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## Совет по правам человека

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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав, включая  
право на развитие**

### **Доклад Специального докладчика по вопросу о независимости судей и адвокатов Габриэлы Кнауль**

Добавление

**Миссия в Румынию\* \*\***

#### *Резюме*

По приглашению правительства Специальный докладчик посетила Румынию в период с 17 по 24 мая 2011 года. Ее миссия включала посещение столицы, Бухареста, и городов Яссы, Клуж-Напока и Питешти, что позволило ей оценить состояние судебной системы и ознакомиться с проблемами, с которыми сталкиваются судебные органы в различных районах страны. Специальный докладчик встречалась со многими представителями правительства и других заинтересованных сторон, включая страновую группу Организации Объединенных Наций, судей, прокуроров и судебных исполнителей, а также с представителями гражданского общества, исследовательского сообщества, профессорско-преподавательского состава учебных заведений, студентов и т.д. в целях получения максимально полного и сбалансированного представления о положении дел с независимостью судебной власти в Румынии. Она посетила также пенитенциарное учреждение в Рахове, недалеко от Бухареста, и побеседовала там с рядом задержанных.

\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и французском языке.

\*\* Представляется с опозданием.

В своем докладе Специальный докладчик анализирует предпринимаемые страной усилия по проведению судебной реформы, в том числе план действий по выполнению требований, установленных в рамках механизма сотрудничества и проверки Европейской комиссии, Закон 202/2010 (закон о "малой реформе") и стратегию, направленную на обеспечение соблюдения принципов профессиональной этики в судебной системе (2011–2016 годы).

Специальный докладчик затрагивает также вопросы, касающиеся независимости судов и представителей юридической профессии, предсказуемости судебной системы, отправления правосудия и судебного преследования; свободы юридической практики; доступа к правосудию; правовой помощи, а также профессиональной подготовки и повышения профессиональной квалификации судей, прокуроров и других представителей юридической профессии, включая подготовку в связи с поправками, внесенными недавно в Гражданский кодекс (Закон 287/2009, вступивший в силу в октябре 2011 года), Гражданский процессуальный кодекс (Закон 134/2010, который должен вступить в силу в сентябре 2012 года), а также в Уголовный кодекс (Закон 286/2009) и Уголовно-процессуальный кодекс (Закон 135/2010) (оба закона должны вступить в силу в 2013 году). В конце доклада сформулированы рекомендации, касающиеся укрепления судебной системы и обеспечения большей независимости судей и адвокатов.

## Annex

*[English and French only]*

**Report of the Special Rapporteur on the independence of  
judges and lawyers on her mission to Romania  
(17-24 May 2011)**

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## I. Introduction

1. The Special Rapporteur visited Romania from 17 to 24 May 2011, at the invitation of the Government. The mission included visits to the capital Bucharest and the cities of Iasi, Cluj Napoca and Pitesti.
2. The purpose of the Special Rapporteur's visit was to examine the policy and legal framework related to her mandate; the implementation of the principle of the independence of the judiciary; the independence of the legal professions; the predictability of the judicial system and issues related to access to justice and legal aid.
3. The Special Rapporteur met a wide variety of actors, including the President of the High Court of Cassation and Justice; the President of the Constitutional Court; the President of the Superior Council of Magistracy (SCM) and several of its elected members; the Director of the National Institute of Magistracy; the Deputy Prosecutor General; the President of the National Council for Combating Discrimination; the President of the Senate Committee for Human Rights, Cults and Minorities; State secretaries; officials from the Ministry of Foreign Affairs and the Ministry of Justice; as well as from the Office of the People's Advocate and the National Integrity Agency (ANI).
4. She also consulted various non-governmental organizations (NGOs) and other stakeholders, including judges, prosecutors, lawyers and bailiffs, as well as the United Nations Country Team in Romania. She visited the Penitentiary of Rahova near Bucharest and interviewed a number of detainees.
5. In Iasi, the Special Rapporteur met judges from the Tribunal and the Court of Appeal, as well as judges, lawyers and civil society representatives, professors and students. In Cluj Napoca, she met judges from the District Court (*judecatorie*), the Tribunal and the Court of Appeal, as well as judges, lawyers, bailiffs, their professional associations and civil society actors, including academics. In Pitesti, she met with various stakeholders. Throughout her visit, the Special Rapporteur consulted various stakeholders in their capacity as users of the system of justice in Romania.
6. The Special Rapporteur wishes to express her appreciation to the Government of Romania for the cooperation extended in the organization and conduct of her visit, and in general, in the exercise of her mandate. She also expresses appreciation to all stakeholders and interlocutors for their cooperation and time.
7. In the present report, the Special Rapporteur presents the main findings of her mission. She starts by referring to various judicial reform initiatives launched in the framework of Romania's accession to the European Union (EU). She also analyses various aspects regarding the independence of the judiciary, addressing issues related to the independence and impartiality of the courts, independence of the legal professions, administration and oversight of the judiciary and the judicial budget.
8. The Special Rapporteur further examines the role and functioning of the prosecution service; free exercise of the legal profession by lawyers as well as capacity-building and training of judges, prosecutors and other legal professionals, including training efforts regarding the Civil Code (Law 287/2009), in force since October 2011; the Code of Civil Procedure (Law 134/2010), expected to enter into force in September 2012; and the Criminal Code (Law 286/2009) and the Code of Criminal Procedure (Law 135 of 2010), both expected to enter into force in 2013. She also highlights additional aspects related to the administration of justice, notably access to justice and legal aid. The report concludes with recommendations for strengthening the judicial system and the independence of judges, prosecutors and lawyers.

## II. Judicial reform

9. For over a decade, judicial reform efforts have been stimulated in Romania by its process of accession to the EU.<sup>1</sup> In light of the recommendations made in the framework of the accession partnership launched in 1999,<sup>2</sup> Romania initiated steps aimed at meeting the accession criteria related to the functioning of the judiciary. In 2003, Romania adopted a five-year Strategy for the reform of the judiciary<sup>3</sup> and in that context, adopted new laws on the statute of magistrates, the organization of the judiciary and the Superior Council of Magistracy (SCM).

10. In 2005, the judicial reform strategy was updated by the biannual Strategy for reforming the judicial system and the accompanying Action plan, which included progress and evaluation indicators, budgetary implications and international assistance programmes. A monitoring commission,<sup>4</sup> supported by a technical working group, was created to ensure the effective implementation of the Strategy.

