

**Standard Sector Programme Fiche**

**JUSTICE**

**ASSISTANCE TO ENHANCE THE INDEPENDENCE,  
PROFESIONALISM AND MANAGEMENT CAPACITY OF THE  
ROMANIAN JUDICIARY**

## Sector Programme Fiche 2004-2006

### SUMMARY

<b>CRIS Nr</b>	RO-Phare 2004/016-772.01.04	
<b>Title</b>	<b>Assistance to enhance the independence, professionalism and management capacity of the Romanian judiciary</b>	
<b>Sector</b> Strengthening judicial sector	Priority sector Justice	Evaluation sector Justice
<b>Indicative Budget 2004 - 2006<sup>1</sup></b>	Total [€Mio] 59,96	Phare contribution [€Mio] 45,73
<b>Budget 2004</b>	Total [€Mio] 23,00	Phare contribution [€Mio] 18,00

### Summary of Main Objectives and Results

This programme will provide support in order to strengthen the independence, professionalism, administration and management of judicial system. Phare support will significantly contribute to the achievement of these objectives committed by the Ministry of Justice within the Strategy for the Reform of the Judiciary and will complement the national effort.

The Romanian judicial system is in line with EU standards (as judged by European Commission, European Parliament, European Council).

### TABLE OF PROJECTS CONSTITUTING THE PHARE MEASURES IN THE SECTOR

Project Nr. <sup>2</sup>	Title	Total costs €Mio	Phare funding €Mio	Start	End
1	<i>Building an independent judiciary in Romania</i>	4,15	3,15	1-10-2005	20.10-2009
2	<i>Building a professional judicial system</i>	2,8	2,5	1-10-2005	30.10-1007
3	<i>Improving the administration and access to Justice</i>	3,9	3,5	1-10-2005	20.10-2009
4	<i>Building an efficient management system</i>	49,11	36,58	1-10-2005	20.10-2009

<sup>2</sup> For each project listed here a project fiche is to be attached. See programme specific project fiche template.

<sup>1</sup>The information concerning the budgetary years 2005 and 2006 is only estimative and does not bind the two parties.

## Table of Content

<b>SUMMARY .....</b>	<b>2</b>
<b>TABLE OF PROJECTS CONSTITUTING THE PHARE MEASURES IN THE SECTOR .....</b>	<b>2</b>
<b>TABLE OF CONTENT.....</b>	<b>3</b>
<b>1. BASIC INFORMATION .....</b>	<b>4</b>
1.1 CRIS NUMBER (2004): 2004/016-772.01.04.....	4
1.2 TITLE .....	4
1.3 SECTOR.....	4
1.3.1 Title of Priority Sector .....	4
1.3.2 Title of Monitoring Sector .....	4
1.4 BENEFICIARIES AND GEOGRAPHICAL COVERAGE.....	4
1.5 DURATION: 2004 TO 2009.....	4
<b>2. OBJECTIVES .....</b>	<b>4</b>
2.1 THE NEEDS .....	4
2.1.1 Contribution to National Development Plan .....	5
2.2 OVERALL OBJECTIVE OF THE SECTOR PROGRAMME .....	5
2.3 PROGRAMME PRIORITIES AND ITS IMPACT ON THE SECTOR .....	6
<b>3. DESCRIPTION .....</b>	<b>7</b>
3.1 BACKGROUND AND JUSTIFICATION .....	7
3.1.1 Priority 1. Building an independent judiciary in Romania .....	7
3.1.2 Priority 2 Building a professional judicial system .....	11
3.1.3 Priority 3 Improving the administration and access to Justice.....	19
3.1.4 Priority 4 Building an efficient management system.....	28
3.2 SECTORAL RATIONALE .....	31
3.2.1. Identification of needs and necessary action .....	31
3.2.1.1 <i>Priority 1 Building an independent judiciary in Romania</i> .....	31
3.2.1.2 <i>Priority 2 - Building a professional judicial system</i> .....	32
3.2.1.3 <i>Priority 3 Improving the administration and access to Justice</i> .....	33
3.2.1.4 <i>Priority 4 - Building an efficient management system</i> .....	34
3.2.2 Identification of projects .....	34
3.2.2.1 <i>Priority 1 - Building an independent judiciary in Romania</i> .....	34
3.2.2.2 <i>Priority 2 - Building a professional judicial system</i> .....	35
3.2.2.3 <i>Priority 3 - Improving the administration and access to Justice</i> .....	37
3.2.2.4 <i>Priority 4 - Building an efficient management system</i> .....	38
3.2.3 Activities and Means .....	39
3.2.3.1 <i>Priority 1 - Building an independent judiciary in Romania</i> .....	39
3.2.3.2 <i>Priority 2 - Building a professional judicial system</i> .....	41
3.2.3.3 <i>Priority 3 - Improving the administration and access to Justice</i> .....	43
3.2.3.4 <i>Priority 4 - Building an efficient management system</i> .....	45
3.3 LINKED ACTIVITIES .....	46
3.4 LESSONS LEARNED .....	48
<b>4. EXPECTED RESULTS OF THE PROGRAMME .....</b>	<b>49</b>
<b>5. DETAILED BUDGET .....</b>	<b>49</b>
<b>6. IMPLEMENTATION ARRANGEMENTS .....</b>	<b>51</b>
6.1 INSTITUTIONAL FRAMEWORK .....	51
6.2 IMPLEMENTING AUTHORITY.....	51
6.3 IMPLEMENTATION SCHEDULE .....	52
6.4 MONITORING AND INDICATORS OF ACHIEVEMENT .....	52

### 1. BASIC INFORMATION

**1.1 CRIS NUMBER (2004):** Phare 2004/016 – 772.01.04

**1.2 TITLE:** Assistance to enhance the independence, professionalism and management capacity of the Romanian judiciary

**1.3 SECTOR:** Reform of the Judiciary

**1.3.1 Title of Priority Sector:** Justice

**1.3.2 Title of Monitoring Sector:** Justice

### 1.4 BENEFICIARIES AND GEOGRAPHICAL COVERAGE:

The main beneficiaries will be the judiciary system, the Superior Council of Magistrates, National Institute of Magistrates, TCC, and NGO-s, Bar Association, Ministry of Justice, and Public Ministry

The impact will be nationwide.

**1.5 DURATION: 2004 to 2009**

The duration of sector programmes is set to 2004 to 2009. This means: the first contract may be concluded in 2005. The last contract, however, must be terminated - including final payment - in 2009.

### 2. OBJECTIVES

#### 2.1 THE NEEDS

Romania is facing now a complex reform in order to strengthen the independence, professionalism, administration and management of the judicial system.

Complex legislative measures are correlated with institutional measure and initiatives of improving the human resources.

With the approaching of the date of Romanian accession to the EU, a number of institutional building activities need to be undertaken and certain tools have to be established in order to implement and monitoring the EU standards on justice. Issues that require immediate strengthening are:

- Increasing the independence of the Judiciary
- Developing the professionalism of the Judiciary
- Improving the administration and access to justice
- To improve the management of courts

The **revised Accession partnership with Romania (2003)** recommended the following measures in the field of justice:

- Develop and implement a strategy for the reform of the judiciary that will:

- i) Ensure full independence in particular by: establishing a transparent system for recruiting and selecting magistrates...
- ii) Enhance the professionalism of the judiciary in particular by: improving training programs in the National Institute for the Magistracy (NIM); strengthening the ability of the Training Centre for Clerks to deliver both initial and in/service training; and developing training for other legal professionals such as lawyers, notaries, bailiffs, court clerks and staff of the Ministry of Justice.
- iii) Improve the administration of courts in particular by: modernising case management and filing system; developing clear criteria for case assignment; systematic introduction of Alternative Dispute Resolution; extending access to free legal aid; and upgrading court equipment and infrastructure...."

