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TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

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

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ROMANIA: Technical Update

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Several measures taken to ensure coherence in jurisprudence such as regular court consultation meetings, publication of jurisprudence collections and appeals in the interest of the law show continuing progress. However, there are problems of incoherence in jurisprudence in both civil and criminal law and these deficiencies hinder prosecution in high profile corruption cases. Contradictory jurisprudence of the High Court of Cassation and Justice (HCCJ) in certain high profile cases of high-level corruption has damaged efforts to move towards more coherent jurisprudence within the judiciary.

The human resource situation also raises some concerns. Despite some progress in filling positions within the magistracy, difficulties remain regarding admission standards and tailored training targeted at specific groups. Consideration should be given to adopting the emergency measures suggested by the General Prosecutor as a way to remedy the human resource and management problems in the Public Ministry. The Superior Council of Magistracy (SCM) has been given sufficient resources to operate effectively, but difficulties in improving accountability and ethical standards of its members are of concern.

Amendments to the Civil and Criminal Procedure Codes were adopted in early 2007, but their implementation has not been monitored since then. There has been considerable controversy surrounding the proposed amendments to Government Emergency Ordinance no 60 of 2006 (GEO 60/2006) on criminal procedures. Drafting of the new Criminal and Civil Procedure Codes is progressing. It is very important that the draft that is ultimately submitted is of good quality and prepared in consultation with and supported by judicial institutions.

Detailed Assessment

- *Implement any necessary measures, including those provided for in the relevant Action Plan of the Superior Council of the Magistracy adopted in June 2006, that ensure a consistent interpretation and application of the law at all levels of court throughout the country following adequate consultation with practising judges, prosecutors and lawyers; monitor the impact of recently-adopted legislative and administrative measures.*

Appeals in the interest of the law were successfully made with a view to ensuring coherent jurisprudence. Between June 2007 and June 2008, 83 appeals were filed, of which 60 were admitted, 4 dismissed and 19 are pending. Decisions made by the High Court of Cassation and Justice (HCCJ) in such appeals are binding for all courts. 20 training seminars were run by the National Institute of Magistracy, and a twinning project was established.

Access to jurisprudence has also improved. Regular consultation meetings were held to discuss uniformity of court practices and communication among practitioners. In 2007-08 the HCCJ organised 67 such meetings with judges from many different courts and specialisations, whilst monthly meetings of magistrates took place within individual courts. Materials

highlighting the instances of non-unitary jurisprudence raised were submitted to the SCM. Courts are also required to publish relevant decisions on their website.

Contradictory jurisprudence of the HCCJ in certain high profile cases of high-level corruption has impeded efforts towards coherent jurisprudence within the judiciary.

Some deficiencies with the unitary application of civil law were also reported, related to the division of responsibilities between different court levels. Measures taken so far have not solved the problem.

- *Design and implement a rational and realistic staffing model for the justice system on the basis of the ongoing needs assessment.*

Work on the human resources strategy has proceeded. In May 2008 evaluations of the complexity of cases at the prosecutors' offices were completed and the optimum workload for each judge and prosecutor is now being determined. Jurisdiction rules are also being devised in accordance with the new procedural codes, and a working group has been set up to monitor their impact. The human resources strategy is scheduled to be finalised by January 2009, but this depends on the passage of the new codes which are expected to redistribute competences among courts, thus influencing the number of magistrates necessary for each court. A German-Romanian twinning project to improve courts management has been established

The use of interviews in recruitment has continued and between June 2007 and March 2008 139 candidates were appointed under this method. Law 97/2008, passed in March, required the SCM to establish objective interview criteria. On 24 April Government Emergency Ordinance 46/2008 was published, proposing to replace the interviews with a formal examination procedure. Although the SCM has cancelled previously scheduled interviews the proposed new law is still being debated in Parliament. If adopted as tabled, this law would represent a positive step, as long as the rigorous quality of exams is assured in its implementation.

130 candidates with 5 years experience were recruited in a single exam session held in May 2008. This number represents a sharp increase in the amount of candidates admitted in this way. The exam held in June 2007 enabled only 2 candidates to be admitted. Concerns regarding lowering of standards have been raised in this context.

