

Corruption and deficiencies in the Romanian justice system

- selection from Global Corruption Report 2007: Corruption in Judicial Systems -

Legal system: Civil law, adversarial, prosecution part of the judiciary.

Judges per 100,000 people: 18.01¹

Judge's salary at start of career: US \$7,8612¹

Supreme Court judge's salary: US \$25,8283¹

GNI per capita: US \$3,830¹

Annual budget of judiciary: US \$651.7 million¹

Total annual budget: US \$15.6 billion¹

Percentage of annual budget: 4.2

Are all court decisions open to appeal up to the highest level? Yes

Institution in charge of disciplinary and administrative oversight: effectively independent

Are all rulings publicised? Yes

Code of conduct for judges? Yes

Country reports on judicial corruption

According to the Romanian Study on National Integrity System¹, the judicial system has been a weak pillar of integrity throughout the transition from communism. It is a three-tiered court system, with a Supreme Court and a body of public prosecutors. The superior council of magistracy represents judicial authority in relations with other state authorities and is guarantor of its independence. This body also safeguards the integrity of members of the judiciary and manages judicial infrastructure.

Alignment with EU justice standards

Reforms have been rare and difficult throughout most of the transition. In recent years, upcoming accession to the EU has been a catalyst to improving the pace and effectiveness of judiciary reforms. These have paid off in certain areas, as noted by the EU's monitoring report on Romania in May 2006², which recognised 'good progress' in the overall reform of the justice sector, but it also noted the need for vigilance regarding continuing unethical behaviour. Many reforms exist only as well-articulated legal frameworks that have not yet been put into practice. In 2004–05 in particular, important judicial reforms were made, primarily modifying or adopting new laws, including three that concerned the Magistrates' Statute, judicial organisation and the attributes of the superior council of magistracy.

TI Romania has monitored implementation of these measures and from October 2005 to October 2006³ hosted a counselling centre to help citizens complain about corruption in the judiciary. During

¹ Launched after Transparency International accreditation in December 2005. For more information see www.transparency.org.ro

² See May 2006 Monitoring Report on Romania at

ec.europa.eu/enlargement/key_documents/pdf/2006/monitoring_report_ro_en.pdf

³ See May 2006 Monitoring Report on Romania at ec.europa.eu/enlargement/key_documents/pdf/2006/monitoring_report_ro_en.pdf

that period, the centre received over 1,600 complaints of which it directly assisted almost 600. However, only 40 per cent fell within the centre's remit. Of these, the centre referred 30 per cent to the superior council of magistracy to determine whether the magistrate in question could be held responsible. After analysis, TI Romania concluded that implementation of reforms was deficient due to poor administrative skills and lack of will by heads of courts and prosecutors' offices.

The summary report⁴ for the centre's first phase of operation revealed that courts, registries, archives and clerks' offices suffer from poor integrity and bad administration in the quality and promptness of service. This led to the conclusion that the reforms have had little impact thus far on citizens' relationship with the justice system.

Pressure on judgement

Legal reforms in the past three years have sought to address the issue of judicial independence, which has been critical since the 1989 revolution. For example, legislation in 2005 transferred management of the judiciary budget from the Ministry of Justice to the superior council of magistracy, effective from 2008, to ensure proper operational and staffing procedures are in place. Until then, it remains under ministerial control.

The council is composed of nine judges and five prosecutors, elected by their peers, but also by law includes the Minister of Justice, the Supreme Court president, the general prosecutor and two civil society representatives elected by the senate. This structure ensures judicial independence, contingent on the application of subsequent reforms⁵. According to a TI Romania survey in September 2005⁶, 78 per cent of magistrates view the justice system as independent, though not 'absolutely independent'. Judges indicated that they felt pressure on their decisions from media, members of parliament, government officials and economic interests while prosecutors said they experienced pressure from within the hierarchy, notably from chief prosecutors.

Though judiciary management will pass to the supreme council, this development will be accompanied by continuing structural weaknesses, such as inadequate court staffing and magistrates' low professional standards. With regard to integrity, Romania has had a judicial code of ethics since 2001 and in 2005 became one of the first countries in the region to adopt a code of ethics for court personnel. Training in both needs improvement, as do mechanisms for monitoring and enforcing them.

Accountability in the judiciary

Corruption and lack of transparency in relations between court users and court personnel are also systemic. Existing legislation on judicial standards is sufficient to penalize corruption by judges and prosecutors, but implementation suffers from delay. TI Romania's analysis of citizens' complaints

⁴ See 'Results of Monitoring Cases at the Anti-corruption Legal Resource Centre in the Period of January–June 2006', at www.transparency.org.ro

⁵ TI Romania, National Integrity System Study 2005, at www.transparency.org.ro/doc/NCR%202006%20eng.pdf

⁶ TI Romania's 'Perception of Justice Independence Study' is relevant for the period August 2004 to September 2005. A representative sample of 418 magistrates from all over Romania answered the questionnaire, the limit of error at perception level being 4.8 per cent. For more information see www.transparency.org.ro.

indicates that in some situations the council does not retain cases until resolution, transferring them instead to courts or prosecutors' offices to resolve. This occurs even if the allegation represents a potential disciplinary misconduct, rather than a legal infraction. If the complaint is not well founded, the council responds with a *pro forma* rejection letter that fails to explain precisely why the magistrate in question was not held responsible for a particular action.