The **Roadmap for Romania (December 2002)** emphasized the necessary steps for the implementation of the *acquis* and the continuation of the judicial reform:

- the effective independence of the judiciary; (point 2.2.)
- adoption of a national strategy for the functioning of the judiciary addressing the requirements of full independence, ethics, training of magistrates, organization of courts and international cooperation on judicial matters (point 2.2)

In line with the recommendations from the Roadmap, Romania adopted on September 12, 2003, by Government Decision no. 1052/2003, a comprehensive **Strategy** aiming to address the next steps and commitments in reforming the judiciary.

"The Reform Strategy contains the objectives to be achieved for the modernization of the judicial system, accompanied by concrete measures of accomplishment, for which deadlines have been provided and financial needs have been assessed".

The strategic objectives covered by the strategy address the following:

- **Legal certainty:** increase impartiality, transparency, credibility and effectiveness of the justice act; create a unitary jurisprudence; complete transposition of the *acquis communautaire* in the field of justice; continue and accelerate the process of developing the Justice IT system; improve the judicial system's capacity in applying the law and consolidating the administrative capacity; continue the process of penitentiary system reform.
- **Quality of judgements:** *reasonable periods of time* for trials; *structural changes* of the judicial system organisation, aimed at restructuring courts and prosecutor's offices based on criteria of effectiveness together with *the specialisation* of certain courts and prosecutor's offices to solve cases in special matters; reform *the administration of justice* and to ensure the *resources necessary* to the accomplishment of the justice act; *professional training* for magistrates and auxiliary personnel.
- **Independence of the judiciary:** ensure the *transparency* of the Judicial activity, by interaction with the civil society; define the prerogatives of the *Superior Council of the Magistracy* and of the Ministry of Justice, in order to consolidate the independence of the judiciary; establish *the magistrates' statute* – their rights and obligations.

### 2.1.1 Contribution to National Development Plan

Not applicable.

## 2.2 OVERALL OBJECTIVE OF THE SECTOR PROGRAMME

Contribution to the implementation and consolidation of the reform project aimed at making the Romanian judiciary fully independent and at increasing its professionalism and management capacity in line with the common values and best practices of the EU Member States as well as with the principles and objective of the Strategy for the reform of the judiciary

## 2.3 PROGRAMME PRIORITIES AND ITS IMPACT ON THE SECTOR

The main priorities of the program will focus on providing assistance to enhance the independence, professionalism, administration and management of judicial system by: further fine tuning the regulatory and institutional framework of the Superior Council of Magistrates after the adoption of new law on judicial system; contributing to the improvement of the institutional framework and policy of the National Institute of Magistrates and Training Centre for Clerks to deliver qualitative training of magistrates, respectively court clerks ; continuing the automation of the system nationwide and standardising the financial and management activity of the system contributing to the creation of a specialized personnel in charge with delivering the justice act; promoting the use of mediation as alternative dispute resolution; identifying and testing an acceptable legal aid system and contributing to an increase level of transparency for the justice system.

Phare support will significantly contribute to the achievement of these objectives committed by the Ministry of Justice within the **Strategy for the Reform of the Judiciary** and will complement the national effort.

**Table of priorities**

<i>Priority Nr</i>	<i>Short title</i>	<i>Summary of expected results, when achieving them</i>
1.	Building an independent judiciary in Romania	SCM fully functional and with sufficient means to perform its role as guarantor of independence
		Specialized courts functional
2.	Building a professional judicial system	NIM' institutional capacity and training policy improved
		TCC 'institutional capacity and training policy improved
3.	Improving the administration and access to Justice	Mediation system functional
		<i>Improved legal and institutional framework ensuring legal aid in civil and criminal cases</i>
		The act of justice is transparent
4.	<i>Building an efficient management system</i>	
		The entire judicial system will be fully equipped with IT and will operate an automated court management system

### 3. DESCRIPTION

#### 3.1 BACKGROUND AND JUSTIFICATION:

##### **3.1.1. Priority 1 Building an independent judiciary in Romania** ***“Strengthening the role of the Superior Council of Magistrates (SCM)”***

One of the strategic objectives of the judicial reform is to enhance the independence of the judiciary.

The main guardian of the impartiality and independence is the Superior Council of Magistracy (SCM), the body empowered to decide on the magistrates' career and their disciplinary liability (*Strategy for the reform of the judiciary*, 2.2.3).

*The revised Constitution* included within the chapter of Judicial Authority, provisions addressing the competences and composition of the Superior Council of Magistrates and its role as body guarantying the independence of the judiciary (art 132-133).

The composition of SCM was enlarged in order to confer a broad representation to different levels of jurisdiction as follows: there are 19 members, out of which 14 are magistrates (9 judges and 5 prosecutors) forming two distinct sections, 2 representatives of civil society, minister of justice, the president of the High Court of Cassation and Justice and the general prosecutor of the Supreme Court of Justice. Additionally, a guarantee of stability is the duration of mandate for 6 years, while the mandate of the president is for one year.

Also, the *revised Constitution* created one of the modern systems in the Europe with regard to the election of the members of the Superior Council of Magistrates, meaning that they are elected directly by the General Assemblies of the magistrates. Therefore the new Constitution contributes to the consolidation of the judiciary power.

Such important revision has to be complemented by a new judicial organization law and the statute of magistrates. The draft new law on the statute of magistrates as elaborated in 2003, transfers a serious number of prerogatives from the Ministry of Justice to the SCM as: competencies regarding the delegation, assignment and transfer of the magistrates, suspension from office, cessation of office, the presiding of the Superior Council of Magistracy works, decisions concerning complaints of magistrates about the evaluation of the professional activity, notice for investigation, detainment, arrest, searching or sending to trial. Also, the actual draft law as approved by the Senate awarded to SCM an important role in supervising the activity of the NIM, mainly in the organization of the entrance exam for the trainees (publicity of the exam, topics, number of positions, subjects of exam and verification of the exam results) and the initial and continuous training policy (curriculum, database with the professional career and training of magistrates, topics of debates and training courses at the regional level etc).

During March 2003 important public debates took place on the legislative package on the reform of the judiciary (the law on the Statute of Magistrates, the law on judiciary organisation and the law on the organisation and functioning of the Superior Council of Magistracy).

It is envisaged that adoption by the Parliament of the legislative package containing the draft laws on the statute of magistrates, judicial organization, and the organization and functioning of the Superior Council of Magistracy will take place in June 2004.

In order to assist in enhancing the Council's institutional capacity and operational performance in accordance with its extended responsibilities and best practice in the EU Member States a Twinning project (RO 02/IB/JH-09 “Strengthening the functioning of the

Romanian Judiciary and its representative body - Superior Council of Magistrates”) is now on going. The main results of the project are:

- to draft a coherent legal framework: a special Law on the Superior Council of the Magistracy and secondary legislation related on the functioning of this body;
- to set up an organizational structure plan for the strengthened SCM taking into due account the expanded range of statutory competencies and administrative tasks of the SCM
- to elaborate an action plan for monitoring the enforcement of the Deontological Code of Magistrates

The present proposal is meant to further support the consolidation of the reformed SCM by providing training for Members of the Council and for its staff, by fostering its administrative infrastructure, and by fine-tuning its administrative and regulatory groundwork to the broad spectrum of tasks the SCM will have to carry out in future. Also, MAP will provide investment in equipment and furniture for the new premises already identified for the SCM

All these proposals will be in line with the recommendation of the European Commission in the *2003 Regular Report* that “the overall position of the Superior Council in the judicial system remains weak and further efforts are needed to ensure that the Superior Council can fulfil its responsibilities”.