11. The strategic goals for judicial reform focused on eight areas: (i) independence, efficiency and accountability of the judiciary; (ii) quality and transparency of the justice administration system; (iii) free access to the justice system; (iv) efficiency of juvenile justice; (v) institutional and legislative framework for international judicial cooperation; (vi) alignment of the penitentiary system to European standards; (vii) victims' protection and social reintegration of offenders; and (viii) prevention and combat of corruption within the judiciary. These goals were complemented by the five-year Information technology strategy for the reform of the judiciary, adopted also in 2005, with the objectives of modernizing and automating the judicial system; standardizing procedures and ensuring the use of indicators in the administration of justice.

12. Following the 2005 justice reform, the European Commission acknowledged the progress made by Romania in reforming the judiciary, including the implementation of measures adopting specialized court sections and panels; adoption of the system of random allocation of cases to judges; improvement of conditions in courts and the increase in resources devoted to the justice system, including to the SCM.<sup>5</sup>

13. A number of recent initiatives revisit and update some past goals. As such, the Special Rapporteur will refer to certain aspects of the following initiatives: (i) the Action

<sup>1</sup> The accession negotiations between the European Union and Romania commenced in 2000 and were concluded in December 2004. The accession treaty providing for accession on 1 January 2007 was signed in April 2005.

<sup>2</sup> The recommendations called on Romania to, inter alia, adopt a new criminal code and a new code of criminal procedure; establish safeguards to ensure the independence of the judiciary and introduce objective criteria for the recruitment and promotion of judges; reinforce administrative and judicial capacity, including through training and the provision of adequate resources and equipment; and take steps to prevent and fight against corruption at the legislative and institutional levels.

<sup>3</sup> See Government Decision no. 1052/2003 on the approval of the Strategy for the Reform of the Judiciary 2003–2007, published in the Official Journal no. 649 of 12 September 2003.

<sup>4</sup> The monitoring commission comprises the Minister of Justice; the presidents of the Superior Council of Magistracy and the High Court of Cassation and Justice; the Prosecutor General; the directors of the National Institute of Magistracy and the National School of Clerks; and one representative of (i) other legal professions (lawyers, notaries, bailiffs); (ii) the magistrates associations, and (iii) the Ministry of Public Finances. Representatives of the civil society and international donors attend certain meetings. The Commission meets quarterly or on request. The strategy is available at [www.just.ro](http://www.just.ro).

<sup>5</sup> Commission of the European Communities, Communication, 16.5.2006, COM (2006) 214 final, p. 5.

plan for meeting the benchmarks established with the cooperation and verification mechanism of the European Commission; (ii) Law 202 of 2010 known as the “small reform;” and (iii) the Strategy for strengthening integrity within the judiciary.

#### **A. Action plan for meeting the benchmarks established within the cooperation and verification mechanism of the European Commission**

14. At the time of Romania’s accession to the EU (January 2007), the European Commission established the Co-operation and Verification Mechanism (CVM), a system to monitor progress made by Romania, after accession, on four benchmarks identified by the European Commission.<sup>6</sup> The benchmark directly related to judicial reform requires that Romania ensure a more transparent and efficient judicial process, notably by reporting and monitoring the impact of the new civil and criminal procedure codes, and enhancing the capacity and accountability of the SCM, which is the oversight body of the judiciary.<sup>7</sup>

15. Through biannual CVM progress reports, the European Commission determines the level of implementation of the benchmarks and makes recommendations to the Government.

16. Following a recommendation made in the European Commission report of 2007, the Government of Romania drafted an Action plan to implement measures to address each of the four benchmarks. The Action plan was developed under the coordination of the Ministry of Justice and agreed at the technical level and adopted by the Commission for monitoring the implementation of the Strategy for the reform of the judicial system (2005-2007) as well as the implementation of the National anti-corruption strategy.

17. The Action plan, adopted in September 2007, prioritizes six areas for judicial reform: (i) adoption of new codes of civil and criminal procedure; (ii) unification of jurisprudence; (iii) strengthening the institutional capacity of the SCM and enhancing the accountability of its members; (iv) increasing the transparency of the administration of justice; (v) improving the human resources policy; (vi) enhancing the efficiency of the judiciary through improvement of the infrastructure and court management.

18. Each of these priority actions is accompanied by a set of activities, performance indicators and sources of verification. The sources of funding, together with the responsible institutions and the expected deadlines are also included in the Action plan. Under the Action plan, a Commission was set up to monitor the implementation of measures aimed at reforming the judiciary<sup>8</sup> and to propose measures to address shortcomings. The Commission meets on a quarterly basis and is assisted by a technical working group.

19. The Special Rapporteur welcomes the cooperation that the European Commission has provided to Romania with a view to strengthening its judicial system. In her view, the establishment of the CVM has contributed to a collaborative and focused approach in clearly-defined areas of judicial reform and the fight against corruption.

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<sup>6</sup> See European Commission, decision 2006/928/EC of 13 December 2006.

<sup>7</sup> The other three benchmarks are (i) establish an integrity agency with responsibilities for verifying assets; (ii) continue to conduct professional, non-partisan investigations into allegations of high-level corruption; and (iii) take further measures to prevent and fight corruption.

<sup>8</sup> The Commission is chaired by the Minister of Justice and composed by the presidents of the Superior Council of Magistracy and the High Court of Cassation and Justice; the Prosecutor General; the Chief of the Department for European Affairs, and a representative of the Ministry of Economy and Finances.

20. The Special Rapporteur expressed concern during her visit about the need to ensure a people-centred approach to the reform. Information provided suggested that the decision to close a number of tribunals was mostly driven by budgetary and other considerations related to the productivity of the courts, particularly regarding the number of cases they dealt with. However, the possible impact of the closure of certain courts on the right to access to justice could have been considered further. While welcoming the elaboration of a series of impact studies by the Government of Romania relating to the different codes, she is of the opinion that the issue of perception of the reform by the general public and the different legal professions should have been addressed more broadly.

21. The Special Rapporteur also wishes to draw attention to information received indicating that, given the concomitant judicial reform efforts, legal professionals, notably judges, prosecutors and lawyers were experiencing difficulties associated with the rapid change in norms and procedures, some of which were compromising their ability to exercise their professional responsibilities in a truly independent manner, especially due to the lack of the necessary infrastructure and training. She takes note of the information received recently on the consultation and training measures undertaken in Romania in the context of the entry into force of the codes mentioned.

22. In the Special Rapporteur's view, such rapid change in norms and procedures requires a carefully designed plan for a transitional period. She welcomes the recent finalization of the Action plan for the implementation of the Code of Civil Procedure, the Criminal Code and the Code of Criminal Procedure, and hopes that its implementation will enable legal professionals to cope appropriately with the legislative changes to be introduced.

