency (within the institution of the Ombudsman).

2. Administrative capacity

In certain areas real progress has been made. The number of vacancies in magistrate positions[1] has dropped significantly. The number of magistrates at Courts and the Supreme Court is sufficient. The development of a human resources policy should in the long term bring improvements in the management of the careers of justice personnel. However, efforts should still be made regarding clerks and greffiers. The lack of sufficient personnel, especially clerks, is particularly grievous. Many judges still have to type their own sentences. The establishment of a National College of Greffiers in December 2000 is a clear progress for the professionalisation and the organisation of work. It should improve the number of auxiliaries of the judiciary and thus to a better Justice administration.

Though the average number of cases dealt with by each judge has decreased slightly in 2000[2], the workload remains heavy, limiting the judge's ability to carry out his functions effectively. In practice, each public sitting in Courts of First Instance means the handling of about 30 cases, while in Tribunals this amounts to 100-120 cases, which is extremely difficult to manage and has consequences on the quality of rulings. The difference is due to the increased jurisdiction of Tribunals to the detriment of that of the Courts of First Instance. Besides, there are only 41 Tribunals, but 180 Courts of First Instance. The former plan to double the number of Tribunals at least in certain counties and in Bucharest has once again been included in this Government's plans.

In the third part of 2002, a (current draft) law will be adopted amending Law No. 92/1992 "on the organization and functioning of the judiciary". It should create a legal framework for setting up specialised courts for judgements of trials with minors, of litigations and work conflicts and of commercial, fiscal or administrative litigations.

Compared to 1999, the number of pending cases in Courts of First Instance and Courts of Appeal dropped in 2000. However, over the same period, there was a slight increase in pending cases before Tribunals.

[1] (which includes judges as well as prosecutors)
[2] from 514 in 1999 to 511 on 2000

Magistrates salaries have been raised and are among the most attractive in the public sector, but inevitably are quite below a private lawyers's salary. Clerks' salaries are far below private sector salaries. The Government eliminated some magistrates' privileges, excluding them from the yearly updating of public sector salaries; an important net loss. Also, income tax levels are exceedingly high, even for relatively low salaries. The relatively low salaries may affect the motivation of personnel.

The National Institute for Magistrates (NIM) carries out specific training of future magistrates. Since November 2000, it has exclusively taken over the task of continuous improvement of magistrates in office. To this end, 2 regional training centres have been set up. The initial training period has been extended to 2 years since 2001. One semester of training in EC law[1] and 2 on the European Convention on Human Rights[2] is part of the core curriculum for trainee judges and participation is compulsory. Training of judges on judicial co-operation in civil matters is realised through a yearly programme within the NIM. As to judicial co-operation, civil or criminal, many courses through Phare twinning have been organised for judges in the past years. In the field of combating corruption and organized crime, all members of the relevant Section of the Prosecutor Office to the Supreme Court were trained by EU experts, as well as 200 prosecutors and 50 judges. Another 300 judges will receive training until end 2002. So far, 220 prosecutors were trained in various judicial fields[3]. Magistrates benefit from language classes during their courses at the NIM (especially English and French). Information on training of greffiers and notaries is still pending.

Doubts have been expressed on the practical content of the NIM's EC law studies which focus too much on primary law and institutions. Also, the different activities organised in the past 3 years[4] do not make up a coherent curricula for continuous training and are not homogeneously given to judges from all over the country. Courses in twinnings reflect sectorial priorities coming from specific project fiches. The Ministry of Justice has organized itself 3 courses on EC law in 2000, but none in 2001. There does not seem to be a clear policy on providing training in these fields, beyond what is given to 1st-year trainee judges.

Despite remarkable efforts to upgrade equipment and invest in renovation of infrastructure, courthouses still give an impression of great dearth. The judiciary system as a whole suffers from a

[1] 36 hours total
[2] 48 hours total
[3] combating trans-national crime, economic-financial crime, human rights, community law
[4] i.e. the numerous courses on EC Law, human rights, civil/judicial co-operation

lack of IT equipment and does not have access to quality documentation, including Romanian law. The Internet network and its judiciary applications are quite difficult to access by most magistrates in the country. Access to court decisions can be a problem due to difficulties related to the work of auxiliary staff at courts. The improvement and modernization of the profession of clerk should eventually help to improve this.

The lack of material resources forms an obstacle to adequate co-ordination between the different judicical institutions and can delay or even block the standardisation of judicial decisions throughout the country. It also contributes to the lack of professional motivation of personnel. Despite recent efforts, uniform implementation of laws has not been achieved, especially due to the lack of resources needed for processing decisions from different Courts of Appeal[1].

The current organisation of work, which needs serious improvement, affects the delays in handling court cases. At present, distribution of files between the different sections of a Tribunal or between different courts is not done in an efficient way. The criminal investigation services do not have the necessary technical means to fight organised crime. The agglomeration of courts explains the existence of rather long delays in the process of judgements, though this is not something typical for Romania alone.

The Ministry of Justice is developing a global computerized system meant for the Ministry itself, all courts, prosecutor offices and the penitentiary system. It aims to improve the functioning of the Ministry and courts and to a more efficient solution of files. The reform should *inter alia* reduce court clerk's work in finding data of judicial files, allow courts to track cases at any stage in the procedure, increase the transparency within the judicial system and provide better access of public and magistrates to legislation.

The Data Protection Agency within the institution of the Ombudsman is being set up. So far, it has already achieved some results[2]. However, it should be monitored that the Ombudsman has the administrative capacity to really perform the complex monitoring required from such an authority.

3. Implementing performance

After one year in power, the Government seems to have understood the importance for Romania to

[1] IT networks still insufficient
[2] i.e. 20 new posts created, the register was set up etc

reinforce the authority and independence of the justice system and to fight effectively against corruption by adopting the institutional and legislative reforms that were so far -and often- postponed. As a result, in the beginning of 2002, the Government made many declarations and announced many action plans and draft laws with the aim to meet -international- requirements of judicial independence, respect of human rights and fighting corruption. It should be monitored that the efforts include the harmonisation of powers of the General Prosecutor, the role of prosecutors in criminal inquiries and the reinforcement of the independence of the Superior Council of Magistrature.

Prosecutors have been considered by the Constitutional Court as agents of the executive branch. There is a certain contradiction between the subordination of the prosecutor to the Minister of Justice, regulated in Law 92/1992 on the organization and functioning of the judiciary, and Law 90/2001 on the organization of the Government which states that "the representation of the Government in its relations with other public institutions is a responsibility of the Prime Minister".

Prosecutors are considered to be magistrates, in the same category as judges. Although this distinction has been better clarified, still today the attribution of responsibilities and powers to "magistrates" may lead to confusion and be a source of legal uncertainty. The appeal for cancellation of criminal and civil sentences to the Supreme Court, promoted *ex officio* by the Prosecutor General or following instructions from the Minister of Justice, has been used in various occasions for apparently political reasons to suspend the execution of final judgements and seems to be an undue faculty of intervention in the normal judicial process.

The Criminal Procedure Code (Art. 201) designates the prosecutor as the main agent of criminal inquiry together with the police and the specialized investigation services. He acts as an instruction judge on the basis of Art. 202 that foresees "the active role of the pursuing organs". This is understood to require the search for evidence contributing to elucidate all aspects of an investigation. This investigation is done even in cases where the defendant admits his guilt and must be done in full respect of the suspect's right to defense. The prosecutor is also responsible for full compliance with procedures since he must supervise and direct the whole investigation. These provisions are complemented by Art. 216 stressing that the prosecutor's primary obligation is to ensure that every crime is discovered and every criminal pursued. Under current law, the prosecutor also has the power to order the detention of suspects up to 30 days as well as to conduct searches, powers which prosecutors in other European states with similar investigation systems do not have.