### “Assistance for the functioning of the newly created specialized courts”

According to the **Strategy for the judicial reform**, the Government assumed as a short-term measure, starting with 2004, “the setting-up...of specialized courts for fields such as: juveniles and family, commercial, administrative-fiscal, labour and intellectual property. **(Chapter9.1)**. The same document mentioned as a complementary measure the necessity to provide specialization of magistrates; **hiring appropriately trained personnel; appropriate spaces for their operation**; supplementary funds to adjust premises and to purchase technical equipment necessary for the proper development of activity.

The actual draft law on judiciary provides in art. 2, para 2 that the justice is accomplished through the High Court of Justice, courts of appeals, tribunals, specialised tribunals, and first instance courts. The competence of these specialised tribunals is mentioned in the art. 34 - 38 within the draft law. The same draft law on the organisation of the judiciary provides the establishment of specialised courts on the following matters: minors and family, commercial law, labour and social securities, administrative contentious and tax law.

The first step for the creation of the specialised courts was already made – on October 1st 2003, at the level of all tribunals and courts of appeals were created specialised panels or sections

The second phase of this process is the creation of specialized courts gradually at the national level until 2008.

In order to allow the specialized courts be functional, human resources, training of all personnel, and adequate infrastructure are necessary to ensure an appropriate work climate. E.g. for cases involving the minors, the hearing rooms must be endowed with furniture in order to create a friendly atmosphere appropriate for under-age. Secondly, the special equipment will record the declaration of minors and witnesses during different trial phases.

With regard to the establishment of specialized courts for minors and family, in September 2003, the Ministry of Justice issued an order to create a working group aiming to coordinate and propose concrete measures in this field.



This group includes representatives of the Probation Department, Legislative Department, the Human Resources Department, the Judicial Department, and the European Integration Department from the Ministry of Justice, NIM, National Institute of Criminology, as well as representatives of judiciary: prosecutors and judges.

Upon the entering into force of the Law on the organisation of the judiciary, the specialized courts for minors and family shall be created gradually, in the following stages:

- In **2004** the **first specialized court for minors and family**, shall become functional, immediately after the publication of the Law on judicial organisation in the Official Gazette of Romania.
- Until the **1<sup>st</sup> of January 2008** specialized courts for minors and family shall be set up in every county.

The effective functioning of these specialised courts shall be preceded by certain necessary and mandatory actions:

- **Establishing the employment schemes of magistrates and auxiliary personnel**, who shall function within the specialised courts, on the basis of statistical indicators concerning the judgement activity within the specialised sections and panels;
- **The appointment of the magistrates and auxiliary personnel** who shall function within the specialised Courts on the basis of their specialisation, achieved through participation in different seminars or symposiums as well as of several specific criteria such as: interpersonal communication skills, empathy, patience, possessing mediation and conflict resolution techniques, etc.;

**The specialisation and training of professionals involved**, within the well configured programs co-ordinated by the National Institute of Magistracy

As stated before until the end of 2004 a first tribunal for minors will be firstly set up.

Until that moment there were pilot projects already in the field.

The pilot Court for minors in Iași was created at the initiative of local representatives of the local judiciary and civil society in order to ensure and observe the national and international standards on criminal proceeding for juvenile offenders and victims.

In the framework of this project, collaboration mechanisms were set up between the Police, the prosecutors' office and the specialised court, as well as the best practice models employed in the cases with minors.

**In a first phase**, the pilot Court for minors had territorial jurisdiction over the Iași municipality. The **main results** achieved in the first phase of the project were: the creation of an optimal environment for hearing and judging the cases with minors and the setting up of a specialized team to investigate and to judge the criminal cases involving juvenile offenders, in order to minimise the impact of criminal proceeding on minors and their families. These results were achieved through:

- Arranging and endowing the courtroom for minors, as well as two hearing rooms for minors within the Prosecutors' Office and the Police with suitable furniture and audio-video and TV system, for a better administration of evidence.
- Creating and delivering booklets in order to inform the juvenile offenders and/or victims and the general public on the investigation and judging mechanism for juvenile offenders, as well as on the available social and psychological assistance services delivered by local NGOs.
- Organizing 2 training sessions on "*Working with children victims and offenders*" and "*The Psychology of Child Development*" for 33 professionals involved in investigating and judging criminal cases with minors.

- Setting up a Steering group made up of local judges, prosecutors, lawyers and representatives of civil society.

As a follow-up, *in the second phase of the project*, the pilot Court for minors has extended its territorial jurisdiction to the Iași County, also including Police stations, Prosecutors' Offices and Courts of First Instance of Răducăneni, Hârlău and Pașcani, as well as the Probation service from Iași.

### Main objectives:

- Police officers, prosecutors and judges from county of Iași shall be specialised by assimilating certain working techniques and methods in investigating children victims of abuses and children who commit offences.
- Children victims of abuses and minors who are sexual aggressors and delinquents shall benefit of appropriate personnel for hearing, trial and social and psychological recovery.

The Police stations, the prosecutors' offices and the courts involved in the project shall benefit of working methodology with the minors victims of the abuses. Due to the available equipment, the cases with minors shall be solved with celerity. They shall have databases and separate archive

The **PHARE assistance** for juvenile justice started **in 2003** by providing twinning arrangements and an investment component for 4 re-education centres and for all probation services. The twinning will address the following:

- recommendations for improving the legal and institutional framework in the field of minors' rights
- support for setting up specialized structures for minors' affairs at both the central and local level. The structures will address the issue of judicial protection of minors as well as specialized treatment of convicted/confined minors
- set up specialised teams (composed by police officer, prosecutor, judge, clerk, social worker, probation counsellor, penitentiary officer) in order to ensure the judicial protection of minors.
- deliver interdisciplinary specialised training for magistrates and other professionals involved in activities related to the judicial protection of minors
- creation of a Documentation and Resources Centre for multidisciplinary use

However, **the programme Phare Twinning 2003 addresses basic needs** in terms of specialized training and practice in a new field. The reform for minors' judicial protection needs further consolidation and support from EU. The assistance will focus on both prevention and treatment of minors in civil and criminal cases and also on developing best practices in the new legislative and institutional framework.

Particularly, the **EU assistance 2005** could support the following:

- strengthening the local specialized structures to be created under Phare 2003,
- specialized training for magistrates in specific areas such as: juvenile psychology, psychology of family, social work, biology and physiology of a child, detection of signs of abuses on child, special issues for minors offender.
- further training of multidisciplinary teams at local level to be created under Phare 2003 in very focused areas (e.g. victimology, criminology, international standards for the treatment of juveniles)

- designing and procurement of a psychological test for the personnel working with minors as part of a regular psychological evaluation
- deliver specialized inputs in order to develop methods and techniques for working with victim minors, part of the general victim protection policy.
- procurement of recording equipment (audio, video etc) and endowment of hearing chambers for police, prosecutor office and specialized courts for minors affairs with furniture, surveillance equipment for minors' behaviour.