Exams in April 2008 admitted 129 candidates to executive positions and competitions to recruit 142 judges and 95 prosecutors to leading positions are underway. Vacancies for court judges fell from 444 to 245, out of a total of 4490 positions, during 2007-2008. By comparison the total number of vacancies at the prosecutors' offices was reduced from 525 positions in June 2007, to 417 on 1 July 2008, out of a total 2859 positions. The National Institute of Magistracy admitted 159 new magistrates and 115 trainees to vacant judicial positions in 2007. More exams are scheduled for June, September and November 2008. To address the shortfall in magistrates, the number of places at the NIM was increased by 30%. Continuous training and regular performance evaluation should ensure that existing standards within the magistracy are maintained.

Government Emergency Ordinance no 100 of 2007 addressed the secondment of magistrates referred to in the June 2007 report by establishing a reserve fund to finance the appointment

of staff for temporarily vacant positions[1]. The reserve fund is an innovative way to address the shortage of staff created by secondments, through its utility can be best assessed after it has been implemented.

The reduction in vacancies and the allocation of new judges to the Courts of First Instance represent positive steps but the recruitment of high numbers of judges compared to prosecutors is a cause for concern. At present judges are recruited at a higher rate than prosecutors despite the greater need for staff[2] within the prosecutors' offices: The focus on recruitment 2007-2008 clearly was on courts where vacancies have been reduced by 45% whereas vacancies among the prosecution have only been reduced by 21%.

Procedures to eliminate excess posts have not been altered, which might cause difficulties given the changes to be introduced by the new codes.

- *Develop and implement a plan to restructure the Public Ministry that addresses the existing managerial shortcomings and human resources issues.*

A plan to restructure the Public Ministry is being successfully implemented. The first two steps were accomplished in early 2007. The third step, the redistribution of 56 positions towards prosecution offices with a significantly higher workload or shortfall in personnel was completed in October 2007.[3] The 2007 Activity Report of the Public Ministry was presented on 7 March 2008. Its priorities for 2008 include addressing the shortfall in personnel, developing professional training programmes, continuing the automation process of the prosecutor's offices, increasing efficiency and transparency and improving the Public Ministry's image.

Whilst the redistribution of some prosecutor positions is a welcome step, further measures are needed. The number of cases handled has doubled since 1997 but 18% of the positions in the prosecutors' offices remain vacant. The workload is unevenly spread as prosecutors in Courts of First Instance handle 1,000 to 1,500 cases annually compared to 30-40 cases per year for those attached to the Courts of Appeal, but 80% of the Public Ministry's activity is undertaken by the local prosecutors' offices.

A draft law was proposed by the General Prosecutor to temporarily redistribute posts between court levels as an emergency measure to alleviate the most pressing staffing problems. The support of the SCM was however not obtained.

Management functions, such as promotion, evaluation, sanction and transfer of staff are the responsibility of the Superior Council of Magistracy. Systematic deficiencies can therefore not be addressed by the General Prosecutor. Heads of Prosecution offices are not able to sanction underperforming staff, even in very minor cases, such as arriving late to work. Rather, information about the transgression must be forwarded to the SCM, who will decide

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1 When the original post holder returns, the replacement staff member will retain the post and the original post holder will be offered another position in the same court financed via the reserve fund. When another position becomes vacant within that court/office, it shall be restored to the reserve fund to maintain balance.

2 In June 2007 18% of positions in prosecutors' offices were vacant, compared to 9% in the courts.

3 21 positions were redistributed among the Courts of First Instance, and the remaining 35 transferred from the Prosecutor's Office attached to the High Court of Cassation and Justice to the Prosecutor's Offices attached to the Courts of First Instance.

upon and deliver the appropriate sanction. This procedure has reportedly been very slow and ineffective in several cases and leaves the supervisor vulnerable to abuse in the meantime.

- *Monitor the impact that the newly-adopted amendments to the Civil and Criminal Procedure Codes have on the justice system so that any necessary corrective measures can be incorporated in the planned new Codes.*

The situation regarding amendments to the Criminal Procedure Code which would severely restrict the rights of the prosecution remains uncertain at present[4].

Whilst the majority of problematic provisions initially proposed by the Chamber of Deputies have been removed by the Senate, clauses restricting the operation of home search and telephone interceptions remain. If approved, these provisions will significantly impede the ability of prosecutors to gather adequate evidence in criminal cases, most notably corruption cases where telephone evidence plays a substantial role. Prosecutors would no longer be able to issue temporary wire tapping authorisations and the conditions for interception or recording to begin have been tightened. Finally, as with the domiciliary search, provisions have been introduced prohibiting the use of evidence gathered in contravention of the specified conditions.