This accumulation of tasks in 1 single person, organizing the investigations both in favor and against the defendant, issuing arrest and search warrants, and supervising that the law is respected in every part of the procedure raises the suspicion that they may not all be carried out with the same degree of independence. This confusion of powers has been raised in front of the European Court of Human Rights against Romania[1].

There is a certain degree of independence in the relationship between Police, Prosecutors and Justice, but there is also evidence that instructions from the Government are often followed without question by all 3. However, the problem lies more in the difficulty for different institutions to pursue a coherent anti-corruption strategy. Efforts are often hampered by the lack of co-operation among institutions dependent on different political bodies. The different institutions do not have established procedures for sharing information so personal contacts are indispensible to obtain co-operation from another police agency. Police complain that they receive no feedback from prosecutors or other agencies about the follow-up on their investigations, so there is little incentive to keep sharing information. A typical example is the relation of the Police with Prosecutors, illustrating the difficulty in placing a military police under the command of a civilian authority. The Draft Law amending and completing the Code of Criminal Procedure provides for the creation of a Judicial Police subordinated to the Prosecutor's Office. Obviously, this judicial police should enjoy the demilitarized status foreseen in the Law on the Policeman's Status which is still pending for approval of Parliament. The creation of this Police and the adoption of the said Law would most probably improve the effectiveness of the Prosecutors.

The Draft Law amending and completing the Code of Criminal Procedure further intends to address the doubts repeatedly expressed by the EU, the Council of Europe and other institutions about the prosecutor's power of arrest[2]. It stipulates a harmonisation to European standards of the judicial guarantees for detainees. This implies a limitation of the prosecutor's detention power to a maximum of 3 days, after which an arrest warrant would have to be issued by a judge in order to prolong the detention.

The Superior Council of Magistrature proposes to the Romanian President the appointment of

[1] Even though it has been initially invoked as a procedural argument, the Court will have to give its opinion on the content of the petition (rules of fair trial).

[2] In fact, a complaint from a Romanian citizen regarding an illegal detention has been admitted by the European Court of Human Rights, which could end in a conviction against Romania.

judges and public prosecutors[1]. In this case, proceedings are chaired by the Minister of Justice who has no right to vote. The disciplinary powers are shared between the Minister and the Superior Council. Disciplinary procedures against a magistrate cannot be initiated without a prior authorization from the Minister of Justice stemming from a report from the Ministry's body of inspectors or the judge-inspectors. In disciplinary hearings, the Minister or the person to whom he has delegated his powers acts as the Prosecutor, while the decision regarding the case lies with the Superior Council. Procedures in these hearings have been criticised for their lack of transparency and for the limitation of judges' -under investigation- right to defense.

With regard to the composition and functioning of the Superior Council, there is room for improvement, especially concerning its judicial independence. The members are appointed by the Chamber of Deputies and the Senate. The fact that some members are prosecutors, so hierarchically dependent from the Ministry of Justice, contributes to doubts about the institution's independence. Similarly, the fact that meetings of the Council are chaired by the Minister of Justice, even if he does not have the right to vote, places a member of the Executive branch squarely in the middle of the institution supposed to guarantee the independence of the Judicial branch. This initial defect, not in line with the principle of separation of powers, may discredit the Council in exercising its competencies[2]. Some of these defects can be remedied easily through ordinary legislation, but others (e.g. the right of the Minister of Justice to sit at the Council in sessions on promotion and evaluation of judges) are provided for in the Constitution and would require a broad consensus to be reformed.

The *distribution of cases* to magistrates depending on their political affiliation or others is relatively rare, but the absence of an objective case distribution system leaves the decision in the hand of Court presidents, who can take political criteria into consideration anytime. The cases of magistrate corruption are difficult to evaluate, except for some well known 'affairs'.

According to Law 92/1992[3], the irremovability of judges guarantees *independence of the judicial power* relative to the executive power: no interference can be made to acts of justice and transfer of judges can be made only with their consent. The office of magistrate is incompatible with any other public or private office, except for higher didactic functions. A deontological code for magistrates

[1] except for those on probation

[2] such as the appointments to the Supreme Court and the Courts and the decisions on magistrates' professional careers, including disciplinary matters

[3] "on the organization and functioning of the judiciary"

was adopted in 2001 by the Council, but at present it does not seem to have legally binding force.

Some developments have occured regarding independence of the judiciary vis-à-vis the executive. In 2001, a number of prosecutors and Court presidents were transferred. The Ministry of Justice justified the transfers as being necessary in the fight against corruption. Others speak of sanctions and underline the fact that the majority of the magistrates investigated or sanctioned on corruption matters do not belong to the Government party. Although decisions of transfers and removals of judges in theory are taken by the Superior Council, the Ministry of Justice seems to have a significant influence over this body[1]. Also, the leeway which the Government has in applying -de iure or de facto- disciplinary measures, based on evidence which subsequently does not seem to merit the attention of prosecutors fighting corruption is worrisome. Further, in March 2001 the Ministry of Justice issued a circular letter to courts asking them to pay attention to the social consequences in cases concerning restitution of nationalised houses.

The authorities have recognised that such recommendations contradict and violate the principles of separation of powers and of an independent judiciary. In response to the criticisms, the Government has committed itself -from 2001 onward- to accomplishing a thorough reform of justice and the depoliticizing of the judicial system. However, despite declarations of intention to yield some powers to the Superior Council, nothing has been done since the appointment of the new Government to reinforce the judiciary's independence. The practice -at least in the beginning- has been rather the contrary, as have been the decisions to reinforce the authority of the General Prosecutor. However, any debate on the reinforcement of the independence of the General Prosecutor must take into account that Art. 131 of the Constitution poses limitations as it places the General Prosecutor in clear hierarchical subordination to the Ministry of Justice.

The planned amendment of Law No. 92/1992 "on the organization and functioning of the judiciary" should increase the role and weight of the Superior Council of Magistrature in the selection, appointment, promotion and dismissal from office of the magistrates, based on strictly objective and professional criteria. To this end, a team of experts has been set up including representatives of the Association of Magistrates, the Supreme Court of Justice and the Superior Council. The Statute of the magistrate should also be consolidated. Moreover, the amendment will reintroduce the principle of fellow-judges for the cases judged in First Instance. This should guarantee impartiality and offer the possibility to train young judges. However, despite the Government's intention to increase the

[1] one third of its members are appointed by the Ministry and the Minister chairs the meetings

Council's powers, it should be noted that Art. 133.1 of the Constitution recognises the right of the Minister of Justice to sit at the Council's sessions devoted to promoting judges. As such, the extent to which ordinary legal reform can fully guarantee the independence of the Superior Council is limited.

Access to justice is guaranteed although the costs of litigation are high. The Civil and Criminal Procedure Codes contain provisions for granting *free legal aid*. These provisions are applied in practice -though the relatively low payment and payment delays make the cases less attractive for a lawyer. In criminal cases, both the Constitution and the Criminal Procedure Code provide for *an interpreter* for citizens belonging to a national minority and persons not understanding Romanian. The implementation of free legal aid provisions varies throughout the country. In Bucharest it is easier to find legal assistance than in the counties. Similarly, regarding the right to an interpreter, there have been cases where foreigners were held in detention for longer periods of time while an interpreter was appointed and sent to the court. Although the practical difficulties to ensure available interpretation in all languages throughout the country are obvious, it is sometimes felt that the delay is used as a means of coercion.