23. Furthermore, the Special Rapporteur wishes to draw attention to the need to closely monitor the impact of a number of the specific measures adopted to achieve certain objectives of the reform. She wishes to illustrate this concern by referring to sanctions to be imposed, under the new codes of civil and criminal procedure, on lawyers for not appearing either in courtrooms or at hearings when their schedules clash with hearings in different courtrooms. According to stakeholders, this is a common challenge due to the dearth of mechanisms to ensure coordination between lawyers, prosecutors and judges. She invites the Government of Romania, the SCM, the European Commission and other stakeholders to reflect on this issue with a view to finding possible avenues for adequate coordination in order to guarantee the right of fair trial in the context of the judicial reform, where the right to be judged by a competent, impartial and independent tribunal should be balanced with the right to defence.

## **B. Law 202 of 2010 (the “small reform”)**

24. In 2010, Romania adopted Law 202, known as the “small reform,” with a view to embarking on a major reform that would introduce substantial changes to the legal framework governing civil and criminal law and procedure. The Law is Romania's response to the observations on judicial reform made in the context of the CVM, as well as to a number of cases before the European Court of Human Rights, which brought to the fore the need to take steps towards reducing the length of legal proceedings.<sup>9</sup>

25. Law 202 introduced a number of provisions in the future codes of civil and criminal procedure aimed at simplifying judicial proceedings and reducing their length, as well as

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<sup>9</sup> See, inter alia, European Court of Human Rights, *Nicolau v. Romania* (application No.1295/02), judgment of 3 July 2006; *Stoianova and Nedelcu v. Romania* (application 77571/01), judgment of 4 November 2005.

the number of appeals for certain categories of cases. It also introduced the principle of opportunity, which provides for the possibility on the part of the prosecution not to pursue cases, for example, where existing evidence shows that further investigation is not warranted, and the possibility for the prosecution to take over reports submitted by the police.

26. During her visit, the Special Rapporteur was informed by the Ministry of Justice that in the past, the average time taken by the courts to decide cases was between 6 and 8 years and that this was reduced to a maximum of 6 months with the implementation of the measures introduced by the Law 202 of 2010. She was also informed that the forthcoming Code of Civil Procedure foresees the set-up of a mechanism enabling the parties to a case to complain of excessive length of legal proceedings.

27. The Special Rapporteur welcomes the efforts made by Romania to reduce the length of judicial proceedings. However, during the visit, she was concerned about the possible detrimental impact that some of these measures may have in the delivery of justice in Romania, in particular measures related to the qualification of delays in deciding cases as a disciplinary misconduct. She takes note of the provisions of the new law regarding the liability of magistrates, which qualify as disciplinary misconduct, repeated non-observance, due to imputable reasons, of the legal provisions to solve cases with celerity, as well as the repeated delays in carrying out work, due to imputable reasons. In the view of the Special Rapporteur, these provisions might add an excessive burden of pressure on the judges and possibly limit their capacity to examine cases in depth.

28. In this respect, the Special Rapporteur notes the concerns expressed by various stakeholders about the reform moving forward too quickly, in the sense that, more steps should have been taken so as to ensure an appropriate impact of the four new codes in the Romanian context. This appears to be a valid concern in the light of the impact of previous legal and judicial reform initiatives in Romania, described by the European Court of Human Rights in a judgement under its pilot judgement procedure, which highlighted a number of challenges, including the undermining of the practice of the domestic courts by the absence of a stable legislative framework, resulting in the lack of a uniform interpretation and application of the law; the lack of predictability of judicial decisions and the lack of acceptability of judicial decision-making.

29. The Special Rapporteur has noted information published by the Government indicating that the SCM undertook a perception survey among the judiciary on the impact of the small reform in Romania, which showed that 62.5 per cent of prosecutors and 75 per cent of judges considered, in 2010, that legislative changes were positive, while only 12.5 per cent of prosecutors and 18.75 per cent of judges considered those changes as negative. This shows the engagement of judges and prosecutors with the judicial reform and how they want to and can contribute to it.

30. The Special Rapporteur has also noted various independent assessment studies undertaken by the Ministry of Justice to analyse both the efficiency of the judicial system through the ongoing functional review of the judiciary, as well as the impact of the forthcoming main codes. She welcomes the objectives of the impact studies on the codes which were also aimed at determining the most suitable dates for the entry into force of three of the codes, namely, the Criminal Code (Law 286/2009); the Code of Criminal Procedure (Law 134 of 2010) and the Code of Civil Procedure (Law 485/2010).

31. The Special Rapporteur also welcomes the information gathered through perception surveys and wishes to draw the attention of the SCM and the Government of Romania, in general, to a number of concerns related to the small reform, that were raised during her visit by a number of interlocutors, including judges, prosecutors and lawyers. These concern the need to ensure that measures taken to speed up legal proceedings are not



detrimental to certain courts within the judicial system and that they do not place an excessive burden of pressure on prosecutors and judges. Numerous stakeholders highlighted that congestion continues in the courts and, with the reform, has been transferred from the tribunals to the courts of appeal.

32. In line with some of the structural factors aforementioned, the Special Rapporteur reiterates the invitation to the SCM to undertake, in close consultation with the judiciary and in all regions of the country and at all levels, a mapping exercise of the current needs of the judiciary and the possible way to address them in the reform as an internal monitoring system, including an assessment of needs in terms of infrastructure, personnel and budget, for the effective implementation of the new codes, with a view to contributing to build a solid and truly independent judiciary in Romania. She also invited the Executive and the legislature to give serious consideration to such a mapping exercise and assessment of the judicial reform process and its impact in Romania. The Special Rapporteur wishes to draw attention to the impact that consistent evaluation, analysis and feedback can have when implementing new legislation and assessing its effectiveness, not only in the short term, but over long periods of time.

### **C. Strategy for strengthening integrity within the judiciary (2011-2016)**

33. In March 2011, the plenum of the SCM decided to draft a strategy to strengthen integrity in the judiciary as a follow-up to recommendations made to the Government of Romania, inter alia, in the framework of the CVM, as well as in the assessment report on the implementation of the 2005-2007 National anti-corruption strategy and the Strategy on fighting corruption in vulnerable sectors and local public administration (2008-2010) in Romania,<sup>10</sup> published in April 2011, which was shared with the Special Rapporteur by the National Integrity Agency (ANI).<sup>11</sup>

34. A first draft of the strategy was made public in July 2011, after the Special Rapporteur's visit. The strategy was adopted in November 2011, following consultations with courts and prosecution offices, as well as civil society and other relevant actors, and after considering observations formulated by the Ministry of Justice and the National Anti-corruption Directorate.