Whilst the amendment law seems to be currently on hold, it has not been finally dropped and some of its provisions risk being re-introduced in the new Criminal Procedure Code when it is presented to Parliament.

Amendments to the Civil Procedure Code had already entered into force in January 2007, and some initial monitoring of the law's anticipated impact took place then. However in the last year authorities have mainly focused on the adoption of the new Civil Procedure Code.

Information provided by Romanian authorities does not give any indication of further monitoring of the amendments, nor of inclusion of changes suggested as part of the public consultation in the draft of the new codes.

- *Report and monitor on the progress made, as regards adopting the new Codes including adequate consultations and the impact it will have on the justice system.*

With assistance from the German Foundation for International Legal Cooperation, the Commission for drafting the new Criminal Procedure Code completed the final draft on 14 April 2008. A copy has been published on the Ministry of Justice website. At present consultations with several legal institutions are ongoing, and the draft is simultaneously being analysed for overall coherence, and compatibility with the new Criminal Code. Practitioners criticised the consultation process as not sufficiently transparent and comprehensive.

The new draft Criminal Procedure Code seeks to address several problems of the judicial process in Romania such as the excessive length of trials and the misuse of procedural rules as delaying tactics. The law intends to reduce the number of restitutions of files by court to the prosecution on procedural grounds by the introduction of a preliminary chamber which is designed to ensure cases do not proceed without sufficient evidence. The legality of all

[4] These amendments (GEO 60/2006) were first discussed in parliament in November 2007 and reported by the Commission in the interim report of February 2008.

indictments would be verified during the pre-trial stage, and if irregularities are found the file may be returned to the prosecutor's office.

Following a similar drafting process the preliminary draft of the Civil Procedure Code was completed on 14 August 2007. Consultations with the courts and main universities took place in April 2008, whilst public consultations will continue until September and the endorsement procedure will begin thereafter. In the meantime the committee is analysing the comments received so far and ensuring the draft is consistent with the text of the new Civil Code.

- *Enhance the capacity of the Superior Council of Magistracy to perform its core responsibilities as well as its accountability. In particular, address the potential conflicts of interest and unethical actions by individual Council members. Recruit judicial inspectors, according to the newly-adopted objective criteria, who should also have a greater regional representation.*

The SCM was allocated sizeable human and financial resources in early 2007. Since then a new management team has been elected, a communication strategy approved, 9 technical positions were added, 2 vacancies were filled and the construction and renovation of courts and prosecutors' offices continued. The SCM budget for 2008 was increased by 25% to MEUR 20.1, though this was accompanied by decreases in the budgets of other judicial institutions.[5]

A regulation enabling a triennial appraisal scheme for magistrates was approved on 4 October 2007. Amendments of 24 January 2008 made activity as a non-permanent SCM member incompatible with membership of an evaluation commission, and clarified the operation of evaluation commissions in courts or prosecutors' offices with fewer than 10 judges or prosecutors. An SCM decision on 4 October appointed evaluation commissioners, based on proposals from the leading boards of the courts and prosecutors' offices. In January 2008, training sessions were organised for them, and the first round of evaluations began on 1 March 2008. Evaluation commissioners are however proposed by the courts whose magistrates they will be evaluating, so doubts regarding impartiality have been voiced.

Despite its key role in promoting a transparent and efficient judicial process, the SCM has not yet fully taken responsibility for judicial reform and for its own accountability and integrity: Following a case of fraud with a management competition, the SCM allowed a criminal investigation by DNA only after a public intervention by the General Prosecutor. The competition was not repeated. An investigation into disrespect of professional integrity in relation to this case within the SCM was not launched.

The recruitment of judicial inspectors continued, with 10 new inspectors appointed in 2007-2008, so that 45 out of a total 53 positions have now been filled. The new inspectors are magistrates seconded from the courts, so they could be asked to assess their colleagues' or superiors' performance. In this context questions regarding conflicts of interest have been raised. The newly recruited inspectors came from a variety of courts and offices, however

[5] The budget of the prosecution for external expertise was i.e. cut by 30%, despite legal changes which will necessitate increased use of such expertise: Article 94 of the Fiscal Procedure Code was modified following GEO 47/2007, published in Official Gazette no 603 on August 31 2007. The amended provision expressly forbids the taxation authority from drafting technical, scientific or other reports at the request of the criminal investigation authorities. Thus the assistance traditionally provided by the tax authorities will now need to be provided through use of external experts.

only one (Arges Tribunal) is located outside of Bucharest. Efforts should be made to ensure new judicial inspectors are geographically representative.