The same draft law provides for the creation of other specialized courts for labour law, commercial law, administrative and fiscal law. In 2004, 3 commercial courts shall be functional. The rest of the specialised courts shall be set up gradually prior to the end of 2008, according to the draft of the new Law on the organisation of the judiciary.

The establishment of each specialised tribunal shall be decided according to specific needs of each region, as they result from a thorough prior assessment comprising the caseload and public financial resources

In order to prepare for the future functioning of the specialised courts, since 1 October 2003, specialised panels and sections are functional at national level.

While the specialized training will be covered through the NIM project, this project will include an endowment component with IT and furniture equipment.

### 3.1.2 Priority 2 Building a professional judicial system

#### *"Further development of the National Institute of Magistrates (NIM)"*

The strengthening of NIM is a priority of the **Reform of the Judiciary**, which states that "Magistrate's recruitment and initial training is done through the NIM. Taking into account that an efficient justice is not only an independent one, but also a competent one, the law grants a particular importance to the *continuous training and periodic evaluation of magistrates*". (para. 7.1)

In the process of EU accession, Government continues its efforts to engage in legislative approximation and harmonisation programme. Regarding the judiciary sector, the judges and prosecutors who will have to apply the new rules required by the future accession need to be upgraded in particularly EU matters, EU related fields and professional ethics.

The National Institute for Magistracy (NIM) is the training institution regulated by the revised Law No. 92/1992, under the authority of the Ministry of Justice. Beginning with 2000, NIM represents the sole entry form in magistracy for young law graduates. Conceived on three dimensions: initial training, continuous training and training of the trainers, the Institute's activity is essentially involved in the Judiciary's reform.

According to the Law no. 92/1992, the initial training of the magistrates within, the National Institute for Magistracy will address training of the future magistrates to enforce the law and to know and observe professional ethics.

The NIM is a public institution with legal personality which is **organised and functions** in the subordination of the Ministry of Justice, according to Law no. 92/1992 on the organisation of the judiciary, with the subsequent amendments.

The NIM ensures at the same time the training of future magistrates (justice auditors), as well as the continuous training during the exercise of the profession – namely the training of the magistrates in-office.

Thus, the NIM's **activity** is structured in three directions:

- the initial training of future magistrates

- the continuous training of the magistrates in-office
- the training of trainers as a distinct instruction stage.

### A. INITIAL TRAINING

Starting with 2000, the initial training for the future magistrates (justice auditors) at the NIM is of 2 years.

The **initial training** of future magistrates is carried out based on the general teaching curriculum, annually approved by the NIM Board, and the analytical curricula for each topic proposed by the initial trainers and approved by the NIM Board, at the beginning of each academic year. The teaching curriculum comprises:

- basic topics like: civil law, civil procedure, criminal law, criminal procedure, family law, fiscal law, labour law etc
- other topics necessary for magistrates in the present context, like: European Law, Human Rights, Constitutional Justice, Environmental Law, Penology, Consumer's Law, Intellectual Property Law, forensics

The second year of initial training, organised for the first time in 2000, is dedicated mainly to practice in Courts and Prosecutors' Offices. The completion of the practice stage has been carried out based on a practice plan, comprising well-determined stages and activities, in order to ensure a complete training of the future magistrates.

### B. CONTINUOUS TRAINING

Continuous training is provided for as an obligation, but also as a right of the magistrates. The principle of court and magistrate specialization is also observed in the process of continuous training.

There is also available on the web site **a strategy for continuous training** according to which training is mainly targeted towards the new areas of national and EC law by way of seminars organised within the Institute's premises, the regional centres of Sovata, Timisoara, Barlad and the courts of appeal, through the "trainers' network".

Also, the continuous training covers specific fields of law as follows: the dynamics of the legislative process; enforcement of the domestic legislation; EC law, jurisprudence of the courts and of the Constitutional Courts, jurisprudence of the European Court of Human Rights and of the European Court of Justice. There are also 18 local trainers for prosecutors who were previously trained by EU experts in bilateral programs.

The **continuous training** of the magistrates in office is carried out by:

- the **network of trainers** chosen from amongst the magistrates;
- NIM trainers within the initial training, magistrates or professors from high legal education;
- specialised legal personnel assimilated to magistrates;
- specialists having a different background from the legal one;
- foreign experts, in the framework of the programs of international assistance granted to Romania.

### C. TRAINING OF TRAINERS

Approximately 70%-80% of the NIM trainers are magistrates holding academic and/or didactic titles, or enjoying a recognized professional status. The other trainers are university professors specialized in fields such as EU Law, Human Rights, Intellectual Property, Environmental Law etc.

Also for the first time, specialists with other background than legal (psychologists, forensics, IT experts, account experts etc.) have been recruited.

The **trainers' network** was set up by Order of the Minister of Justice, according to articles 70 and 74 of Law no. 92/1992.

The first stage of the process of completing the network of trainers was finalised by Order of the Minister of Justice, for the list of trainers selected and proposed by the NIM. The network is now composed of 80 judges and prosecutors.

The selection of the candidates was carried out based on the following the criteria:

1. professional activity and experience in the chosen field;
2. stages and seminars for training the trainers within the NIM or in the framework of other projects for international assistance in the field of training of trainers;
3. academic ranks or presentation of a seminar plan or presentation of a seminar
4. publications;
5. foreign languages.

The selected candidates are trained in the specific chosen fields and in didactical skills.

At present, the first stage of the trainers' selection process was completed for the following fields:

- civil law and civil procedure law
- criminal law and criminal procedure law, justice for minors
- EC law
- Commercial law, competition law and bankruptcy
- Labour law
- Human rights protection
- Professional Ethics and Deontology of magistrates

For the continuous training in the field of administrative-fiscal law the NIM uses the trainers involved in the initial training.

The NIM also started the process of including non-legal experts in the network of trainers, especially in the commercial field (accountants) and in the field of justice for minors (psychologists, sociologists, social assistants).

The NIM uses various trainers from this training network of 80 magistrates, based on the topics of continuous training and on the Regional Centres where the training sessions are held. The trainers are paid, like the ones in the initial training, by the hour and on a monthly basis, depending on the seminars they held.

In the trainers' network of 80 magistrates, the EC law correspondents trained in the framework of the previous Phare projects, the Matra trained magistrates and all the other magistrates who received training in the framework of the continuous training in general or training of trainers within the NIM are also included.

Finally, **the draft of the Judiciary law** included provisions improving the institutional framework of NIM. **NIM will have increased guarantees of independence as follows:** the board will include members among judges and prosecutors, designated by SCM prestigious law professors, and a representative of each trainees generation; participation of magistrates

associations to the meetings of the board upon request; trainers selected among mainly magistrates with 10 years tenure, but also among professors, Romanian and foreign experts. Also, **the actual draft on the status of magistrates** describes the role of NIM in improving the initial and all professional activity of magistrates. As presented in the justification for project 1, **SCM will have an important role in supervising the main activities of NIM.**

The Minister of Justice shall have no competence with regard to the recruitment of teaching staff of the National Institute of the Magistracy. This shall be under the competence of the National Institute of Magistracy.

The existing developments of NIM were recognized by the **2003 Regular Report** stating that "training of entry - level professionals has been developed, curricula have been improved, and the National Institute has established new legal subjects such as ethics and justice for minors" the same document acknowledged that ... "there is, however, no clear policy on in-service training for judges and prosecutors, and training activities have focused on further developing academic knowledge rather than on developing applied skills or professional ethics. Specialized training on issues such as economic crime, money laundering and the fight against corruption remains limited. Understaffing and inadequate budgets have also limited the institutions' activities".