35. The strategy aims to prevent and combat the lack of integrity within the judiciary and accordingly, seeks to uphold the rule of law and ensure consistency and cooperation in matters related to judicial integrity. It addresses both the integrity of the judiciary as a system, and the individual integrity of the members of the judiciary, and builds on prior strategies, including the Information technology strategy for the reform of the judiciary (2005-2009). The strategy includes a set of objectives and priority actions aimed at ensuring its effective implementation.

36. The SCM is the main body responsible for coordinating the implementation of the strategy and its action plan. The SCM is also in charge of monitoring and evaluating the strategy, including through its participation in the debates of the Platform of independent

<sup>10</sup> The assessment report was prepared by independent experts with the assistance of the United Nations Development Programme (UNDP) and the support of the Ministry of Justice and relevant stakeholders in Romania. During her visit, the Special Rapporteur was informed by ANI that the report was approved in April 2011 by the Ministry of Justice of Romania.

<sup>11</sup> The National Integrity Agency (ANI), established by Law 144/2007, is an independent body with legal personality, created to remedy shortcomings in the monitoring of conflicts of interest and public officials assets. ANI is not a law enforcement agency; it functions as a specialized control body with administrative investigation functions.

institutions and anti-corruption agencies, coordination of meetings organized by the Ministry of Justice and the undertaking of “trans-sectoral theme evaluation missions.”

37. The Special Rapporteur welcomes this initiative on the part of the SCM in fulfilment of its mandate and calls on the Government as well as the judiciary to accord all cooperation to the SCM so that the strategy is implemented effectively. Furthermore, she wishes to draw the attention of the SCM to the recommendations made in connection with judicial integrity by the CVM in its second report of 2011 on progress made by Romania, as well as the recommendations made in this regard in the assessment report on the implementation of the 2005-2007 National anti-corruption strategy and the Strategy on fighting corruption in vulnerable sectors and local public administration (2008-2010) in Romania.

### **III. Independence of the judiciary**

38. The institution of the judiciary in Romania is comprised of courts and public prosecution offices, which are attached to the courts of law. The principle of an independent judiciary is recognized in article 124 of the Constitution of Romania,<sup>12</sup> which also recognizes that justice is to be rendered in the name of the law, and with due respect for the principles of impartiality and equality.<sup>13</sup>

#### **A. Structural challenges**

39. The Special Rapporteur received information on a number of challenges that may affect the delivery of justice in Romania.

40. Judges, and other stakeholders informed the Special Rapporteur that cases are filed at a rate considered far in excess of what judges in the jurisdiction of the courts can dispose of within reasonable time, and that this is exacerbated by the fast pace of legislative change. Stakeholders also reported that some of the measures expected to reduce the length of judicial proceedings have in fact placed an additional burden of pressure on judges, who, out of their fear of being sanctioned for delays in judicial decisions, are attempting to decide cases at a rate that does not allow a thorough analysis of the issues at stake.

41. In the Special Rapporteur’s view, these factors may hamper the predictability of judicial decisions, uniform interpretation and application of the law and the overall quality of the system of administration of justice in Romania. Accordingly, she wishes to draw attention to the fact that not only the exercise of the profession of judge, but also the predictability and quality of judicial decisions are affected if the law lacks coherence or the legal framework is instable, for example, due to the excessive proliferation of laws and lack of an adequate implementation plan for the legislation.

42. Accordingly, the Special Rapporteur shares the findings of the latest CVM report that urgent measures are needed in this respect, including adequate training for judges, prosecutors and lawyers; reorganization of the court system, in order to balance the workload among different courts; and the necessary recruitment of judicial professionals.<sup>14</sup>

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<sup>12</sup> Constitution of Romania, art. 124, para. 3.

<sup>13</sup> Ibid., art. 124, para. 2.

<sup>14</sup> European Commission, Interim report to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, 8.2.2012, COM (2012) 56 final.

43. In this regard, she recalls that the discretion of judges to interpret and apply the law finds its limit in the law itself. In her view, making judicial decisions rendered by the High Court of Cassation and Justice and the Court of Appeals public can be an important guide for the interpretation of the law by the courts in order to keep the discretion of judges within acceptable boundaries. This may also guide prosecutors and lawyers in their activities, foster a better understanding of the law by the general public and ultimately contribute to strengthening the independence of the judicial decision-making process and the rule of law.

44. The Special Rapporteur also wishes to stress the importance of ensuring that courts are adequately resourced so that they are able to function properly and uphold the principles of independence, impartiality, integrity, propriety, equality, competence and diligence. In her view, challenges relating to the infrastructure of the courts, such as inadequate office space and insufficient venues for hearings, including at the level of the High Court of Cassation and Justice (HCCJ), seriously hamper the independence of judges and prosecutors, and exert a detrimental influence on the performance of their tasks. During her meeting with the HCCJ, the Special Rapporteur was able to assess the precarious working conditions relating to the structure of the building in which it is housed. She was informed that the HCCJ was moved to the current building as a provisional measure while the original building was being refurbished. However, after the refurbishment had been completed, the building was not given back to the HCCJ. The Special Rapporteur notes the information received that the HCCJ was given an additional building in November 2011, and hopes that this development will contribute to the smooth and independent functioning of the Court.

45. In this regard, she recalls that the Basic Principles on the Independence of the Judiciary<sup>15</sup> recognize that it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions, including adequate workspace. In this respect, the Special Rapporteur wishes to draw attention to the importance of having well-maintained court facilities that are adequately equipped with desks, chairs and office supplies. Court facilities should also be equipped to allow access and movement by persons with disabilities. The Special Rapporteur received information on the total value of investments in the infrastructure of the Romanian judiciary since 2007, and encourages the Government to further pursue the goal of improving it.

46. The Special Rapporteur welcomes the steps taken by Romania to ensure the random assignment of court cases and to modernize and automate the judiciary and the justice sector in Romania, in general. In her view, such efforts are crucial for the consolidation of an objective and impartial system that ensures the fair and equitable distribution of cases among the judges in each court. However, she wishes to draw the attention of the Government and the SCM to allegations indicating that the current automated programme that facilitates random assignment of cases to judges leaves room for manipulation. She calls on the Government to take these allegations seriously and to undertake a thorough and independent investigation into the matter, as well as to take all necessary steps, in accordance with the findings of the investigation, to improve the integrity of the system.

47. The Special Rapporteur also welcomes efforts made to ensure the smooth flow of information among the institutions of the justice chain, including rapid access to legislation, jurisprudence and information regarding the trials by the personnel of the courts and prosecution offices. She has taken note of the publication of Court of Appeal judgements from 2008, 2009 and 2010 in different platforms.<sup>16</sup> In this regard, she encourages the

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<sup>15</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August-6 September 1985.