The judicial inspection within the SCM has not yet established a track-record for ex-officio investigations; guidelines for this purpose are missing.

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

After a considerable delay in 2007, substantial progress was made in setting-up the National Integrity Agency (ANI) in the first half of this year. Practical measures to set up the agency, such as recruitment of personnel, budget allocation and public procurement for infrastructure requirements were taken. In June 2008, ANI reported on investigation activities in about 40 cases.

ANI will need to continue to receive sufficient budgetary resources to assure the operation of the agency – such as for recruitment and training of inspectors, competitive salaries and the installation of suitable IT equipment and software.

ANI will need to establish a track record of completed cases to demonstrate that it is exercising the range of its sanctioning powers. The robustness with which ANI carries out its legal mandate and the nature of the supervisory role carried out by the National Integrity Council cannot as yet be evaluated.

Detailed Assessment

- *Adopt legislation establishing an effective and independent integrity agency with responsibilities for verifying assets, potential incompatibilities and conflicts of interest, as well as issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.*

The ANI legal framework was completed in May 2007 with the passage of Law 144/2007, which regulated the agency's establishment, organisation and functioning. On 14 April 2008, the Senate issued Law 94/2008, designed to address concerns raised in the June 2007 report. The law clarified the mandate of ANI inspectors, enabling them to pursue "unjustified" instead of "illegal" wealth, decreased the financial threshold required for an investigation[6] and clarified the status of ANI personnel. These changes corrected shortcomings of Law no 144/ 2007, and meant that the administrative prerequisites for ANI's functioning were in place.

Although the completion of the legal framework for ANI was certainly a positive step, some provisions in the present law may have an adverse impact on the agency's effectiveness. For example notifications cannot be anonymous as they must indicate the sources of their information, and be dated and signed, before they can be taken into account. Preliminary inquires must be carried out within 30 days, and the scope of an investigation may not extend

[6] See Article 4(4). The initial provision defined the obvious difference between assets and revenues as being higher than 10% but no less than 20,000 EUR. The new provision redefines this expression so that investigation can start after a difference of only 10,000EUR between assets and revenues has been demonstrated

beyond the issues raised in the complaint. Inspectors do not have powers of subpoena nor the express right to request information of a sensitive nature.[7]

If irregularities are found, ANI will notify relevant institutions so that they can take further action. Thus ANI cannot take mandatory decisions itself but is able to ask the court to order confiscation of wealth considered unjustified, and request disciplinary sanctions such as dismissal or suspension. The legal basis enabling confiscation of wealth considered unjustified was called into question by a Constitutional Court decision taken on 17 April 2008. The decision declared that the draft Law amending Law 115/1996 was unconstitutional, because it mandated the confiscation of "unjustified wealth" in contradiction to the Constitutional presumption that all wealth has been obtained legally. As a result the confiscation of unjustified assets may be challenged in court and may ultimately not be possible.

The role of the National Integrity Council, ANI's governing body, has also been extended. This discussion has given rise to concerns regarding the independence of ANI. The Council, formed in May 2007 to appoint the President and Vice President of ANI, is now empowered to screen all ANI staff in terms of incompatibilities, unjustified wealth and conflicts of interest, just as ANI inspectors screen the assets of high level officials and politicians.. In addition, the Council can evaluate ANI's managerial capacity and propose the dismissal of the President or Vice President. Previously these tasks were undertaken by an independent external auditor. In order to assist the Council in its assessment, the ANI President must report to the Council on the agency's activities, and provide it with access to documents when requested.

- *Establish such a National Integrity Agency; ensure it has the necessary human and financial resources to fulfil its mandate.*

Despite initial expectations that ANI would be fully operational by October 2007, this target has not been achieved though attempts were made to hasten the agency's set up. In December Government Emergency Ordinance no. 138 of 2007 (GEO 138/2007) introduced interim measures giving ANI's Vice President all the prerogatives of President, including the power to act as the agency's chief financial officer. Administrative measures were undertaken thereafter, and on 15 April 2008 the Senate appointed a President, following the proposal of the National Integrity Council.