In line with these recommendations, **Phare multi-annual assistance** supporting further institutional development of NIM and training for magistrates is fully justified.

NIM will provide training for both judges and prosecutors. Training will focus mainly on improving the skills of trainers for both judges and prosecutors the training sessions being focused mainly on developing the teaching skills of the "training network" members.

As regard the specific needs of training for prosecutors, the **Strategy for the reform of the judiciary** committed an ample process of amending the criminal procedure law with direct impact on the activity of the prosecutors. (chapter 4.2)

In line with the European models for public prosecutor and the large jurisprudence of ECHR on the meaning of "independent tribunal" and "judicial function", the institution of Public Prosecution was largely reorganized. In this scope, the new Constitution provides that "Preventive custody shall be decided by the judge and only during criminal proceedings". article 23(4)

The recent modifications to the Criminal Procedure Code removed the competences of the prosecutor to issue an arrest mandate for the suspect or the accused. The prosecutor has to submit the file to the court within 24 hours from the date of the arrest mandate. Thus it is the court that exercises the judicial control over the activity of the prosecutor during the criminal investigation phase and it is the same court that decides upon the opportunity and legality of preventive measure in a procedure offering to the accused large procedural guarantee of fair trial.

The recent legislative modifications improved the enforcement of presumption of innocence, protection of witnesses, tape and phone recording and other procedural norms.

All these legislative modifications operated in line with the EU relevant standards have to be accompanied by relevant training activities of the public prosecutors.

Because of the specialization trend affecting not only the body of judges, but also the whole body of prosecutors, a specialised training is more appropriate. However, the Public prosecutor body needs both common training of trial prosecutors with judges for legal issues related to the nearest introduction of specialized courts and also specific training for issues related to the strict investigative activity (complex economic-financial and organized crime, cyber crime, homicide, intellectual property rights, money laundering, traffic of drugs, means of investigating terrorist acts etc). Specialized training in Organized crime and Terrorism and

financing terrorism related crimes will be organised within the Prosecutor's Centre for Operational Applications.

The setting up of the **Prosecutor's Centre for Operational Applications** was determined by the necessity of achieving several professional training internships for the prosecutors and for the judicial police officers, focused on acquiring **practical knowledge**, by carrying out **applied activities** and by presenting solved cases with a high level of complexity.

**Coordination with the topics established in the NIM curricula is ensured** so that eventual parallelisms are avoided. In fact, the Centre provides for a continuation of the training achieved by the NIM, offering a wider range of in depth practical knowledge on issues pertaining to team work in more complex cases.

Such training activities were undertaken in the past through various Phare and bilateral programmes. However, the existing number of prosecutors and the future increase included in the Strategy needs to be complemented by appropriate training. The **Regular Report 2003** acknowledged that "specialised training on issues such as economic crime, money laundering and the fight against corruption remains limited".

Training activity and exchange of experiences with prosecution bodies from other European countries is a long-term objective aiming to address the quality of the human resources within the Public Prosecution body.

In order to ensure an appropriate training, NIM needs to rely not only on good expertise and curriculum, but also on relevant facilities for conference and accommodation. As stated before since 2002, the continuous training modules are developed in all four regions in the country – in the three regional centres: Sovata, Timisoara and Barlad and NIM headquarters in Bucharest – in order to ensure the unitary training for the magistrates of all courts of appeal. While the conference facilities were mainly provided by previous Phare assistance, the accommodation facilities are still insufficient. In this sense, taking into account that only one regional centre (Sovata) has more adequate training conditions (conference facilities and accommodation facilities in the centre), Government Action Plan of the Accession for 2003-2006 committed to the creation of accommodation facilities next to the regional centres in Timisoara. Therefore, the endowment through the Phare assistance 2004 with proper facilities for accommodating the magistrates during the continuous training modules would allow the organisation of a larger number of seminaries and would allow an economic and efficient functioning of the regional centres.

Finally, the majority of trainees usually leave in dormitory which is located outside the NIM headquarter. The NIM has a computer lab for studying but the dormitory is insufficiently endowed with IT resources restricting trainees full access to information while are in the study rooms. Some IT equipment could help these young trainees to better study in the three study rooms while are accommodated in the NIM dormitory.

As a general conclusion, MAP could further assist NIM by providing technical assistance for the training policy and supply for a regional centre and NIM dormitory.

Since 1998, the NIM was consolidated through both national and international programmes.

### **"Further development of the Training Centre for Clerks (TCC)"**

Considering both the context of EU accession and the necessary improvement of Romanian judiciary's operations, redefining the court clerk's competences and legal status is a must for an ongoing legal reform. Consequently, the court clerk will soon be empowered with new, extensive administrative tasks, in order to substantially contribute to an efficient, competent and reasonably fast court resolution of legal disputes. Such development follows the

Recommendation no. (86)12 of the Ministers Committee of the Council of Europe and the provisions of the Statute of European Clerk elaborated by the Union of Rechtspfleger from Europe.

**The Strategy for the Reform of the Romanian Justice System** while comprising the necessary steps to be taken for proper implementation of the reform measures, addressed the importance of further strengthening the institutional capacity of **the Training Center for Court Clerks (TCC)** as the institution in charge with delivering professional training for clerks performing within the courts and prosecutor's offices.

The main points included in the **Strategy for the Reform of the Judiciary** refer to the following:

"Setting up the Training and Specialisation Centre for Clerks and Other Specialised Auxiliary Personnel, as institution created in Romania for the initial and continuous training of the law clerks has the goal to improve their legal training and to change the mentality within the judiciary towards this profession.

The evolution of the *law clerk profession* in Romania, in accordance with the systems of main European states, is to be developed in order to create an adequate statute for the law clerk, as well as to increase his competences, by taking over mainly administrative tasks from judges." (Chapter 11.1)

Set up through Government Decision no. 423/1999, TCC has started its operation in 2000 and in April 2002, 44 graduates became clerks of the court.

Since then, through initial training period of 8 months, there will soon be 3 generations of trainees who will become court clerks and more than 2000 sitting court clerks shall have been professionally trained on the continuous training component of the academic pursuit of the TCC.

A network of 40 trainers had to be developed in order to sustain professional training; among them, judges, prosecutors and IT experts.

The curricula for both initial and continuous training have been elaborated.

For future development of training policy, the starting period of 8 months of initial training had to be prolonged to 9 months in order to be adapted to an extended curricula required by a training scheme in line with the developments manifested in the Member States' legal systems.

Step by step, the TCC became an institution of more importance within the general process of justice reform, with increasing and demanding educational efforts.

Involved thus, in such a radical reform, the Training Center for Court clerks now faces the challenge of adapting its training policy to the requirements derived from the envisaged reallocation of tasks between judges and court clerks, as a natural response to the tendency manifested at European level.