<sup>16</sup> See for example, Jurindex at <http://www.jurispudenta.org>.

Ministry of Justice and the judiciary to ensure that the full jurisprudence of the courts is published in a user-friendly and easily searchable database.

48. The Special Rapporteur also commends the Government for the priority given to the establishment and further improvement of various software programmes available for the daily activities of the judiciary and, in particular, the electronic court register information system (ECRIS).<sup>17</sup> In this regard, she wishes to draw attention to information received indicating that a number of challenges remain to ensuring a unified case law system and that the ECRIS programme has a functional judicial statistical modulus, as it has been reported that the improper correlation of the initial statistical index with the legislation in force is yet to be addressed.

## **B. Administration and oversight of the judiciary**

49. The Superior Council of Magistracy (SCM) is the guarantor of the independence of the judiciary, in accordance with the Constitution of Romania. It appoints, promotes, demotes and dismisses judges and prosecutors, and performs the role of disciplinary council for judges and prosecutors to ensure their accountability.

50. Out of the 19 members of the SCM, 14 are directly elected by the magistrates and validated by the Senate, including 9 belonging to the section of judges, and 5 to the section of prosecutors. The Minister of Justice, the President of the High Court of Cassation and Justice and the General Public Prosecutor are also members.<sup>18</sup> The other two members are civil society representatives elected by the Senate. The President of the SCM is elected by the members of the SCM's Council and selected from among the elected magistrates for a non-renewable term of one year. In this regard, the Special Rapporteur would like to highlight that the majority composition of judges and prosecutors in the SCM is a safeguard for the independence of the judiciary.

51. Concerns were raised by civil society representatives regarding the transparency, efficiency and fairness of procedures by the SCM. Some major challenges identified by stakeholders included the need to: (i) create effective procedures for addressing potential conflicts of interest among its members; (ii) identify and discipline misconduct consistently; and (iii) address the practice of assigning judges and prosecutors to non-judicial positions within the judiciary and appointing them to various Government agencies, thereby depleting the already understaffed courts and prosecution offices.

52. The Special Rapporteur recalls the importance of the role of the SCM, which should carry out its functions properly and independently, avoiding politicization or excessive solidarity with its fellow judges, as it should act as a disciplinary body and take measures to improve the administration of justice and promote the independence of the judiciary. She invites the SCM, together with the judiciary, to help the Government of Romania to uphold the rule of law, particularly in all its efforts to combat corruption and organized crime. In this respect, the Special Rapporteur welcomes the information that the acceleration of high-level corruption trials by the High Court of Cassation and Justice seems to have circumvented the risk of these cases reaching the prescription period.<sup>19</sup> However, some recent investigations involving senior magistrates have cast doubts, including in the public opinion, about the SCM's resolve to ensure accountability within the judiciary. The Special

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<sup>17</sup> ECRIS, introduced in 1997, is the application used by the Romanian courts for their unified system of jurisprudence.

<sup>18</sup> Constitution of Romania, art. 133.

<sup>19</sup> European Commission, Interim report to the European Parliament and the Council, on Progress in Romania under the Co-operation and Verification Mechanism, 8.2.2012, COM (2012) 56 final, p. 1.

Rapporteur also calls on the Government to undertake efforts to identify ways and means to eliminate undue political and external influence on the SCM, as this was a frequently reported concern of various stakeholders.

53. In this regard, the Special Rapporteur welcomes the efforts undertaken to increase the credibility of the SCM, including the decision of the Constitutional Court to invalidate the re-election of some members of the SCM, in accordance with applicable law.<sup>20</sup> In response to concerns raised regarding the need to find an adequate balance between magistrates' immunity and their accountability, a draft law to amend Law 303/2004 on the statute of judges and prosecutors and Law 317/2004 on the SCM was initiated by the Government in 2010. According to information received, this draft law on magistrates' liability was approved by Parliament on 15 December 2011 and deemed fully constitutional by the Constitutional Court. The Special Rapporteur stresses the importance of ensuring the appropriate safeguards for the immunity of magistrates, which requires the establishment of objective criteria for the assessment of misconduct (art. 99) by the SCM, especially in order to avoid improper or undue use of disciplinary proceedings and sanctions (art. 100).

54. In this regard, the Special Rapporteur highlights the importance of avoiding the misuse of disciplinary proceedings against judges and prosecutors as a mechanism for imposing improper influence on them and undermining their independence and impartiality. She notes in this respect the novelties contained in the new law on magistrates' liability, and stresses that the law must give detailed guidance on the seriousness of the infraction and the type of disciplinary measure applicable in the case in question. In this context, she reiterates that judges should not be removed from office because of errors in judicial decisions or because their decisions have been overturned on appeal or review by a higher court (see A/HRC/11/41, paras. 57-58).

55. The Special Rapporteur further invites the SCM to contribute to the implementation of the recommendations made to Romania by the EU through the cooperation and verification mechanism.

### **C. Judicial budget**

56. The Ministry of Justice in Romania manages its own budget as well as the budget of the courts, while the HCCJ, the SCM and the Public Ministry manage their own budgets.

57. The Special Rapporteur has noted information publicized by the Government subsequent to her visit to Romania, indicating that the advantages and disadvantages of the transfers of budget allocated to the justice sector by the Ministry of Justice have been the object of surveys involving foreign experts and that the presidents of the courts participate in the drafting of the judicial budget and have the prerogative to take decisions on its expenditure.

58. The Special Rapporteur has also noted the Government's position that the management of the judiciary be diversified so that management of the courts is undertaken by court managers; management of trials is undertaken by the presidents of the court and management of the budget is undertaken by the Executive following professional and functional skills within the Government.

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<sup>20</sup> In December 2010, the Senate validated the election of 11 members to the SCM, of whom, four were re-elected, even though the law prohibits re-election, and two members (representing civil society) were deemed to have conflicts of interest. This was challenged in the Constitutional Court, which decided in January 2011 to invalidate the elections of some members.

59. During her visit, the Special Rapporteur was informed of concerns regarding the institutional independence of the judiciary, particularly with regard to its de facto financial dependency on the Executive branch of Government. In her view, effective control of the budget of the judiciary by the Ministry of Justice is a factor that may hamper the independence of the judicial system.

60. Furthermore, the Special Rapporteur is of the view that entrusting the administration of its funds and assets directly to the judiciary or to an independent body responsible for the judiciary may reinforce the judiciary's independence and help to prevent financial dependency as well as avoid tensions between the judicial and other branches of power.