By June this year, ANI reported first investigation activities in about 40 cases on the basis of signals from press. Model registries of declaration of assets and interests and a guide for completing them have been drafted. In January 2008 equivalent organisations within and outside the EU were contacted to establish cooperation.

At present ANI has 100 employees, including 42 integrity inspectors and recruitment for more personnel, including a Vice President, is continuing. In addition the agency's ongoing activities include training courses, drafting an internal code of conduct, elaborating a mid-term management strategy, and designing a database for storing, processing and analysing declarations.

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[7] Article 5 states that information may be requested from "all public institutions and authorities involved, as well as other public or private legal persons" and may include " the documents and information necessary." Discussions with ANI officials revealed that this provision is being interpreted to exclude financial, personal, or similarly classified information.

Whilst most of these developments are positive, some detract from overall progress towards achieving this benchmark. They should be rectified. For example, the salaries paid to inspectors may not attract the best candidates, whilst the institution's training budget may not cover all of the training needs involved in setting up a new institution, especially one whose operation is largely unprecedented within the EU. Furthermore, the budget proposal for a new data processing system, to scan and comparatively analyse data from the 60,000 wealth statements held by ANI, was initially rejected by the government. Combined, these budgetary issues may influence the effectiveness of the agency. A longer term view is necessary as completion of this benchmark will require a thorough assessment of the agency's functioning in practice, which will be possible only when ANI has an established track record of completed cases.

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

Aside from the continuously good track record shown by the National Anticorruption Directorate (DNA), the fight against high level corruption has overall not shown convincing progress since June 2007. As reported then courts continue to deliver lenient sentences and inconsistent sanctions. The key cases concerning high profile politicians show no real progress.

Despite intense political and legal debate, Romania managed to keep the institutional framework for the fight against corruption intact. The legal framework remains weak in some areas, with restrictions on the powers of specialised authorities, and increased requirements for some investigations. Inconsistent decisions delivered by the HCCJ in high profile cases work to diminish public trust in the fight against corruption. There appears to be insufficient awareness of the problem of high level corruption within parliament.

Detailed Assessment

- *Continue to provide a track record of professional and non-partisan investigations into high-level corruption cases.*

The DNA continued its activity, with 385 persons indicted as a result of 146 suits brought between 1 June 2007 and 10 June 2008. These included 80 non-final convictions delivered by the courts against 132 defendants, and 69 final convictions rendered against 107 defendants.

The sentences awarded ranged in length from 3 months' to 5 years' imprisonment for non-final convictions, and from 3 months' to 7 years' imprisonment in the case of final convictions. In both categories the majority of sentences were either conditionally suspended or suspended under probation; the rest were enforced sentences. These convictions account for 60% and 64% of the defendants respectively.

In 2007 the number of public sector employees given final convictions was 18% higher than the number of private sector employees. Despite their greater representation, penalties overall were lower for public sector than private sector employees. For example 12 public officials were sentenced to detention, compared to 16 private sector defendants, and suspension was given to 47 public officials whilst those from private sector received 34 suspensions.

The DNA has prosecuted 17 high profile cases. Three of those, each concerning former ministers, were returned to the prosecution by the HCCJ. Justification for the restitution was based on the retrospective application of a Constitutional Court judgement taken in July 2007.[8] Reasons for the HCCJ decision in one case reveal that the restitution will nullify all of the investigative acts carried out by the prosecutors in that case.

Delays in the criminal trial process were addressed in a bill initiated by the Ministry of Justice in 2007. The text removes the automatic suspension of trials whilst the Constitutional Court deliberates on objections of unconstitutionality. The government and the Chamber of Deputies approved the law, however it is pending analysis by the Senate, which is the decision making chamber in this case. If adopted, the changes introduced by the new law will be complemented by the introduction of the Preliminary Chamber in the draft criminal procedure code, designed to ensure cases do not proceed without sufficient evidence.

The number and profile of new investigations initiated by the DNA shows a good track record of non-partisan investigation into high level corruption, however the courts have not increased their delivery of dissuasive sanctions in the majority of cases. Despite requests by prosecutors for stiff penalties, the minimum sentence is awarded in most cases. The government set up a working group to undertake a comparative analysis of court decisions in July 2007 however this group has not yet produced any results. In reaction to the lack of results from the working group, the DNA itself conducted a sample analysis of the penalties given to 108 defendants in 2007, which revealed that 90% were awarded the lowest penalty possible, whilst only a quarter were sentenced to detention.