Access to justice when a defendant is a member of the military, which includes all the police forces, can be quite difficult in practice. All crimes, whatever the nature, fall under the jurisdiction of military courts which have shown themselves to be very reticent at admitting the validity of cases under investigation and of issuing convictions, and even then penalties are often more lenient than asked for. The draft Law amending the Criminal Code of Procedure -which is currently under being discussed by the Government- contains provisions that will allow people who denounce a crime to appeal the decision of the prosecutor not to open an inquiry.

Special attention must be paid to the situation of minors whose rights are not protected within a separate juvenile justice system. Projects associating Police, Justice and Child Protection services are being studied and should remedy this situation. Also, in the third part of 2002, a law will be adopted creating a legal framework to set up specialised courts for the judgements of trials with minors.

In April 2001, a revised version of the Civil Procedure Code entered into force. New procedures were introduced in order to speed up the operation of the courts and to improve the enforcement of judicial decisions. In a separate measure, the Government made it necessary for judges to publish a

reasoning for all their decisions (before this was only necessary in cases involving appeals to higher courts). Most of the changes to the Civil Procedure Code represent much needed efforts to improve the efficiency of the judicial system. At present, a regular procedure is solved in between 12-15 months, which seems satisfactory in comparison to the duration in some Member States in the same matter. Disciplinary procedures can be undertaken against judges for delays in rulings and issuing sentences.

However, some of the changes introduced with the Civil Procedure Code raise concerns: the Supreme Court, already overburdened, has been given additional tasks (such as hearing appeals in commercially significant cases), and the process of simplifying procedures has considerably restricted the right to appeal in certain cases. Other concerns relate to the extension of the right of the General Prosecutor to introduce extraordinary appeals against judicial decisions. This provision already existed in Romanian Law, but an Emergency Ordinance extended the period during which extraordinary appeals could be brought (from 6 months to 1 year), allowed extraordinary appeals to be made before all other legal avenues had been exhausted (previously only "final" judgements were covered) and made the right to introduce such appeals more discretionary (they can now be exercised against "obviously ungrounded judicial decisions" - an ill-defined criterion).

With regard to the *enforcement of judgements*, the creation of the justice executor (bailiff) as a liberal profession should allow for much more rapid execution of some judgements. However, one problem is that currently some public institutions simply do not comply with court judgments. Also, information on the efficiency of enforcement varies. One source states that enforcement often takes a very long time, that there is a poorly developed procedural framework, and that some officials in charge are reportedly corrupt. Reforms which have privatised enforcement are yet too recent to be fully assessed. According to others, recourse to the bailiff can give good results. The recent ordinance that regulates the "injunction" procedure should allow to hasten finalisation of litigation in the commercial area.

The profession of notary has been liberalized in 1996. There are accusations of falsification or forgery by public notaries and it is known that certain notaries do not hesitate to stamp false documents.

The *quality of decisions* is hampered because court hearings are not usually recorded, so at the time of writing a judgement, the declarations of the parties heard are set down according to the memory

of the judge. This may have very serious effects on the right to appeal, since sentences based on incorrect recording of statements cannot be disproved in any way.

Though the practice of *arbitration* exists, it seems reserved for the cases of commercial litigation with great financial implications. However, specialised sections in matters of labour and social service are in the process of being set up.

With regard to practical judicial co-operation in criminal and civil matters, the Romanian administration has all in all responded in an adequate, albeit slow, manner to extradition requests and has on occassion even undertaken to prosecute offenders of Romanian nationality[1]. The willingness to co-operate is not put in question and in general relations with the Ministry of Justice are good. The general impression is that low administrative capacity, insufficient co-operation between different law enforcement bodies and lack of tradition in international judicial co-operation affect requests for extradition and co-operation in criminal and civil matters, leading to delays in responding. In practice, these problems are best solved by personal contacts with those directly in charge of the relevant files or with the General Prosecutor's office, which allows procedures to be accelerated. Lack of language skills in specialized sections has been cited as a problem affecting the time needed to process requests of judicial co-operation. Another problem is the lack of resources[2]. Judges from at least 1 Member State hold the view that their petitions are lost in the rogatory commission procedure and seldom get solved. The lack of results of this procedure and the delays it involves has led some judges to try more direct approaches to their Romanian colleagues, or sometimes to abandon the investigations in Romania altogether. The much publicised case of a magistrate who was subject to disciplinary sanctions by the Romanian authorities for co-operating with Justice of a Member State caused considerable stir among Romanian magistrates and could bring serious prejudice to future co-operation due to fear of reprisals against magistrates co-operating in sensitive cases.

With the purpose of solving the problem of disseminating information, French magistrates have placed great expectations on the creation of a network for "international judiciary assistance". This network, proposed by them, was set up in 2001, consisting of judges and prosecutors responsible for the efficient and unitary enforcement of international conventions.

[1] in accordance with Art.6.2 of the Paris Convention on Extradition
[2] no Internet connection

4. Summary

In both criminal and civil matters, Romania has ratified a large number of the relevant Conventions. Full alignment with several Joint Actions is still ongoing and some instruments remains to be ratified. Harmonisation in the field of civil law will be continued this year, taking the new *acquis* into consideration in time. Legislation fully putting in line Data Protection with European standards should enter into force this year.

Progress has been made with regard to the administrative capacity. Whereas the number of magistrates is now sufficient, the lack of greffiers and clerks remains problematic, as do the current insufficient equipment and infrastructure, organisation of work and access to files and legislation. Training, although provided for in all relevant fields, lacks a coherent policy and extension to the entire judiciary throughout the country.

Independence of the judiciary is still not fully and clearly guaranteed: the too large roles of the prosecutor and the military courts and the too small role of the Superior Council of Magistrature are currently being discussed both at national and international level. The announced reform of the Government aiming at enhancing the judiciary's independence, the respect of human rights and the principles of the rule of law will need to be continued and monitored. The Code of Civil Procedure should improve the effiency of procedures and of enforcement of decisions. The foreseen amendment of the Code of Criminal Procedure should improve the rights of detainees and minors and create a Judicial Police, bringing Romanian Law closer to European standards.

F. Human Rights

1. Formal acquis

Romania is member of the Council of Europe and has ratified the entire relevant human rights related *acquis*, except Protocol N° 12 to the ECHR. It expects to do so in 2005.

Changes have been made to legislation on sexual offenses which eliminates discrimination based on sexual orientation, but restrictions to freedom of expression in the Criminal Code remain unchanged. The articles dealing with slander and libel are restrictive and have been used extensively in legal proceedings against journalists, in particular where they made allegations of corruption. The Criminal Code also includes articles on "offense to authorities" and "verbal

outrage" which provide for specific punishments, including prison for insulting or defaming an elected official or civil servants. In 2001, there have been some cases in which these articles have been used to justify detaining persons using their freedom of expression.

The law still allows the police to make use of their weapons in an excessive number of situations not directly involving the protection of lives. The demilitarization of the police should be the occasion for reform of legislation on this issue, frequently raised by NGO's as a problem and source of abuse by police. The draft law on the Status of Policemen is currently on the agenda of the Chamber of Deputies.

Amendments must still be made to legislation on powers of detention of prosecutors, the role of military courts and on a clearer definition of the constitutional powers of the police to retain suspected criminals for up to twenty four hours[1].