#### **IV. Prosecution service**

61. The Romanian Prosecution Service, known as the Public Ministry, represents the interests of society, defends the rule of law and the rights and freedoms of citizens, and performs the accusatorial function on behalf of the State in criminal law cases.<sup>21</sup>

62. Pursuant to the Romanian Constitution, the Prosecutor's Office is attached to the High Court of Cassation and Justice and, together with all prosecutors of the country, is under the authority of the Minister of Justice. Such authority, according to the Government, is not hierarchical but administrative, as the prosecution service is considered independent in its relations with the Executive, the courts and other public authorities.

63. The Prosecutor General<sup>22</sup> leads the Prosecutor's Office, and discharges its powers through public prosecutors, constituted into public prosecution offices.<sup>23</sup>

64. Public prosecutors are expected to carry out their duties in accordance with the principles of legality, impartiality and hierarchical control. In this regard, the Special Rapporteur is concerned about the recent powers granted to the Prosecutor General to reassign investigations to another prosecution office of the same level without an explicit requirement by the law to motivate such a reasoning. She wishes to draw attention to the need to ensure that such powers are exercised in conformity with the United Nations Guidelines on the role of prosecutors, and the relevant guarantees that should exist in societies governed by the rule of law.

65. The Public Ministry's structure consists of 16 prosecution offices attached to courts of appeal, 42 prosecution offices attached to tribunals and 182 prosecution offices attached to courts of first instance. There are also six military prosecution offices. The National Anticorruption Directorate and the Directorate for the Investigation of Organized Crimes and Terrorism are attached to the Prosecutor's Office. The Special Rapporteur encourages the Government of Romania to redouble its efforts to strengthen the capacity of the prosecution service, as information received indicates that it is understaffed.

66. The National Institute of the Magistracy undertakes the initial recruitment and professional training required to become a prosecutor. Prosecutors are recruited by competition, based on their professional competence, skills and good reputation. However, allegations of politically-motivated appointments were made by stakeholders. In this regard, the Special Rapporteur calls on the Government and the respective anti-corruption entities in Romania to look into these allegations.

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<sup>21</sup> Constitution of Romania, art. 131, para. 1

<sup>22</sup> The Prosecutor General is appointed by the President of Romania, based on a proposal by the Minister of Justice and with the assent of the Superior Council of the Magistracy, for a three-year mandate, renewable once.

<sup>23</sup> Constitution of Romania, art. 131, para. 2. See also Law 303 of 2004 on the status of magistrates and Law 304 of 2004 on judicial organization.

## V. Other aspects of the administration of justice

### A. Access to justice

67. In the course of her visit, the Special Rapporteur obtained information through individual interviews, indicating serious challenges in access to justice by victims of domestic violence and human trafficking, as well as persons of Roma origin.

68. In the light of the foregoing, the Special Rapporteur draws the attention of the Government of Romania to some of the recommendations in her 2011 reports to Human Rights Council (A/HRC/17/30) and the General Assembly (A/66/289). In particular, it is important to challenge the traditional notions of judging and judicial authority and to encourage the representation of women at the top level of the judiciary. At the same time, men have the opportunity to play a crucial role, as judges, prosecutors or lawyers, in making the criminal justice system more accessible to women, and therefore more equal. In this respect, she notes the information provided by the Government that at the end of 2010, 72 per cent of the judges in Romania were women.

69. The Special Rapporteur also recommends that gender expertise be promoted, valued and integrated in all types of legal training and capacity-building for the judiciary and members of the legal profession.

70. She further invites the Government of Romania to consider conducting a mapping exercise to identify barriers to women's access to justice, as victims, witnesses or offenders, and to take all necessary steps to address gender-based discrimination within the administration of justice, particularly regarding the criminal justice system, at all stages of the criminal law chain.

### B. Legal aid

71. Legal aid is provided in Romania for both criminal and civil cases. For civil cases, legal aid is provided ex-officio, as stipulated by law.<sup>24</sup> The Government has indicated that the legal aid system was established in compliance with Directive 2003/8/EC of the Council of European Union to improve access to justice in cross-border civil cases by establishing common minimum rules relating to legal aid for such disputes.

72. Legal aid is primarily granted on the basis of financial needs in accordance with established criteria, including demonstrated low-income earners (below the threshold stipulated by law, i.e., approximately 200 EUR) and within a certain limit imposed by the financial context (i.e., up to approximately 1400 EUR per year). Public legal aid is provided in the following forms: counselling; amount of the fee of the legal expert, translator or interpreter; amount of the fee of the bailiff; judicial taxes and/or bails prescribed by the law, including taxes and bails required at the forced execution stage.

73. Asylum seekers are entitled to receive legal assistance and advice from NGO legal counsellors, lawyers hired by themselves (or paid through programmes funded by United Nations High Commissioner for Refugees (UNHCR) and the national European Refugee Fund) or, at the judicial stage of the procedure, they may request to be represented free of charge by ex officio lawyers. The courts usually grant requests for free legal assistance, and ex officio lawyers are appointed by the bar associations. It was reported that although NGO partners have made efforts to train these lawyers, the quality of free and, in some cases,

<sup>24</sup> See Emergency Ordinance No. 51 of 21 April 2008 on Public legal aid in civil matters.

paid legal representation still remains poor, due to lack of specialization in the field of refugee law.

74. The law also provides for extrajudicial aid in the form of counselling; drafting requests, petitions, and notifications; undertaking similar legal proceedings when addressing authorities or public institutions other than judicial ones or institutions with jurisdictional powers. For criminal cases, parties have the right to have a defence counsel, as stipulated in the Code of Criminal Procedure.

75. Most of the "users" of the judiciary who met with the Special Rapporteur highlighted that pro bono representation in practice is limited to criminal law cases, and that the quality of the defence is not adequately ensured.

## **VI. Lawyers**

76. In Romania the legal profession is free, independent and with autonomous organization, functioning and administration, as provided for under Law 51/1995 regarding its organization. Romanian lawyers informed the Special Rapporteur that they are able to pursue their work freely and without fear of reprisal. However, she was not informed of any special measures aimed at providing opportunities for candidates of Roma origin to enter the legal professions and ensuring that they receive training appropriate to their needs.<sup>25</sup>

77. Lawyers, prosecutors and judges underscored the importance of appropriate training on the new codes, so as to ensure a clear understanding of the changes introduced and a smooth transition to a major legal reform.

78. Furthermore, aspects needing improvement, such as the lack of harmonization of the law, interpretation of the law and judicial decisions, as well as constraints relating to resources and infrastructure faced by some courts, have also been affecting the adequate exercise of the legal profession.