The judicial system has been slow in regard to the jurisprudential interpretation of article 20 (3) of the constitution and article 6 (1) of the European Convention on Human Rights. Both refer to a reasonable term for resolving cases, as a function of the complexity of the case, which is not always respected in the Romanian legal system. Visitors at TI Romania's centre cited multiple examples of appeals and disciplinary complaints that are still navigating the justice system after many years. Another cause for delay is the rapid change in laws, a problem exacerbated by courts' delayed access to recent legislative texts, leading to the pronouncing of decisions that do not conform to the new law in force and which consequently favour repeated appeal.

Despite several attempts to standardise the system of jurisprudential interpretation, Romanian justice is inconsistent, with many unpredictable decisions and differing legal interpretations indifferent courts – and sometimes in the same court. A law is under consideration that will outline mechanisms to foster unitary jurisprudence, and ensure a proper balance between judges' decision-making independence and the increased predictability of their decisions.

Visitors to the counselling centre complained that magistrates, court staff or auxiliary personnel refused to speak to them, provide information or receive their requests. Court registers and archives refuse citizens' access to their own files. In Bucharest, TI Romania observed a significant improvement in citizen–court relations, but the problem is still widely prevalent in local courts. This state of affairs is worsened by people's ignorance of their own rights (i.e. the right to be informed, the right to fair process and the right to have cases resolved within reasonable timeframes) under the constitution.

Conflicts of interest

Since 2003 a stricter set of conflict of interest provisions has prohibited magistrates from numerous compromising situations, including the hearing of cases that involve relatives up to the fourth degree. Where conflicts of interest remain, visitors to the centre cited instances of acts of a criminal nature, such as trafficking of influence, through which family or non-family relationships were used to twist rulings or motivate magistrates to make particular judgements. Of the 600 cases adopted by the counselling centre, 190 were serious enough to pursue through legal channels.

The two most frequent charges were 'failure to consider evidence' and 'violation of court procedures', and many clients attributed these actions to conflicts of interest.

Conflicts of interest and other lapses are made more common by the lack of adequate numbers of magistrates in courts and prosecutors' offices. According to figures issued by the superior council for magistracy in June 2006, there should be 7,253 magistrates in the judicial system. Only 89 per cent of judicial posts and 78 per cent of prosecutors' posts are currently filled, while the number of parties waiting for cases to be resolved is 22,408,393.

Disciplinary procedure for judges

The system for ensuring the integrity of magistrates is another issue in the fight against corruption. In 2004, the competence for disciplinary measures officially switched from a cooperative system between the Ministry of Justice and the superior council to the exclusive domain of the latter. The capacity to monitor performance and enforce discipline, however, needs to be consolidated and integrity issues remain problematic.

The council is composed of two committees that investigate infractions and abuses, one for judges and the other for prosecutors. It must promptly exercise these powers to enforce integrity in the magistracy if the judiciary is to regain any esteem in society. When the state loses appeals in the European Court of Human Rights, it is forced to pay damages to citizens harmed by magistrates' errors. This punishment is often softened, however, because the cost is borne by the Ministry of Finance, causing taxpayers financial loss, and this in turn blunts the council's ability to prevent magistrates from abusing their power.

The Magistrates Statute⁷ established magistrates' civil, penal and disciplinary responsibility for damages resulting from improper or unjust rulings. As to holding magistrates financially responsible, the law merely *permits* the pursuit of monetary compensation against magistrates found guilty of improper rulings. Similarly, the former Criminal Procedures Code *allowed* the Finance Ministry to initiate action against a magistrate responsible for state losses. A new law⁸, adopted in July 2006, amended the provisions of the Criminal Procedures Code and makes action against magistrates mandatory for errors in criminal trials. This is a step towards holding magistrates truly accountable for the decisions they make and could improve the integrity of the entire judicial system.

The prospect of Romania's accession to the EU and the need to create a legislative framework corresponding to European standards of justice prompted an extensive and rapid overhaul of judicial and legal legislation. In 2004, when Romania was expected to complete the requirements of the Justice and Internal Affairs chapter of the EU accession protocol, the pace of reform accelerated, but EU monitoring reports, increasingly frequent and more detailed, reflected the difficulties facing the justice sector.

For most of the measures adopted, the Justice Ministry benefited from EU technical advice on the legislation most likely to reduce corruption. What remains to be done is for these measures to be applied more effectively. If Romania is to become a full EU member, pressure must be maintained on the government to strengthen its efforts to fight corruption and increase public integrity.

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⁷ Law no. 303/2004

⁸ Law no. 356/2006