The issue of child protection and continuing the reform represents a national priority. Over the past years, great progress has been made. Romania has ratified a large number of Conventions in the field, the Law for the ratification of the UN Convention was revised and the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography was forwarded to Parliament for ratification. The Government is expected to adopt by end 2002 a new Act on children, detailing their rights and the obligations of the State towards them, including a new more transparent regulation of inter-country adoptions as part of an integrated policy on child protection.

2. Administrative capacity

The issue of child protection is managed by the Government through the National Authority for Child Protection and Adoption, a specialised body of the central public administration established in 2001. This authority was placed under the Secretary General of the Government, thus providing it with representation at ministerial level. Its main responsibility is to draft, co-ordinate and monitor the policies in the field. At local level, child protection activities are performed by the public specialized services for child protection. They are public institutions, with legal status, established under the subordination of the local/county councils and of the sectors of Bucharest.

The second Ombudsman -People's Advocate- was sworn into office in september 2001. The PA

[1] viz. Chapter on Justice & Analysis on Justice

may examine complaints lodged by persons whose civil rights and freedoms have been infringed by the public administration or may initiate '*ex officio*' inquiries. Public authorities are obliged to provide all relevant information/documents they possess regarding complaints being investigated, although no sanctions are stipulated for non-compliance or delayed compliance with this obligation. Following investigation, the PA may issue recommendations to authorities concerned requesting concrete measures to be taken. In case the authority fails to comply within the specified deadline, the PA may approach higher administrative bodies, notify the Government or even submit the matter to Parliament when it is the Government that doesn't comply. Recommendations may also be made on draft laws and can be included in the PA's annual report to Parliament. Since 1999, the law also allows children, irrespective of age, to address the PA. Budgetary constraints[1] have limited the PA's administrative capacity, especially to conduct investigations outside of Bucharest. The recent opening of regional offices and greater contact with NGOs should bring improvement in this respect.

Overall, prison conditions are reported to often be extremely poor and prisons remain severely overcrowded. The excessive number of pre-trial detainees is one of the major problems of the justice system and has a very negative influence on the prison conditions. Currently, pre-trial detainees account for 30% of the prison population, placing an additional burden on the already overburdened system. Unacceptable situations still exist. Although under reform, the prison model currently used still favours keeping inmates in their collective cells for most of the day, activities are limited and their avalaibility depend to a great extent on the prison and the willingness of the warden. Investments are being made and in those centres which have benefitted from them, notable improvements are perceived in ensuring a minimum standard for inmates. Unfortunately however, it will take some time for these improvements to reach all prosons, so conditions still vary greatly and minimum standards are not yet met throughout the system.

The process of training Police personnel in view of demilitarization has started. Both 'Police Demilitarization' and Human Rights Instruments have been the subject of various conferences and courses[2]. Training -to both officers and non-commissioned officers- is given by both the Ministry of Interior and the Committee of Human Rights and Humanitarian Law. Training on conflict management in multicultural communities is also provided.

[1] though no different than those suffered generally by other Romanian institutions

[2] e.g. Legal Protection of Human Rights, Elements of Psychology and Professional Ethics, Police-Community Relationship, relevant European Legislation

3. Implementing performance

Reform of the child care system is well under way: decentralisation and deinstitutionalisation -the 2 cornerstones of the reform- are being implemented stage by stage. Romania has further adopted a comprehensive revised National strategy on the protection of children in need, which sets out its priorities up to 2004. At the same time, the Government has substantially increased budgetary allocations for the system, as well as for subsidies to families with children with the objective of reducing abandonment, which remains a important problem.

Significant problems in child protection remain, but the system has reached a stage where its main task is simply to manage reform. This will have to be done under constraints imposed by limited budgetary resources, insufficient training of staff at different levels[1], and most importantly by the poverty of large numbers of Romanian families, who's demands on the State are still growing. External pressure has been essential in quick implementation of reforms, but may have also led to hasty decisions in some cases of deinstitutionalisation and in the Government's decision to suspend all international adoptions. External assistance is reportedly still indispensable to finance activities included in the Government's strategy, to provide policy advice and technical know-how currently lacking.

Also, during many years the authorities' attention has focused on reform of institutions and dealing with the public image consequences of the adoption file. This has led to the neglect of other areas of responsibility of the State towards children, e.g. the problem of street children, the juvenile justice system, child exploitation and child abuse within families. Although the National strategy mentions all these aspects as priorities for the next years, the administration as a whole has yet to take up these responsibilities as its own. A great deal remains to be done so that all public institutions, including Police and Justice, and not only those specialised in child protection assume their responsibility in this field and deal with these problems from a perspective of the child's best interest. Recent legislation on combatting child exploitation which has raised penalties for crimes of this nature and has improved legal provisions for bad treatments within the family, and continuing programs financed by Phare should help to induce a change in the Administration and in Romanian society as a whole.

Unfortunately, the People's Advocate is a relatively unknown institution and its nature is mistaken

[1] particularly local

by many who believe that it is something like a free lawyer. This has led to the inadmissibility of a greater part of the complaints lodged, though the percentage of complaints declared admisible is improving yearly and has already surpassed 50%. The number of complaints received is also rising steadily[1]. Most of the complaints concern alleged infringements of individual rights in the process of restitution of land or residential property. Other frequent cases concern women's and family rights, and the provision of social security. The PA's main problem is insufficient co-operation from all government agencies which undermines the credibility and effectiveness of the institution. The PA does not seem to receive the political backing that the importance of its mission in protecting constitutional rights would deserve and might still be perceived as an uncomfortable entity, rather than as the foremost exponent of moral legitimacy in the country.

Treatment of inmates, taking into account the limited resources available, is slowly improving and prison authorities have shown for some years already willingness to address problems identified by independent sources[2] and are undertaking measures to raise living conditions of inmates, improve training of staff and develop alternate measures of punishment provided for in the probation law. Legislation on serving punishments and on the recruitment of prison staff should be adopted in 2002. Other positive initiatives included finding jobs for inmates and limited improvement to educational/recreational facilities. Further, prisoners have been granted the right to appeal against disciplinary measures. However, disciplinary procedures have still to be adequately regulated and sanctions such as depriving inmates of the right to receive food parcels from relatives should be eliminated, particularly given the poor quality of food in prisons.

Reports continue on that conditions in police lock ups are much below European standards on hygiene, medical care and respect for rights such as legal aid, confidentiality of conversations with a lawyer or even that the detention should be preceded by a police arrest warrant (valid for 24 hours). The regulation of pre-trial detention in Romania does not yet comply with CoE recommendations regarding the power of prosecutors to order the arrest of suspects for up to 30 days without intervention of a judge. This problem is compounded by the large number of situations in which pre-trial detention may be mandated or is even automatic, such as in case of repeat offenders. At present, the maximum duration of pre-trial detention is up to half of the maximum sentence for the crime for which the detainee has been indicted, which can be excessive. In order to address these issues, reforms have been initiated. An ordinance establishing a probation system

[1] 1.168 in 1997; 4.556 in 2000
[2] e.g. NGO's

entered into force in 2000 and 11 experimental probation centres have been set up. The Criminal Code was further amended in November 2000 to improve the provisions on conditional release from prison. Although these are positive developments, a major constraint on the effective implementation of these laws is the severe shortage of probation officers.

According to Romania, representatives of human rights organisations have free access in all preventive detention and confinement places of the police in order to verify conditions and the respect of prisoner's rights However, another report mentions that independent access to police lock ups has been greatly restricted up to now, making it difficult to assess routine treatment of detainees.