79. In this regard, the Special Rapporteur wishes to recall that the Basic Principles on the Role of Lawyers stress that Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.<sup>26</sup>

## **VII. Capacity-building and training of judges, prosecutors and other legal professionals**

80. The Special Rapporteur commends the commitment of the Government of Romania to enhance training and continuous education programmes, and welcomes the activities of the National Institute of Magistracy (NIM), established in 1992.

81. She visited NIM in Bucharest, met with its Director and learned about the different programmes it offers. NIM is ascribed to the SCM, which coordinates its activities. NIM provides initial vocational training of future judges and prosecutors, as well as continuous vocational training for appointed judges and prosecutors. It is a professional school and not

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<sup>25</sup> See Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in the Havana, Cuba in 1990, principle 11.

<sup>26</sup> *Ibid.*, principle 9.



an extension of university studies, thus it ensures the study of law through practical exercise, and in particular through case studies carried out in small groups.

82. The Special Rapporteur was informed that the continuous professional training takes into account the dynamics of the legislative process and focuses on domestic legislation, the legal instruments ratified by Romania, the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Communities, comparative law and the deontological norms related to the profession of magistrates. In 2011, NIM organized five seminars on international judicial cooperation and is seeking to find avenues of cooperation to ensure that magistrates are able to attend the courses it offers at least once a year. It should be noted in this regard that Romania currently counts approximately 6,000 magistrates, and NIM has the capacity to provide training to up to 3000 magistrates yearly. NIM is also exploring the possibility of developing long distance e-learning programmes, and has launched a Swiss-sponsored project to provide seminars and conferences for magistrates in 2012 and 2013.

83. The Special Rapporteur welcomes the positive impact of such programmes on the enhancement of the standards of professionalism of judges and prosecutors, as highlighted by stakeholders. She also welcomes this encompassing approach and invites NIM to consider providing specific training on international human rights law standards, including those developed by the United Nations. The Special Rapporteur notes that a proposal to harmonize entry exams and to strengthen the initial training provided to magistrates is awaiting SCM approval. She welcomes the fact that separate training sessions are provided to judges and prosecutors in certain domains, and encourages further consideration to this issue in the light of the different roles and functions they perform.

84. NIM has started to provide training on the new codes within its initial and continuous training programmes, at both central and decentralized levels. The Special Rapporteur welcomes these activities and underlines the importance of intensifying efforts to provide comprehensive training on the new codes before they enter into force, so as to prepare the ground and ensure a smooth normative transition among prosecutors and judges to enable them to better cope with the legislative changes. Consideration should also be given to training opportunities for lawyers in connection with the new codes.

85. In this respect, the Special Rapporteur welcomes other efforts undertaken by the Government of Romania to raise awareness on major changes that will be introduced by the new Criminal Code as well as the Codes of Civil and Criminal Procedure, all of which will enter into force in 2013. In particular, the Special Rapporteur welcomes the partnerships established by the Ministry of Justice with the Public Ministry, the National Union of Bar Associations in Romania, the SCM, and the High Court of Cassation and Justice to provide a series of professional training seminars on the major changes introduced by the four new codes.

86. She also welcomes initiatives by the Ministry of Justice which has launched a series of lectures designed to raise awareness on the most important changes laid down in the new codes. These lectures will be attended by some 300 magistrates from courts and prosecution offices in Bucharest and are also open to judges, prosecutors and other legal professionals, such as lawyers, notaries and bailiffs.

87. The National Union of Bar Associations of Romania has also carried out awareness-raising activities relating to the new codes, and held a national conference in May 2011 that was attended by magistrates and lawyers from all over the country. The budget of the High Court of Cassation and Justice provides 200,000 RON (or 48,000 EUR) for professional training, with a view to ensuring the participation of judges and assistant magistrates in seminars and conferences on the new codes.

## VIII. Conclusions

88. The legal framework regulating the judiciary in Romania is comprehensive, recognizes the importance of the independence of the judiciary and complies with international norms and human rights standards.

89. Romania has adopted tailor-made strategies and action plans aimed at addressing different aspects requiring focused attention, so as to improve the judicial system in areas such as information technology, the benchmarks established through the cooperation and verification mechanism of the European Commission and integrity within the judiciary.

90. The Special Rapporteur commends Romania for its continued efforts to strengthen the judiciary through various reform initiatives. In her view, recent efforts illustrate the resolute commitment of Romania to strengthen the judiciary through tailor-made laws and policies. Some of these efforts include (i) the Action plan for meeting the benchmarks established through the cooperation and verification mechanism of the European Commission; (ii) law 202 of 2010, known as the “small reform;” (iii) the adoption of the new Criminal Code, Code of Criminal Procedure, Civil Code and Code of Civil Procedure; (iv) the recently adopted Strategy for strengthening integrity within the judiciary; and (v) measures intended to enhance knowledge on the judicial reform in Romania. At the same time, she highlights the importance of including all concerned actors in the implementation of these reforms.

91. Romania’s current strategy for judicial reform seeks to improve the management of the judiciary, enhance the delivery of justice, promote citizens’ participation in the judicial reform debate and take steps to counter corruption within the country, including in the judicial system. The action plan of the judicial reform strategy seeks to measure the performance, integrity, transparency, accountability, capacity as well as the human rights dimension of the judicial system as a pre-condition for the achievement of the goals and priorities of current judicial reform efforts.

92. Promising initiatives with a positive impact on areas related to the mandate of the Special Rapporteur include the training programmes provided by the National Institute of Magistracy as well as the information campaign launched by the Government to inform on the main changes introduced by the four new codes.

93. Despite efforts made, a number of challenges remain. Some of them are related to the need to create effective procedures for addressing potential conflicts of interest among the members of the Supreme Council of Magistracy; identify and discipline misconduct consistently; and address the practice of assigning magistrates to non-judicial positions within the judiciary and appointing them to various Government agencies, thereby depleting the already understaffed courts and prosecution offices. Efforts to identify ways and means to eliminate undue political and external influences on the SCM should be made in order to render the SCM independent, as it should be.

94. Another concern relates to the impact of the judicial reform, notably the adoption of the new codes on the work of judges, prosecutors and lawyers. The Special Rapporteur welcomes the finalization of the Action plan for the implementation of the Code of Civil Procedure, the Code of Criminal Procedure and the Criminal Code, and hopes that its implementation will ensure a smooth transition to the new legal frameworks.

95. In the Special Rapporteur's view, efforts should be redoubled to ensure that a people-centred approach is adopted in all judicial reform initiatives so that Romania can successfully achieve its goal of guaranteeing a justice administration system that ensures independence, impartiality, integrity, equality and transparency, all of which are prerequisites for the enjoyment of human rights by all in Romania.