In this respect, taking into careful consideration all the aspects involved in enhancing the educational effort of the newly established institution, and in line with the recommendations made through the final report of the first **PHARE project RO 9905.01-01 "Assistance to the National Institute of Magistracy and the Training Centre for Court Court clerks"**, the following key directions are envisaged to be further developed:

- I. Developing the institutional structure of the TCC
  - Carrying out the initial training program
  - Deliver continuous training program
  - Consolidating and developing the network of regional centers in Birlad, Sovata and Timisoara



- Continuing to support the regional centers by expanding the accommodation facilities in Birlad
- II. Elaborating and developing the appropriate curricula as well as teaching materials for the TCC
    - Periodical evaluation of the curricula for the initial and continuous training
    - Periodical evaluation and updating of the strategy of the continuous training
    - Procurement of a printing house
    - Elaborating textbooks, courses, leaflets and other teaching materials
  - III. Training of trainers (TOT) of TCC
    - Elaborating the scientific documentation for TOT
    - Completing the network of trainers
    - Delivering seminars for the TOT
  - IV. Developing the necessary skills and motivation for the court clerk profession in the perspective of the Romania's accession to the European Union and of the evolution of the court clerk's profession according to the statute of European court clerk.
    - Drawing up a deontology and a statute for the court clerk profession

These objectives are not likely to be achieved without a significant technical and financial support. Hence, further national and international assistance will have a strong impact on TCC's capacity to carry out extensive initial and continuous training scheme in accordance with the European standards.

***In order to strengthen the institution building capacity***, the Center needs to continue deliver initial and continuous training for court clerks. Regarding the training policy, academic efforts shall be made toward ensuring the permanent link between the legislative amendments and the legal information passed to the trainees.

To meet the objectives of initial and continuous training programs, it is imperative to ***elaborate and develop an appropriate curriculum as well as teaching materials and facilities***. This directive comes as a follow up of the conclusion of the ***2003 Regular Report*** of the European Union.

### A. Training policy

The **initial training** curricula provide the future court clerks with the necessary legal knowledge of the relevant legislation and required by their actual and upcoming statute. As mentioned above, the content of the curricula will be under permanent adjusting and updating and the planned courses will have to match the training need derived from the evolution of the legislation, the enforcement of ECHR jurisprudence, enforcement of EC law, the creation of specialized courts such as: commercial law courts, intellectual property law courts, labour law courts, family and minors law courts and administrative and financial law courts.

On the other hand, **training of the sitting court clerks**, in a moment when Romania is both reforming their statute and expanding their competencies, requires a permanent and coherent training effort of the Romanian authorities and international donors. One of the most important goals of these efforts is, besides the institutional development, the **creation of a**

**network of trainers** equipped with necessary knowledge and skills and able to take over in the near future the training of court clerkss from all over the country.

Due to its recent establishment, the trainers of the TCC benefited only to a small extent of the assistance provided by the previous PHARE project. It is also one of the most important recommendations of the final report of the above-mentioned project: "Highest priority should be given to the restructuring of the academic staff. (...) Professors should get the opportunities to take part in regular training schemes in order to enhance their specific knowledge and didactic skills".

In the light of this demand, TCC has finished the selection process of hiring 40 trainers for the initial training and a number of 98 trainers for the continuous training. The selection process was set up, following the guidelines of principles listed in the report of the first PHARE project, those of: selecting the most capable candidate, transparency, independence of political influence and participation of academic staff and students in the decision making process. ***Following the training of trainers' concept (TOT), under the ongoing PHARE project RO/02/IB/JH - 10 "Further assistance to the developing of the National Institute of Magistracy and the Training Center for Court Court clerkss"***, a number of 105 trainers for the initial and continuous training shall be trained on specific topics such as: civil and criminal procedural law, deontology, ECHR, EC law and IT.

It is imperative that this action continue and thus, **training of trainers** program must benefit of further extensive financial resources targeted not only to support their professional development as trainers but both strengthening the professional relations between them and improving the overall operation of the network. Hence, further training on topics equally pertaining to domestic and European Union law, as well as preparation on non-legal but complementary fields of interest is doubtless necessary for the creation of a body of professional trainers. Consequently we propose as future PHARE support in this respect, organizing Train of trainers sessions for a number of 40 trainers entrusted with the initial training and 60 trainers from the continuous training program.

Taking into considerations the aforementioned aspects involved in planning the content of the initial and continuous training program, 2004 PHARE assistance will support the implementation of training seminars for the court clerks who will benefit of the EU experts expertise on the above mentioned topics as well as the teaching experience of the Romanian trainers previously trained.

### B. Teaching materials and facilities

In order to strengthen its operations to appropriately deliver modern continuous training for sitting court clerks, Bucharest center and regional centers in Birlad, Sovata and Timisora shall continue to improve their training capacity by allocating further financial resources to assure the endowment with modern **training equipment** such as: workstations, printers, connecting devices, smart boards, laptops, video projectors, etc.

Existing IT equipment in the regional centers is insufficient to provide an adequate training of court clerkss especially in IT issues.

PHARE 2004 will significantly improve the quality and quantity of the training equipment used in delivering training sessions.

**Teaching materials** are also an important tool during the training process. Court clerkss need to have access to course materials, booklets, leaflets and other printed materials. In accordance with the recommendations of the 1999 PHARE project, the activity of promoting the role and competencies of TCC will be better achieved by creating leaflets, posters,

brochures. In order to spread such informative materials as well as teaching materials for training purposes, 2004 PHARE assistance will support the procurement of a mini-printing house. In-house printing of materials is an economic solution that has also been adopted by similar institutions from abroad. Not of less importance, is the possibility to purchase for the center's library through Phare 2004 funds, books, journals and courses edited in the EU, helping to align Romanian court clerks to the European level of professionalism.

Finally, the teaching process in regional centers will be economically and successfully accomplished by providing appropriate **accommodation facilities** needed for both furnishing of the premises as well as equipping with electro-technical equipment. 2004 PHARE funds can be allocated to support furnishing at European standards the accommodation space attached to the regional centre in Barlad which will be soon contracted

**In conclusion.** PHARE 2004 assistance is vital for an appropriate development of the Training Centre for Court Clerks, still a young institution but with an ambitious pursuit of academic objectives.

### **3.1.3 Priority 3 Improving the administration and access to Justice** ***"Promotion of mediation as alternative dispute resolution (ADR)"***

In the **2003 Regular Report**, the European Commission noted that "the average caseload per judge has also increased (to 550 cases, up from 531 last year). This heavy workload is still a particular problem in the tribunals and courts of appeal".

The **strategy for the judicial sector** (chapter 6) considers the alternative dispute resolution methods (ADR) as an effective way in order to solve the caseload of the courts on one hand, as well as to address the efficiency of the act of justice. ADR methods have a special importance for litigants in terms of avoiding or reducing the time and money they could spend during judicial proceedings.

Part of the efforts to promote the development of ADR, the Ministry of Justice has recently concluded a **Phare 2002 Twinning light** project aiming to support the promotion of legal norms on alternative dispute resolution for civil and commercial cases. Such initiative followed the recommendations of the European Commission Green Paper in this matter. Another important EU norm is the Council framework decision of 15<sup>th</sup> of March 2001 on the standing of victims in criminal proceedings, which states among other provisions that "each member state shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure and that also shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account".

Finally, the **Council of Europe Recommendation in 1999** supports the development of mediation in criminal matters within the member states, including Romania, and sets out the minimal principles to be taken into consideration when setting up criminal mediation program. The current Twinning lights 2002 provided assistance for supporting a draft law on mediation, training of a core of mediators, creating a pilot mediation centre attached to a court, designing and implementing a public awareness campaign on the benefits of ADR.