Also, the system in general is not properly set up to provide differentiated treatment for minors in pre-trial detention. Although there are prisons for minors and re-education centres within the prison system, minors not yet convicted must be held near the court where they are tried, so inevitably are mixed with other detainees or even convicts, sometimes for quite long periods of time. As there is no provision limiting the time that a person, minor or not, may be under arrest in a police lock-up before being sent to a prison, a detainee may spent months in those conditions.

Although investments in improving conditions at police lock-ups and prisons are certainly necessary, it is the legislation in force in the Criminal Code and Code of Procedure which lie at the root of problems of overcrowding and insufficient attention to the rights of detainees at all stages of criminal investigations, as well as after conviction.

Law enforcement agencies[1] continue to be accused by human rights organizations of concrete cases of violating human rights of people under investigation or in custody, although these violations cannot be called systematic. Several organisations report cases of torture and ill-treatment, including against children and the use physical force to extract confessions. The safeguards in place to prevent such incidents are inadequate. In 2001, police brutality has in some cases lead to the death of people in custody. Also, intimidation and harassment of victims and witnesses impede prompt and impartial investigations. One report states that the authorities did not acknowledge that harassment took place, failed to provide adequate protection to the complainants and often failed to investigate the incidents.

[1] in particular the National Police and the Gendarmerie

Criminal complaints against police officers are dealt with according to rules of the Criminal Procedure Code and fall under the jurisdiction of military prosecutors. Complaints of this nature may also lead to investigations being conducted by the internal control organs of the Ministry of Interior and of the police institution involved[1]. Investigations are reportedly lengthy, not impartial and often inconclusive. According to one report, complaints were often dismissed on technicalities. Military courts continue to represent an obstacle to the discovery of truth, interpreting more often than not their mission as one of protecting the good name of the institutions involved. In this regard, the attitude of military courts is a clear breach of the right of access to Justice.

Moreover, it is worrisome that various actions undertaken by the Gendarmerie and National Police involving large scale raids of villages where suspected criminals were believed to be hiding were given widespread media coverage and presented by some authorities as examples of police efficiency in dealing with certain types of crime. The fact that these interventions, about which the least that can be said is that they would not be condoned in Member States, are still a regular part of police procedure, indicates that there is a certain gap between Member States' expectations regarding correct police procedure and respect for human rights and the perception of this in the Romanian Government and police. A great effort must be made to instill a new attitude with regard to the exercise of public authority in the law enforcement agencies.

According to one report, the state response to domestic violence against women and trafficking and legal protection for the victims remain inadequate. The Domestic Violence Victims' Assistance Center reported that a long, complicated procedure and probation system discourage domestic violence victims from pressing charges. Despite the high level of trafficking through Romania, the Government did little to address the problem. Moreover, the mentality problem of the law enforcement agencies causes practical problems in the implementation of international programs for assistance to trafficking victims. Treatment by Border policemen to women returning to their country was described as degrading. The political priority granted to these programs, which is clear, often does not reach the police who must put it in practice. In this sense greater efforts must be made to ensure that police receive proper education in human rights, instructions concerning special cases and are made aware of the consequences of disregarding the rights of people they deal with.

Legislation designed to enhance minority rights was not implemented. The National Minorities Council, meeting for the first time in July 2001, criticized the legislation creating the Council for

[1] Gendarmerie, Border Police or National Police

failing to require the executive to consult with it on all legislation pertaining to national minorities. Access to media by national minorities remained limited. Among the issues regularly brought up about police, treatment of the Roma minority figures prominently. Cases of police abuse denounced most often have to do with Roma and the police raids mentioned usually are directed against predominantly Roma communities. Recognizing the problem, the Ministry of Interior has recently adopted a plan to favor the entry of young Romas into the police. It is still too early to assess this measure.

Romania has recently adopted important legal guarantees, in particular an Anti-Discrimination Law including stipulations against discrimination on the grounds of ethnic origin and race. However, the Roma further continued to experience discrimination in housing, eduction, medical care, employment, and access to goods and services. In April 2001, the Government published an ambitious plan for improving conditions for Roma, but activists questioned its lack of detail on reaching the goals identified. The integration of Roma into Romanian society is a long-term task. The governmental strategy gives useful guidelines for tackling the problems related to the dissatisfying situation of the Roma but remains unclear about the financing of this programme. Although an overall improvement of the political situation of the Roma is clear, both the State and the minority will have to prove their will to continue the difficult integration process. The Government should use its influence to act as an opinion leader in changing the determinedly negative attitude of the majority population towards the Roma.

4. Summary

Romania has ratified almost the entire relevant human rights related *acquis*. However, restrictions to freedom of expression still exist and have been used to justify detaining persons using this freedom. Also, the law continues to allow Police to use their weapons in too many situations not directly involving the protection of lives. Demilitarization of the police should modify legislation on this issue. Further, amendments must still be made to legislation on powers of detention of prosecutors, the role of military courts and on a clearer definition of the constitutional powers of the police. A new Act on children, *inter alia* detailing their rights and the State's obligations towards them, is expected to be adopted by the end of 2002.

Deficiencies in administrative capacity, such as lack of staff, do not seem to concern the area of child protection, though the continuing reform will have to be managed under constraints such as

limited budgetary resources, insufficient training of staff at different levels and by poverty of the population involved. Budgetary constraints -though no different than those suffered generally by other Romanian institutions, also affect the Ombudsman. Moreover, the existence and role of the People's Advocate is not yet clear to everyone. Although the penitentiary system is undergoing reform, prison conditions are in some cases still unacceptable, notably since improvements have not yet reached the entire system. Training of Police personnel -including non-commissioned officers- on human rights, conflict management etc. is being provided and treatment of prisoners is improving.

However, reports on unacceptable prison conditions -including hygiene, medical care and respect of rights such as legal aid and pre-trial detention- continue. Restriction of independent access to police lock ups, no differentiated treatment of minors and violation of human rights by police -including of minors and Roma- are serious causes of concern.

G. Corruption

1. Legislation and relevant international instruments

Romania has signed but not ratified the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption. However, law 27/2002 ratifying the Criminal Law Convention on Corruption has been adopted and the law ratifying the Civil Law Convention on Corruption is being debated by Parliament. Further, Romania is party to the Group of States against corruption (GRECO) and applied in 1999 to the OECD for full membership to the Working Group on combating corruption in international transactions.

With regard to the protection of the EC's financial interests, the legal provisions of the Criminal Code -Law No 87/1994 on combating tax evasion, Law No 82/1991 on accountancy, Law No. 78/2000 on preventing, detecting and punishing corruption acts and Law No 141/1997 (The Customs Code) and the Regulations for the appliance of the Customs Code represent the legal framework in the field. In the first semester of 2003, a law will be adopted which aims to punish fraud which affects the EC interests as defined in the Convention as well as the acts of persons that have power of decision and control in case of fraud concerning the EC financial interests. In the first semester of 2002, the draft law modifying Law No 21/1999 on the prevention and criminalisation of money laundering, through which money laundering originating from serious offences will be punished, will be adopted. By then the draft law amending the Criminal Code and

the Criminal Procedure Code on criminal responsibility of a legal person and the punishment of corrupt acts of international civil servants will also be adopted.

Crimes of corruption such as receiving and giving a bribe, accepting undue advantages and influence traffic are criminalised by Articles 254-257 of the Criminal Code. The legislation in force, through the Criminal Code and Law No.78/2000 on the prevention, discovery and criminalisation of corrupt acts criminalises the crimes of corruption in both public and private sector. Law No.78/2000 transposes certain provisions of the OECD Convention on combating corruption in international business transactions and of the Criminal Law Convention on Corruption, by criminalising both money laundering and the crimes of corruption committed in international transactions under organized crime conditions.