## **IX. Recommendations**

96. Based on her findings, the Special Rapporteur makes the following recommendations with a view to contributing to the development of an effective justice administration system that ensures independence, impartiality, integrity, equality and transparency, as a prerequisite for guaranteeing the enjoyment of human rights for all in Romania.

### **A. Recommendations on judicial reform**

97. The Special Rapporteur encourages the Government of Romania to:

(a) Ensure a human rights-based and people-centred approach to judicial reform in Romania and take into consideration aspects related to access to justice when taking decisions to close certain courts;

(b) Design and implement a plan for the transition period before the entry into force of the three new codes (Code of Civil Procedure, Criminal Code and Code of Criminal Procedure) so that legal professionals can better cope with the legislative changes to be introduced;

(c) Monitor closely the impact of the entry into force of the new codes on the judicial system in the short, medium and long term;

(d) Provide sufficient human and financial resources for the re-organization of courts and prosecution offices;

(e) Continue providing and strengthen training to judges, prosecutors and lawyers on the new legislation;

(f) Increase the capacity of the National Institute of the Magistracy and adopt its proposals to improve training and recruitment standards;

(g) Undertake an exercise of good practices and lessons learned from past experiences on judicial reform with a view to informing current and future judicial reform efforts;

(h) Ensure that all judicial reform efforts are integrated into the broader programming of the justice sector so that past pitfalls, including the congestion of the courts, are adequately mainstreamed;

(i) Take all necessary steps to ensure that the courts are adequately resourced, so that they can function properly; that they are adequately equipped, including with facilities to allow movement and access by persons with disabilities; that there is adequate workspace, so that there is no interference in the functions of the judges and the courts;

(j) Ensure that the full jurisprudence of the courts is published in a user-friendly and easily searchable database.

## **B. Recommendations to enhance the independence of the judiciary**

98. The Special Rapporteur recommends that the Government:

- (a) Ensure a transparent process of resource allocation to the judiciary;
- (b) Ensure that courts are adequately resourced so that they can function properly;
- (c) Allow the judiciary or an independent body to administer the premises where the courts are housed, and assign on an as-needed basis, the assets that are required for the efficient performance of the courts;
- (d) Ensure that the High Court of Cassation and Justice is provided with all necessary infrastructure compatible with its important role;
- (e) Take the necessary steps to ensure the institutional independence of the judiciary with regard to the judicial budget, by recognizing the right of the judiciary to draft its own budget and to participate in deliberations in the Parliament, as well as by entrusting the administration of said budget directly to the judiciary or to an independent body responsible for the judiciary, in order to prevent financial dependency and avoid tensions between the judicial and other branches of power;
- (f) Establish adequate safeguards to ensure that budgetary allocations to fund the courts in the current fiscal year, or in the next financial year, can only be reduced with the consent of the judiciary, or of an independent body representing it, at all times, including in times of crisis;
- (g) Undertake a thorough and independent investigation into allegations regarding the possibility of manipulating the automated system for the random allocation of cases, and take the necessary steps, in accordance with the findings of this investigation, to improve the integrity of the system;
- (h) Identify ways and means to eliminate undue political and external influence on the Supreme Council of Magistracy and adopt all the necessary measures to address this;

99. The Special Rapporteur encourages the courts and its judges to:

- (a) Continue working to build public trust, and enhance their ability to deliver justice on a daily, case-by-case basis as their performance contributes to building public confidence in the integrity of the justice system;
- (b) Take all necessary steps to ensure the uniform and equal application of the law, including by publicizing its decisions.

## **C. Recommendation to the Superior Council of Magistracy**

100. The Special Rapporteur recommends that the Superior Council of Magistracy:

- (a) Establish mechanisms which guarantee the independence of the Council and avoid its politicization;
- (b) Continue working to build public trust and strengthening the administration of justice, as well as enhance its ability to identify and discipline judicial misconduct consistently;
- (c) Create effective procedures for addressing potential conflicts of interest among its members;

(d) Take steps to address the practice of assigning magistrates to non-judicial positions within the judiciary and appointing them to various government agencies, thereby depleting the already understaffed courts and prosecution offices;

(e) Establish objective criteria for the assessment of misconduct and for applying relevant sanctions (art. 99 and 100 respectively of the Law 303/2004 on the statute of judges and prosecutors) in order to avoid improper or undue use of disciplinary proceedings and sanctions, and ensure thorough respect for the immunity of judges;

(f) Contribute to the implementation of the recommendations made through the CVM;

(g) Consider monitoring closely the impact of the various measures adopted to achieve judicial reform objectives;

(h) Coordinate efforts among judges, lawyers and prosecutors in order to implement effective mechanisms in courts for the implementation of the four new codes, respecting fair trial guarantees.

#### **D. Recommendations on the Prosecution Service**

101. The Special Rapporteur recommends that the Government:

(a) Redouble efforts to strengthen the capacity of the Prosecution Service, including ensuring it is adequately staffed;

(b) Ensure that the recent powers granted to the Prosecutor General to reassign investigations, without an explicit requirement by the law to motivate such a reasoning, are exercised in accordance with the United Nations Guidelines on the Role of Prosecutors and other applicable international and regional standards.

#### **E. Recommendations on capacity-building and training of judges, prosecutors and other legal professionals**

102. The Special Rapporteur recommends that the National Institute of Magistracy:

(a) Consider providing specific training on international human rights law standards with a particular focus on instruments and mechanisms developed within the United Nations;

(b) Continue and intensify efforts to provide comprehensive training on the new codes, before they enter into force, so as to prepare the ground and ensure a smooth normative transition among prosecutors and judges so that they can cope with legislative changes and consider also extending such trainings to lawyers;

(c) Mainstream gender in all capacity building and training programmes of judicial actors.

## **F. Other recommendations**

### **Recommendations on access to justice and legal aid**

103. **The Special Rapporteur recommends that the Government:**

- (a) Consider launching awareness raising campaigns on legal aid targeting groups in situations of vulnerability;**
- (b) Take all necessary steps to ensure the provision of quality legal counsel by ex-officio lawyers;**
- (c) Facilitate the access to justice to the Roma people.**

### **Recommendations on gender mainstreaming**

104. **The Special Rapporteur invites the Government to:**

- (a) Incorporate gender considerations in current judicial reform efforts and ensure a systematic gender analysis of the judicial sector;**
  - (b) Conduct a mapping exercise to identify barriers to women's access to justice, whether as judicial actors, victims, witnesses or offenders;**
  - (c) Take all necessary steps to address gender-based discrimination within the administration of justice, particularly regarding the criminal justice system, at all stages of the criminal law chain.**
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