Some progress can be recorded on smaller measures. For example the programme implemented by the General Prosecutor to combat corruption involves practical and effective steps to broaden the scope for investigations into corruption and ensure that operations are carried out as efficiently as possible. In addition, the cooperation between the General Prosecutor's Office, DNA and local prosecutors' is good and effective.

A set of measures to prevent and fight corruption have been proposed by the General Prosecutor and implemented via the Action Plan of the Ministry of Justice. In December 2007, prosecutors were recruited to form a national network of corruption investigators. These prosecutors, attached to the tribunals and courts of appeal, would be responsible for investigating any corruption cases falling outside the remit of the DNA. Their appointment was followed by a round of specialised training sessions with DNA prosecutors and police officers in May 2008. Opportunities for continued specialised training will be coordinated by the Public Ministry. Finally the General Prosecutor's Office set up a working group to draft a manual of best practices for investigating criminal corruption cases, based on the observations and conclusions drawn from the training sessions. The manual will be finalised by August 2008 and disseminated to prosecutors.

Ten training seminars were also organised by the National Institute of Magistracy and the Fight against Fraud Department between June 2007 and March 2008. They covered a range of issues including financial offences, fraud against EU interests, the fight against corruption, high level corruption and judicial sanctions, and judicial cooperation in criminal matters. European Commission funding was used to finance the seminars, while international experts

[8] Constitutional Court decision 665/5.07.2007 required that former ministers be subject to the same restrictions on lifting political immunities as those ministers still in office.

provided technical assistance. Seminars targeted professionals dealing with corruption cases and were attended by judges, prosecutors, DNA staff, police officers and magistrates.

- *Ensure the legal and institutional stability of the anti-corruption framework, in particular by maintaining the current nomination and revocation procedure for the General Prosecutor of Romania, the Chief Prosecutor of the National Anti-Corruption Directorate and other leading positions in the general prosecutor's office.*

The Act concerning the organisation and functioning of the DNA was not modified. Likewise no changes were made in relation to the nomination and revocation procedures for relevant high level positions since the Commission's last comprehensive report was issued in June 2007. This represents a positive development. Nonetheless, a series of Constitutional Court decisions and legislative modifications made over the last year could seriously weaken the fight against corruption.

- A decision of the Constitutional Court delivered in July 2007 restricted the operation of the military section of DNA by prohibiting it from further investigating cases involving both civilians and military personnel.

- In August Article 94 of the Fiscal Procedure Code was altered to forbid the taxation authority from drafting technical or scientific reports at the request of the criminal investigation authorities, and the special procedure enforced for investigating current ministers was extended to cover former ministers.

- In October the Constitutional Court declared relevant provisions of the laws relating to ministerial accountability[9] unconstitutional.

- Requirements for investigating ministers concurrently serving as Members of Parliament were tightened in March 2008.

For investigations to begin, the assent of Parliament is now required, in addition to the consent of the President. Despite a public statement on 22 April 2008 that no public procedures currently exist to process such requests the Legal Committee of the Chamber of Deputies already advised the plenum in two cases.[10]

In each case the relevant Constitutional Court decision or legislative amendment restricts the operation of an anti-corruption body, or increases the requirements which must be satisfied before investigations can begin. At a practical level, implementation of the changes resulted in blockages and delays at the prosecution stage. Whilst the provisions of the Romanian Constitution must naturally be respected, these amendments do not aid effective investigations into allegations of high-level corruption, and may obstruct progress towards reaching this benchmark. Careful assessment of the impact of draft laws on the ability of relevant authorities to successfully investigate and prosecute crimes of corruption must become the norm if progress against this benchmark is to be achieved.

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9 GEO 95/2007 and article 16 of Law 115/1999 were declared unconstitutional

10 The Legal Committee of the Chamber of Deputies recommended against starting investigations concerning former transport minister Miron Mitrea in May 2008, and former Prime Minister Adrian Nastase in June 2008.

Against this background the need for institutional continuity must especially be emphasised. In particular the nomination and revocation procedures for relevant high level positions must be maintained. DNA's strong record of investigating and prosecuting prominent corruption cases should not be disrupted if progress toward this benchmark is to continue to advance.