Other relevant laws in the field of the fight against corruption that were adopted include: Law No.115/1999 regarding the responsibility of the ministries; Law No.188/1999 on the civil servant statute, Emergency Ordinance 75/1999 regarding financial audit and Emergency Ordinance 60/2001 regarding public acquisitions.

The sectoral plan of the Ministry of Justice regarding corruption stipulates a clear regulation on liability of corrupt acts in international transactions, the introduction of criminal liability of corruption acts perpetrated by employees of international organisations and the introduction of criminal liability of legal entities.

2. National programmes and strategies

The Government of Romania, by GD no.1065/2001, approved the National Programme on Preventing Corruption Acts and a National Anti-Corruption Action Plan for its enforcement and implementation, involving civil society and NGOs, in order to establish a permanent partnership. The National Programme inter alia requires the adoption of measures ensuring that prosecutors have access to all necessary information for investigating cases of corruption, including intelligence data. A National Committee on Crime Prevention was set up (Government Decision no. 763/2001), responsible for the development of governmental policies relating to crime prevention at national level and a subordinate Task Force for the Assessment and Co-ordination of Corruption Prevention Activities in charge of implementing and monitoring the National Programme and Action Plan.

Up to date, sectoral anti-corruption plans and preventive / pro-active measures have been drafted

and adopted by the Ministries of Justice, the Interior, Public Finance (Customs) and the Public Ministry. The Superior Council of Magistrates adopted its Deontological Code of Magistrates in 2001 and the Ministry of Justice is in the process of developing a monitoring mechanism on judicial system integrity and capacity.

The Government further adopted an amendment to Law 115 / 1996 on the statement and control of the wealth of MPs, magistrates, civil servants and of certain persons in leading positions, ensuring an efficient control of civil society over the public authorities thus obliging all those in leading public positions to state their personal wealth. These statements are regularly updated and published in the Romanian Official Gazette.

Assessment of legal provisions on local public administration led to the adoption of Emergency Ordinance no. 5/2002 prohibiting local government representatives from contracting services, engineering works or goods supply contracts with the local public administration authorities employing them (conflict of interest).

A number of legislative measures concerning access to information / personal data protection were taken[1] and awareness-raising campaigns regarding these legal provisions are scheduled to take place in 2002, organised by the Ministry of Justice in co-operation with Transparency International and the Press Monitoring Agency "Promoting access to public interest information and the freedom of expression".

Over the past years, the judiciary, notably prosecutors, have benefitted from training in the framework of PHARE and other international assistance programmes covering inter alia the fight against corruption and new forms of economic and financial crime.The 1999 PHARE Programme and PHARE Programme RO 9910.05 "Integrated project for the strengthening of state institutions' capacities to fight corruption and organized crime" are ongoing. In the framework of these programmes, 65 seminars will be held during 2002. The programme is structured on three components: institutional twinning, specialized training of judges and investments. One of the objectives was “the establishment of an anti-corruption national structure”. Meanwhile, a number of laws to this end have been adopted and structures set up. Legislative and institutional reviews carried out in the framework of this project (the closure date is envisaged for the end of 2002), have revealed the need to restructure the Section for the fight against corruption and organized crime and its territorial structure and to change this structure into National Anticorruption Prosecutor’s Office.

[1] Law no. 544/12 - October 2001 on free access to information of public interest; Law no. 676/21- November 2001 on personal data processing and the protection of privacy in the telecommunications sector; and Law no. 677/21- November 2001 on the protection of persons against the processing of personal data and the free circulation of such data.

The National Programme and the National Action Plan provide for the setting up of effective international co-operation and exchange of information and expertise. Two structures have been established:
- a network of national correspondents for legal and judicial international co-operation, including judges and prosecutors responsible for an efficient and uniform application of international conventions
- in the framework of the PACO NETWORK Programme, an international network of experts and magistrates has been set up with attributions in the field of prevention and combating corruption and organized crime in South Eastern countries

A National Anti-corruption Office is to be set up within the General Prosecutor's Office at the Supreme Court of Justice after the restructuration and transformation of the Section for the fight against corruption and organized crime and of its territorial structure.

Ordinance no.20 of 24 January 2002 on Public Procurement by Electronic Means, aims at minimizing and eliminating the phenomenon of corruption, while providing electronic services to citizens and businesses.

The Sectoral Plan of Ministry of Justice further stipulates:
- a clear regulation on liability for corruption acts in international transactions;
- the introduction of criminal liability for corruption acts perpetrated by the employees of international organizations and by legal entities;
- the implementation of a raising awareness campaign focused on the causes, effects and costs of corruption;
- the publishing of information papers on anti-corruption legislation and measures;
- the implementation of these campaigns in education centers (high schools and universities);
- the development of a civic education syllabus under teaching curricula (to cover the study of basic elements concerning the judicial system, public administration, legislation etc.);
- the development of such tools as may be needed for the evaluation of the real scale of corruption, in co-operation with Transparency International Romania;
- the development of modern means of information for public use (the anti-corruption web page of the Ministry of Justice).

An annual report on corruption in Romania will be drafted and published. Provisions are also included on assessing the effectiveness of corruption control measures.The Ministry of Justice has already produced an initial Progress Report covering the first three months since entry into force of the National Programme on Preventing Corruption Acts and the National Anti-Corruption Action Plan.

In order to strengthen, from the human resources point of view, the Corruption Combating and Organized Crime Section, extra funds have been proposed for the creation of 12 prosecutor positions at national level and 50 prosecutor positions at local level. In terms of equipment, by the end of 2002, the structure will be endowed with IT equipment, consisting of 90 workstations, 3 servers, as well as software such as Windows and Oracle, under PHARE Programme RO 9910.05 (ACOS).

*Statistics:*In 2001, 684 offenders were brought to court for corruption crimes, in comparison to 388 in 2000, representing a 76,29% increase. Among these, 236 offenders were taken into custody and 323 convicted. The 684 offenders have perpetrated 977 crimes.

In the same year, in the system of the Military Prosecutor's Offices, 221 sentences were passed on corruption acts. Penal procedures were instituted against 44 offenders for the perpetration of 98 crimes.

From the point of view of the structure on social categories and professional training, among those sentenced, there are: 13 managers, 21 commercial companies administrators, 5 judges, 2 prosecutors, 3 court clerks, 3 judicial executors, 4 lawyers, 21 Ministry of Interior employees, 4 Ministry of National Defense employees, 2 military employees in the suborder of the Ministry of Justice, 4 mayors, 13 inspectors and 57 guard agents.

3. Current trends

a) Border management

Corruption in the Border Police remains an important problem, although improvement in the overall level of corruption in this institution has been noted. The Border Police have tried to combat corruption in several ways. One example on how the Border Police tries to stop corruption is that each member of the border police has to declare before starting to work, how much money he has in

his pocket. The chiefs are allowed to perform checks[1]. Internal controls in the IGPF are inadequate to discover cases of corruption of any significance. The control unit is understaffed and has little knowledge of police investigation techniques. Its activity is based mainly on denunciations or in small scale undercover operations leading to disciplinary actions against border policemen for minor issues. The IGPF is currently receiving some training in internal anti-corruption investigations from the Guardia Civil. The Romanian Border Police Force's poor logistics, actual equipment and the standard of living of the personnel, - inevitably encourages corruption although they do not completely explain the phenomenon.