During the implementation of the Twinning Light, the recommendations of the experts were already incorporate in a **draft law on mediation in civil and commercial cases**, available for comments on the website of the Ministry of Justice for 30 day according to the law on public information. The draft law took into consideration the existing instruments adopted by the Council of Europe: **Recommendation no. 9/2001 of the Committee of Ministers on alternatives to litigation between administrative authorities and private parties**, **Recommendation no. 10/2002 of the Committee of Ministers on mediation in civil**

### **matters, Recommendation of the Council of Europe no 1/1998 on mediation in family matters and Recommendation no. 19/1999 on mediation in criminal matters.**

The draft law provides that mediation is a public service with specific characteristics (voluntarism, impartiality and neutrality, confidentiality) and defines the statute of mediators as a quasi/liberal profession similar to the one of the notaries).

The training of mediator has a multidisciplinary approach and includes knowledge of legal, psychological, sociological, communication and negotiation' issues. The mediation will take place upon request of parties or on the recommendation of the court and the mediator is selected by common agreement of parties.

A very important provision of the law is the one regulating the training and career of mediators (Chapter II) A Council of Mediation is set up in order to supervise the organization of mediators. The Council will be under the coordination of the Ministry of Justice, including 4 representatives of the ministry, 5 mediators nominated by associations of mediators, academic and high professionals nominated by Bar Union, Notaries Union, Chamber of Commerce, Ministry of Labour, Social solidarity and Family, Rectors Union and Child Protection Authority.

The Council will supervise the accreditation of the NGOs and associations able to conduct training in mediation, the organization of such training, the issuance and withdrawal of licences for practice and the disciplinary actions against mediators.

According to the draft law the mediators will have a quasi/liberal status and will exercise the activity in individual or associated offices with appropriate staff (interpreters, legal advisors, administrative personnel etc) and financial records. Mediators can participate in professional associations at local or national level. The parties will pay an honorarium stipulated in the mediation agreement priory signed. After the end up of mediation session, the mediator will conclude a minute signed by the parties inserting the result and content of agreement. The agreement is checked for legality reasons by the court a notary or an authority competent to solve the conflict between the parties. If mediation agreement was achieved while the trial in the court was suspended, the judicial and stamp taxes will be reimbursed to the parties.

While the draft law exposed above applies to civil matters, mediation can be also introduced in the area of minor criminal offences that are, under the Romanian Criminal Code, the offences where the criminal investigation can start only at the request of the victim, such as libel, slander, minor injuries, etc. Victim-offender mediation is also to be taken into consideration having in mind the restorative justice concept, which has been experimented successfully in two pilot courts in the framework of a public-private partnership project carried out between the Probation Departments attached to Dolj and Bucharest Tribunals and the NGO Centre for Legal Resources.

In order to introduce mediation in the penal proceedings, some amendments of Romanian Criminal Code will be necessary, such as the competences of the prosecutor be regulated by the principle of opportunity.

In this respect, MoJ will need further assistance in implementing the ADR methods especially through the adoption of an appropriate legal framework and secondary legislation regulating the status and responsibilities of a specialized body of mediators.

Subject to adoption of the law on mediation, MAP expertise on the improvement of the legal framework should be complemented by specific training. Training seminars at the national level will contribute to the creation of a core of professional mediators at the EU standards"

### **"Support for enhancing the legal aid in Romania"**

The **Strategy for the reform of the judiciary** mentioned that access of citizens to justice, as an essential objective and right within the Rule of Law, refers also to the possibility to get information on the organisation and operation of the judiciary as well as on the rights that persons have according to the law or that they can obtain through justice (chapter 10).

In the **2002 Regular Report**, the European commission noted a limited progress on enforcement of legal aid in Romania: "The Romanian system of *legal aid* is operational but is limited and should be extended. There have been no changes over the reporting period, and in criminal cases, mandatory legal aid is provided in all cases of detention and to all minors. However, legal aid is only mandatory during hearings for cases where the punishment exceeds five years imprisonment and in cases where the court decides that the defendant is unable to defend himself. The Civil Procedure Code contains provisions for granting *legal aid* to persons who cannot afford the legal costs of a civil case. Legal assistance service is organized by the bars and payment is provided by the Ministry of Justice." The **2003 Regular Report** noted no further progress of the legal aid system in both civil and criminal cases and stated that "limits to the right to the right to legal representation are a human right issue that needs to be addressed".

### EXISTING LEGAL FRAMEWORK

Legal aid is regulated in the Romanian Civil and Criminal Procedural Codes, the Lawyers Law and the Statute of Lawyers and represents the guarantee of the right to defence and furthermore of the access to justice in a rule of law society.

### LEGAL AID IN CIVIL MATTERS

According to the Civil Procedure Code, as amended by OUG 59/2001, the legal aid refers to the following:

- exemptions, reductions, postponements, dividing of the payment of judicial stamp tax and the judicial stamp -Art.75 (1)
- free assistance and representation from a lawyer nominated by the bar association- Art. 75 (2).

The regulation concerning the legal stamp taxes is provided by the Law no. 146/1997 (published in the Official Gazette no.173/29.07.1997), Government Decision's no.561/2003 concerning the modification and completion of the methodological norms for the application of Government Ordinance no.36/2002 regarding the local taxes.

The legal stamp taxes are differently evaluated for two main categories of actions and petitions, as follows:

- a) The pecuniary assessable actions and petitions are calculated proportionally and progressively according to the value of the petition's object. The legal stamp taxes level is placed between 17.000 lei for the actions and petitions of a value less than 342.000 lei and 45.195.000 lei + 1% of what exceeds 1.710.000.000 lei. This percent is greater for a smaller value of the object, and then is lowering as the value of the object is growing.
- b) The actions and the petitions which are not pecuniary assessable, are taxed with a fixed sum of money according to the object of the petition:
  - the petitions related to an issue of civil law;
  - the petitions related to the granting of legal personality in order to authorise their functioning;

- the petitions related to an issue of commercial law;
- the petitions related to an issue of family relations;
- the petitions related to an issue of copyright (based on Law no.8/1996);
- the petitions related to an issue within the Law no.36/1995 of the notary public and notaries activity;
- the petitions on real estate registration;
- the petitions exercising the right to an appeal;
- the petitions related to the Law no.188/2000 concerning the bailiffs and enforcement of judicial decisions.

There are also certain categories of petitions that are tax-exempted such as:

- the free judiciary assistance in the field of civil law;
- the labour cases;
- any kind of pensions;
- legal and contracted obligations of maintenance;
- the petitions related to adoption, interdiction, warship, trusteeship and the annulment, rectification and completion of the civil state acts;
- the punishment of the offenders and any kind of the penalties.

The tax-exempts also envisage certain categories of individuals or bodies directly provided by the law:

a) Categories of individuals tax-exempted:

- the petitions, actions and the appeals formulated by the prefect and mayor for the annulment of the legal acts made or given by breaking the provisions of Law no.18/1991, republished concerning agriculture land;
- the prosecutors for the petitions introduced in the exercise of their duties;
- the petitions for the registration of the owners associations addressed to the courts of first instances and the transcription of the owner titles or, the contracts for obtaining the apartments in the buildings with many houses in order to set up the owners association.

b) Categories of bodies tax-exempted:

- the petitions and the actions including the appeals filed by the Romanian Government, the Public Ministry and the Ministry of Finance and
- the petitions and the actions filed by the other public institutions with regard to the public assets.

The remissions, the reductions, the postponements, dividing of the payment are granted by the Ministry of the Public Finances through its territorial divisions, at the request of the demanding person.