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

The number and variety of awareness campaigns undertaken by Romanian authorities show a willingness to act constructively to combat local corruption. These campaigns have contributed to raising awareness about the disadvantages of corruption, but more measures need to be taken in order to explain to average citizens how they could combat corruption. Research has not been conducted to determine the most vulnerable sectors, and authorities in some traditionally susceptible sectors, such as health and education, demonstrated little awareness of the extent of the problem. Further critical analysis of the impact of campaigns and corruption within different sectors is needed to enable more targeted actions in future. An effective and comprehensive system to collect and follow-up corruption signals of diverse origins providing for easy access and the protection of confidentiality is missing.

Efforts to improve local administration services were also made by bodies responsible for many different sectors. Revision of legislation, faster and more efficient procedures and improved public access to information are effective steps to reduce opportunities for corruption, though ongoing implementation must be monitored to ensure results are demonstrated in the long term. More investigation and sanctioning of public officials for corruption offences are necessary to reinforce the message sent by the legal and administrative changes and awareness campaigns.

Detailed Assessment

- *Assess the results of the recently-concluded awareness-raising campaigns and, if necessary, propose follow-up activities that focus on the sectors with a high risk of corruption.*

Campaigns to combat corruption were initiated or continued by a wide variety of institutions. For example, the Ministry of Justice conducted the "No Bribe" campaign from 16 October 2007 until 27 February 2008. A variety of media, internet and direct information methods were used to target different sectors of the population with the overall message "don't bribe and don't accept bribes". The impact of the campaign was assessed by means of a sociological analysis conducted in February 2008, which gave the campaign a very positive evaluation.

In May 2007, the General Anti-Corruption Directorate (GAD) within the Ministry of Interior and Administrative Reform re-launched the "Public Awareness Campaign". It consisted of radio and television segments with real life corruption scenarios, and encouraged citizens to call the Green Helpline (TELVERDE) and receive counselling and practical advice. Since May 2007 voice messages and calls to the Green Helpline have increased by 50%. Other measures were numerous, including anti-corruption groups and youth training programmes conducted by the National Integrity Centre, an anti-corruption caravan organised by the Ministry of Interior and Administrative Reform, and audio campaigns and manuals prepared by the Agency for Governmental Strategies.

Whilst the extent of projects undertaken by different institutions to combat local corruption is encouraging, the lack of analytical information or assessment of the campaign's impact makes their utility hard to measure. Although it must be recognised that a cultural change is necessary before corruption can be dramatically reduced, independent information does not reveal a positive trend at the local level. A study undertaken by Transparency International in April 2007 asked Romanian citizens a range of questions regarding their perception of corruption. 38% of those surveyed said almost all public institutions employees are corrupt, while 44% said that many are. Despite the fact that a majority agreed with statements like "Corruption makes the rich even richer" or "Corruption lowers the population living standards", 69% considered that failure to give a bribe would result in their problems not being solved. It is clear from the survey that whilst Romanians generally condemn corruption acts in principle, they consider that corruption is in practice widespread, and a problem which is beyond their control.

Vulnerable sectors were not especially targeted by the measures put in place. Instead authorities in fields such as health and education denied the existence of a serious problem, citing as evidence the lack of complaints of corruption. They reported that the disciplinary structures in place were rarely used, citing very low numbers of disciplinary measures taken and minimal sanctions delivered. However, reports from civil society suggest that corruption is common practice, with neither party involved in a corrupt transaction likely to complain about it. For example, a pilot study run by the Coalition for Clean Universities reported that universities have a high degree of autonomy and administrative discretion due to the lack of transparency and of genuine accountability mechanisms such as students' evaluations and ethics committees.

- *Report on the use of measures to reduce the opportunities for corruption and to make local government more transparent, as well as on the sanctions taken against public officials, in particular those in local government.*

Many measures have been taken to improve the quality of public services and reform the administrative system, thus ensuring reduced opportunities for corruption. Services at both central and local levels were involved. For example the Ministry of Economy and Finances, and the National Agency for Fiscal Administration acted to reduce timeframes for issuing important documents, revise relevant legislation, implement online facilities, and streamline administrative procedures, in order to increase transparency within the business environment.