A report on the anti-corruption plan of the Ministry of Interior presented in January 2002 states that in the year 2001, files on 8.287 persons were forwarded to the Prosecutor, 216 of which were investigated under conditions of preventive arrest. According to the BP, 1000 employees received administrative sanctions during the year 2001 and 122 were sent to the prosecutor (among which 55 officers).

A sergeant earns approximately 3 Million Lei per month (less than 150 EUR/month[2]). The authorities say they can live with such an income, in particular in the rural areas along the borders. NCOs earn about 10% more. In comparison, a worker's average salary is 2,8 Million Lei.

b) Migration

Reports do not stress on this issue. There are only rumours about corruption in obtaining temporary work permits, for relatively small sums of money, and residence permits, which are more expensive. Actually, due to the current visa policy and legal provisions on admission, legal entry and access to legal temporary stay and work are still relatively easy, e.g. by setting up a fake commercial activity.

c) Police and customs

(This part will follow at a later date)

d) Justice

The Romanian court system is among the institutions that are publicly perceived to have widespread corruption. Since 2000, despite a general recognition by the Government of the seriousness of the

[1] This procedure is applied at least at the Otopeni airport.
[2] According to another Romanian source the basic salary of sergeant is 175 EUR/month.

problem, there has been no noticeable reduction in levels of corruption and measures taken to tackle corruption have been limited. In 2001, a number of judges, prosecutors, court clerks, bailiffs and lawyers have been sent to justice for crimes of corruption. Some judges are currently indicted for their suspected participation in different networks between judges and criminals.

Several surveys and polls have been carried out in the past years, including a report from the World Bank on corruption in the country at the request of the Government itself. It appears that both households and enterprises consider the judiciary corrupt and bribery to be normal. Many bribes are paid to attorneys, who may act as intermediaries, rather than to a judge or a clerk directly. However, other sources state that petty corruption is widespread among auxiliary staff in the Justice system. The main reasons for bribery are a) to speed up the trial or b) to assure that a certain person is assigned to the case.

Public confidence in the judicial system is low. One explanation is the publication of cases of corrupt judges and of the malfunction of the judiciary system. Another is the fact that the procedures used within the Courts -such as the very limited recording of proceedings- often do little to protect against corrupt practices or to allow for their subsequent discovery.

In 2001, the Deontological Code of Magistrates was adopted. However, at present this Code does not seem to have legally binding force. The Ministry of Justice is working on an assistance programme on "the consolidation of the integrity and capacity of the judicial system" which aims, *inter alia*, at developing a monitoring mechanism for the enforcement of the provisions of the Code. Further, the Government adopted a draft law for the amendment and completion of a 1996 Law on the statement and control of the wealth of MPs, magistrates, civil servants and certain persons in leading positions. This should ensure efficient control of civil society over public authorities. Thus, (sub-) prefects, persons in leading and control positions within public authorities and institutions, as well as persons appointed by the President of Romania, the Parliament or the Prime Minister are obliged to state their personal wealth. The statements are published in the Romanian Official Gazette.

However, despite the Code and draft Law, so far the Government's commitment to fight corruption has manifested itself and continues to do so mainly through the use of disciplinary measures; there have been only few convictions in front of a court. This raises doubts about the Government's real willingness to tackle this issue and about the practical independence of the Justice system and of prosecutors to indict and convict those charged with corruption. The creation of an independent

prosecutor specialized in cases of corruption with the appropiate guarantees of its independence and adequate resources -as is currently being discussed by Government- could prove to be a better instrument to fight corruption. A law on the creation of such an institution, which would build upon the current anti-corruption unit in the General Prosecutor's Office, is currently being debated by the Ministry of Justice.

4. International organisations

Romania ranks 69 on the TI corruption perception index 2001 with a score of 2.8, the lowest of all candidate countries (compare Latvia 60, Slovakia 51 and Bulgaria and the Czech republic 47).
(more will follow at a later date)

III. CONCLUSIONS

A. Border security

The Romanian border security system has several deficiencies in respect of the formal acquis, administrative capacity and especially in implementation. The biggest problems lie in administrative capacity and in implementation. Many elements of legislation are in place but current legislation does not provide fully sufficient powers to the border police to carry out border checks according to Schengen principles, and territorially limited powers do not allow them to tackle properly trans-border crime and international criminal networks. The Military regime is still very strong within the Border Police. Administrative capacity suffers from bureaucracy, old management methods and a very inexperienced and heterogeneous staff under military regime. The necessary technical means are also extremely poor. The implementation level is still far from effective. Implementation capacity is very weak at all levels of the organisation and extremely poor at crossing points, both at the green border and sea border - in fact at the sea area there is no capacity to detect, identify or detain illegal cross border activities or subjects. The same applies also to many parts of the green border.

the situation in the field of administrative capacity is still problematic due to slack behaviour in the modernising process and continuous changes in organisation and staff. Old habits from the past and old-fashioned management systems are also just beginning to develop into modern ones. Co-operation with other law enforcement authorities is very difficult due to hard rivalry between

authorities and the absence of a tradition of inter-agency co-operation. The starting point in Romania being so low, it takes time before real results can be achieved. A lack of clear vision and a practical and comprehensive strategy also hinder improvements. Corruption as an integral part of the system does not help those responsible for modernisation. Lack of money and lack of technical means causes serious problems for implementation.

Romania has rapidly improved parts of its border security system. However, there is much to be done before the Romanian system can cope with EU requirements and it is necessary to continue development work in a very determined manner. Existing legal bases are relatively sufficient but it is necessary to finalise legal reform and give all necessary powers to the Border Police. In this respect it is also necessary to adopt the new Law on the Police Status related also to the Border Police's status. The basic organisation structure is in place but it is necessary to continue towards a more comprehensive and solid professional entity, capable of fulfilling all elements of a modern border security system. It is of utmost importance to establish a comprehensive and useable integrated border security strategy in order to be able to improve the system in a structured way and prioritise different projects and needs. The management, training, recruiting and career management system must be enhanced. In order to achieve better results, it is necessary to improve mobility, night vision capacity, technical surveillance and the communication system. The sea border system shall be established. Investigation, intelligence and crime prevention operative capacity and activity at all levels must be enhanced- also at crossing points. It is also necessary to pay more attention to outdoor surveillance at crossing points and their immediate vicinity. The current system in use contains loopholes and makes it possible to avoid border checking. It is also necessary to improve checking procedures.

B. Migration

Visa policy is still non-aligned, inasmuch as FRY, FYROM, Moldova, Russia, Turkey and Ukraine, which are essential as far as illegal stay and transit in Romania is concerned, are not subjected to visas yet. Legislation on Aliens has progressed, but is still very vague and laconic on important items of the acquis, contrary to the principle of the rule of law. The share of consular visas is still feeble, and consular procedures differ from Schengen ones in several important aspects. Romania has no readmission agreements with the (non-applicant) neighbouring countries which are the most important in that respect. Although progress in noticeable in this field, the fight against illegal migration and against criminal networks involved therein produces little result and anyway is not to

the scale of the problem in Romania.

The non alignment of the visa policy is probably due to the fact that Romania assumes the date of 2007 as a working hypothesis for accession, and consequently targets the date of 2005 (only) for fulfilling the criteria for EU and Schengen. The same goes for legislation on admission. As for the fight against illegal immigration, lack of co-ordination, lack of staff, maybe lack of willingness, and above all lack of material means at police stations are the main reasons for explaining that Romania is still one of the main transit country for illegal immigration towards the EU as well as one of the main transit/origin country for trafficking in women.