In order to improve the work of the National Integrity Centre, a protocol was concluded between the Association for Implementation of Democracy (AID) and the Ministry for Interior and Administrative Reform (MIAR) in November 2007. New premises and facilities ensured the Centre's continued activity. Since then anti-corruption groups and debates were organised in 20 different counties, bringing together representatives of anti-corruption institutions and civil society. Proposals drafted as a result of the debates will form the basis of national, local and regional plans to promote integrity. Measures anticipated include improving legislation, reforming local public administration and the institutional framework and development of best practises in preventing corruption.

A substantial twinning project funded through PHARE and initiated in December 2006 assisted the National Civil Servants Agency to re-define its human resources policies and internal practices. These reforms were conducted with the aim of enhancing the transparency and integrity of the civil servants' performance in public office. Improving civil servants' integrity was also the objective of the training sessions organised for MIAR employees. A

total of 2225 meetings were attended by 32,500 people, including 1113 sessions specifically organised for staff in leading positions. 1664 integrity training sessions were conducted for all new employees, namely those 44,916 staff members hired since January 2006. Possibly inspired by the training sessions conducted, 150 ministry personnel informed GAD about instances of bribery between July 2007 and May 2008, and 29 corruption notifications were received. According to recent information submitted by the Romanian authorities, between June 2007 and May 2008, GAD sent to the prosecutor's offices 1144 prosecution files concerning corruption offences committed by MIRA staff; the prosecutors indicted 552 persons, issued 132 public prosecution indictments and 87 administrative measures.

The National Civil Servants Agency also centralised all data on breaches of code of conduct committed by civil servants at central and local level. Their reports, published on the Agency's website, reveal that in 2007-2008 the disciplinary commission received 275 notifications, 2 of which concerned incompatibilities or conflict of interest, and 273 cases of infringement of the code of conduct. 240 sanctions were given, most commonly written reprimands and financial penalties. Likewise personnel from the Ministry of Interior and Administrative Reform committed 3216 infringements of the norms of conduct, in most cases receiving a reprimand, warning or financial penalty. The National Agency for Fiscal Administration received 485 notifications between June 2007 and February 2008, of which 134 resulted in disciplinary sanctions.

Fraudulent abuse of EU funds was targeted by the Department for the Fight against Fraud, which opened 70 new cases between June 2007 and March 2008, raising the total number of cases under investigation to 105. Of these, 68 cases were finalised and 37 cases are in progress. In 14 cases where potential fraud or irregularities were discovered, the cases were forwarded either to the DNA or to the competent prosecutor's office. Cooperation with its European Union counterpart, OLAF, also took place, as did cooperation with Romanian General Police Inspectorate, Financial Guard and State Construction Inspectorate. Most recently, on 8 June 2008 the Government published the National Anticorruption Strategy in Local Public Administration.

Several measures taken under this benchmark show how effective certain tools can be in the fight against corruption at a local level. For example, measures taken to improve public services, such as reducing face to face contact with institution staff and streamlining procedures may remove the opportunities for corruption by local officials. These programmes can be effectively complemented by the follow up of ideas raised in public discussion within the anticorruption groups organized at local level.

Nonetheless, independent information demonstrates that problems in public administration persist. At the most public level, allegations of corruption amongst candidates for local elections persist. The Coalition for a Clean Government, a civil society group including NGOs and trade unions monitored the integrity of candidates running for the Presidency of the County Councils in the June 2008 electoral campaign. This position is filled for the first time by direct election and is key for the implementation of EU funds on a local level. Out of 150 candidates, the coalition found that 54 had previous integrity transgressions, such as a corruption charge by the prosecution, materially profited from conflicts of interest or broken fiscal regulations in the distribution of funds. 13 of the 54 candidates concerned were elected.

In addition, administrative practice still suffers from shortcomings that may encourage corruption. The persistence of such problems suggests that measures currently being taken are not yet having the required impact. These shortcomings include a frequent failure to respond

to public information requests, incomplete, inconclusive or late information, and lack of professional training.

The increased number of investigations and referrals of allegations of fraudulent abuse of EU funds indicate a promising trend. However more results must be demonstrated to be able to report real progress. Of more concern is the lack of sanctions being taken against public officials who commit acts of corruption. Statistics on disciplinary measures taken against public officials show a predominance of infringements of the code of conduct and very few cases of incompatibility or conflict of interest. Accordingly the sanctions given are usually lower-level penalties, usually consisting of a warning, reprimand or financial penalty. Whilst adherence to the codes of ethics is naturally desirable, these statistics do not demonstrate an effective system for investigating and sanctioning cases of corruption within local administration.