Romania should, as it has started to do, set up timetables for alignment of visa policy and legislation, should endeavour to conclude readmission agreements with the countries concerned, should find the resources necessary for equipping its police forces dealing with illegal immigration, and focus all efforts on investigation and prosecution of criminal networks involved in trafficking - which requires less material means than awareness and willingness.

Finally, the question of illegal entry of Romanian nationals in the EU has been formally addressed, up to the verge of breaching the Constitution, and implementation of theses deterrence measures seems active, although it is still too early to assess the effects of the visa lifting with EU States. Cooperation with Member States for repatriation of nationals is satisfactory.

C. Asylum

Legislation adopted in 2001 is compliant with the acquis, with the exceptions that the time limits set up in the normal procedure are unnecessarily ambitious (thus threatening, if respected, the quality of the decisions), that clarifications are necessary on the residence permit issued to the refugee, and on subsidiary and temporary protection, and that the grounds for accelerated procedures are worded too extensively. Administrative capacity still needs modern communication systems and a Documentation Centre, which are planned, and is accorded to the relatively low current number of applications. Border Guards need more training.

The novelty of these issues in Romania, as well as the current low number of applications, may explain this situation.

Romania should finalise the adjustment of its legislation, train the Border guards, and above all prepare itself (staff, material means, reception centers to be planned) to the burst of applications that will follow the prospect of enlargement and anyway the implementation of the Dublin Convention, since Romania is likely to become, when time comes, one important "responsible" State.

D. Police and Customs

(These conclusions will follow at a later date)

E. Justice

With regard to the adoption of the formal *acquis*, clear progress has been made concerning ratification of Conventions in the field of Criminal Law, adoption of necessary national legislation and by alignment of EU legislation in the field of terrorism. Full and necessary alignment with regard to several important Joint Actions has not yet been achieved, legislation is in the process of being drafted. This year, most of the -new *acquis*- in the civil field will be either ratified or taken on board. Romania is well ahead in its alignment to legislation on Data Protection though concern has been voiced about unauthorised use of wiretaps by the Romanian secret services and of inappropriate legislation on this issue. The number of magistrates is sufficient, but the number of clerks and greffiers is not. Equipment and infrastructure are yet insufficient, as is the situation regarding access to legislation/documentation, the organisation of work, the handling of cases and specialisation of courts. With regard to implementing performance, the main problems are the insufficient independence of the judiciary in practice, the current role and position of the prosecutor and of the military courts and deficiencies in applying the principles of the rule of law.

Ratification takes time, as does the elaboration of new legislation and its adoption. The organisation and functioning of the judiciary as well as the current Criminal Code of Procedure need quite thorough amendments, including new courts and new roles for different judicial and law enforcement institutions. Such issues are clearly not realised in a fortnight. Improvement with regard to the number of magistrates, their salaries and training have provided results, but the profession of clerk is yet quite young and efforts to make the judicial system more transparent, effective and thus less exposed to corruption are still hampered by a significant lack of material resources. Continuous training of magistrates -including on all relevant European legislation- has only started recently and has not yet covered magistrates throughout the country. The adoption of the amendment to the Law on the organisation and functioning of the judiciary, which should

remedy many of the current deficiencies, is currently foreseen for the third part of 2002. The amendments to the Code of Criminal Procedure which should bring criminal law in line with European -human rights- standards is still being discussed. Despite the clear demonstration of intentions to reinforce the independence of the judiciary, little has been done so far, also since some current imbalances imply -maybe even Constitutional- reform which requires broad consensus.

Romania should continue and step up adoption of legislation, using all assistance it can get in drafting the legislation to bring it in line with European standards. Implementation in practice, including the sufficient administrative capacity in place, should be closely monitored. The need to improve working conditions of the judiciary remains: modernisation and upgrading of equipment, infrastructure, access to legislation and uniform interpretation of legislation must continue and be provided with the necessary resources. Regarding training, a coherent, homogeneous policy must be elaborated extending basic, continuous and EU *acquis* training to the entire judiciary. Further, well-defined and visible efforts are needed in order to guarantee independence of the judiciary including the adoption of the amendment to the Law on the functioning and organisation of the judiciary and the adoption of the amendment to the Criminal Code of Procedure. It should be monitored that the continuing of the judicial reform brings Romanian standards closer to European ones, improves the position of detainees and minors in particular and access to justice and the respect of human rights in general.

F. Human rights

Despite the fact that Romania has ratified the formal acquis and has modified human rights related legislation on a number of important points, amendments still need to be made to the Criminal Code and Code of Procedure in order to substantially improve various -at present- critical and sometimes even unacceptable situations. These concern freedom of expression, the role of the current -military- police, the excessive pre-trial detention period, the role of the military courts, the situation in prisons, the rights of detainees and the treatment of minors within the judicial system. Administrative capacity of various important institutions is restrained by budgetary restrictions and lack of sufficient training. Moreover, the Ombudsman lacks political co-operation and backing, and the fact that the institution is mistaken by many as a free lawyer implies at least that a need for legal defense exists. The implementing performance in the field of human rights related legislation and principles of the rule of law -especially by Romanian law enforcement agencies- varies from poor to simply unacceptable. The situation of minorities, in particular the Roma, has not visibly

improved yet.

It may be that that the Criminal Code has not yet undergone the necessary changes mentioned above since they requires broad consensus. However, it seems that Romania has started to understand, also by pressure of NGO's and European/international institutions, that a reform regarding the protection of human rights and respect for the rule of law principles is necessary. There have already been some major improvements over the past years: e.g. legislation eliminating discrimination based on sexual orientation and the entry into force in 2000 of legislation establishing a probation system and improving conditional release. More legislational changes, at least as regards the role of the police (demilitarisation), on serving punishment, the recruitment of prison staff and the setting up of specialised courts to deal with minors are underway as part of the judicial reform. However, despite training of police being organised, given the numerous serious reports on police brutality, torture, ill-treatment and the backward mentality of some officers, it seems at least that this training has not yet been sufficient or comprehensive enough.

Romania should make serious efforts to modify its criminal legislation on the above-mentioned points in order to bring them in line with European standards. This would not only improve the situation of citizens, but would prove that the announced judicial reform and improvements regarding the respect of human rights and the principles of the rule of law are not merely declarations of intention and goodwill. Serious political support and co-operation from the side of the government -including the necessary administrative and budgetary resources- of institutions set up to protect human rights including those of children and minorities is needed. Assistance from the side of the EU -in drafting legislation, providing administrative and budgetary assistance as well as monitoring improvements- also remains necessary. Training law enforcement agencies on how to treat all people while fully respecting their rights and instilling a new attitude with regard to exercising public authority should be prioritised in order to put a hold to the current critical situation.

G. Corruption

(old)

Corruption has been and continues to be a serious problem, particularly arising out of the privatisation process. It may be found in almost all fields of activity, where relationships between individuals and institutions are established, either in the area of economics or of services.

According to the published results of a recent poll, businessmen spend 4% on average of their earnings on bribes[1].

The Romanian authorities are aware of the problem and have taken numerous initiatives such as the establishment of the Squad for Countering Organised Crime and Corruption and the Central Operational Group for Combating Organised Crime and Corruption as well as the preparation of the Anti-Corruption Law. Information indicates that corruption among police, customs and border officers is widespread and even involves senior officers of the Squad, who have in the past also been suspected of being involved in criminal activities in a Member State.

[1] Business Central Europe March 2000