The request of exception is filed to the law court, and the judge submits the request to the territorial financial organ. The request has to be motivated and accompanied by supporting documents concerning the incomes of the demanding person and of his family, a declaration concerning the person supported by the petitioner, proofs about his eventual inability of working, a declaration that he has no other incomes etc. The request is to be solved in 30 days.

The request for granting the exemption is filed at the beginning of the trial. The trial is pending but the decision in the case is postponed until the tax exemption is granted or the tax is paid. The existing procedure for tax exemption is not very complicated but the public knowledge is extremely poor. Also, the secondary norms detailing the enforcement of the law are relative new (July 2002).

The free assistance / representation in civil cases is regulated by articles 76-81 of the Civil Procedure Code, as amended by OUG 59/2001 (published in the Official Journal no.217 on 27 April 2001). Any person in need can file a request for free assistance to the court and attach the evidences of income. The actual provisions show that only the expenses for tax or judicial stamp and the honorarium of the lawyer appointed by the bar can be reimbursed by the other party if the latter lost the case. No provision is available for the potential expenses incurred during the trial by the person in need (such as fee for expertise) or for the honorarium of the lawyer if the person in need lost the trial.

Finally, in civil cases, persons need to pay taxes for having their judicial decisions enforced.

Law no. 188/2000 on the status of judicial bailiffs does not set as a requirement for the coercive enforcement of an executory title to pre-pay the honorarium to the bailiffs. In practice, the honorarium is negotiated between the bailiff and the creditor within the minimal and maximal limits and, if the creditor requires so, it can be that only part of the honorarium is paid in advance, the rest being paid upon the positive enforcement of the civil decision.

As it is also the case with public notaries, the judicial bailiffs collect, for the services rendered, the following:

- *the stamp duty* – state income, payable in the bank account of the court of first instance in the jurisdiction of which the enforcement takes place
- *the honorarium* of the bailiff.

These sums are paid by the creditor of the obligation, who shall later retrieve the expenditures paid for the coercive enforcement from the debtor of the obligation ascertained by an executory title.

### LEGAL AID IN CRIMINAL MATTERS

**Legal aid in criminal proceedings** is ruled by the provisions of the Criminal Procedure Code (see Annex II.12), in articles 171 to 173 (The general part, title V “The ordinary processual and procedural acts”, Chapter I, “Legal assistance and representation”). Articles 171-173 were recently amended and completed by Law no. 281/2003. These amended and completed provisions entered into force on January 1<sup>st</sup>, 2004.

Articles 171-173 of the Criminal Procedure Code provide for the cases of mandatory legal assistance for the accused and the offender, the procedure of granting legal assistance, the lawyer’s rights and the legal assistance for the other parties, as follows:

### ASSISTANCE OF THE ACCUSED PERSON OR DEFENDANT

**Art. 171 – (1)** The accused person or defendant has the right to be assisted by a defender throughout the criminal investigation and the trial, and the judicial bodies must inform him/her of this right.

(2) Legal assistance is compulsory when the accused person or defendant is a juvenile, military in service, military with reduced service, called-up reservist, student of a military educational institute, held in a re-education centre or in a medical-educational unit, when arrested in another case, or when the criminal investigation body or the court appreciate that the accused person or defendant could not defend himself/herself, as well as in other cases stipulated by the law.

- (3) During the trial, the legal assistance is compulsory, also in the cases in which the law provides for the offence committed life detention or imprisonment for 5 years or more.
- (4) When legal assistance is compulsory, if the defendant has not chosen a defender, measures are taken for appointing one ex officio.
- (4<sup>1</sup>) When legal assistance is compulsory, if the chosen defender does not appear, without reason, at two consecutive summons, according to the case, at the date established for an action of criminal investigation or at the date settled for trial, thus creating difficulties for the development and solution of the criminal trial, the court appoints an ex officio defender to replace the chosen one, granting him/her the necessary time to prepare the defence, which may not be shorter than 3 days, except the solution of requests regarding preventive arrest, when the due time may not be shorter than 24 hours.
- (5) The delegation of the ex officio defender ceases once the chosen defender appears.
- (6) If the defender is absent from the trial and cannot be replaced, in the conditions of par. 4<sup>1</sup>, the case is postponed.

### **The rights of the defender**

- Art. 172 –** (1) During the criminal investigation, the defender of the accused person or the defendant has the right to assist in the performance of every criminal investigation act and may draw up requests and statements. The absence of the defender does not impede the performance of the criminal investigation act, if there is proof that the defender has been informed on the date and time of the act performance.
- (2) When legal assistance is compulsory, the criminal investigation body will ensure the presence of the defender at the defendant's hearing.
- (3) In case the defender of the accused person or of the defendant is present at the performance of a criminal investigation act, this will be mentioned and the defender also signs the act.
- (4) The arrested accused person or defendant has the right to contact the defender, the confidentiality of talks being ensured.
- (5) It shall not be forbidden to contact the defender on the occasion of the extension of the arrest duration by the court, while at the presentation of the criminal investigation material this is compulsory.
- (6) The defender has the right to complain, under art. 275, if his/her claims have not been approved; in the situations stipulated in paragraphs 2, 4 and 5, the prosecutor must solve the complaint in maximum 48 hours.
- (7) During the trial, the defender has the right to assist the defendant, to exert the trial-related rights of the latter and, in case the defendant is arrested, to contact him.
- (8) The defender chosen or appointed ex officio must ensure the judicial assistance of the accused person or defendant. In case of non-compliance with this obligation, the criminal investigation body or the court may inform the managing board of the bar, in order to take measures.

### **Assistance to the other parties**

- Art. 173 –** (1) The defender of the victim, of the civil party and of the party bearing the civil responsibility has the right to draw up requests and statements.
- (2) During the trial, the defender exerts the rights of the party that he/she assists.



(3) When the court considers that, for certain reasons, the victim, the civil party or the party bearing the civil responsibility cannot handle their own defence, it orders, *ex officio* or upon request, enforcement of the measures for appointing a defendant.

If the rights of the person with no financial means may be infringed by delaying, the bar dean shall approve legal aid for such a person, in the cases provided by article 68 of Law no. 51/1995 for the organisation and exercise of the lawyer profession.

**Art. 68 – (1)** The bar ensures legal assistance in all the cases the assistance is mandatory pursuant to the law, also at the request of the Courts, prosecuting bodies and local public administrative bodies, in all the cases it is considered that the persons are in obvious impossibility of paying the fee.

**(2)** In exceptional cases, if the rights of the person with no financial means could be prejudice by the delay, the bar dean may approve legal aid granting.

**(3)** The bar organises legal assistance services in every court's premises within the county, which ensure legal assistance, and at the prosecution bodies, being led by a final lawyer, appointed by the bar council and co-ordinated by a council member.

**Art. 69 – (1)** In the cases where the legal assistance is granted *ex officio* at the request of the courts or prosecuting bodies, the payment of the fees is ensured from the funds of the Ministry of Justice.

**(2)** When the legal assistance is granted *ex officio* at the request of the local public administrative bodies, the payment of the fees is ensured from the funds of these bodies.

### LEGAL AID FOR CRIME VICTIMS

**The Law 211/2004** regarding certain measures for ensuring the protection of crime victims establishes four categories addressing directly the needs of the victim, namely:

- informing the crime victims of their rights,
- psychological counselling,
- legal assistance free of charge and
- financial compensation of crime victims by the state, each of these measures being enlarged on in the provisions of distinct chapters.

The third category of measures provided by the law regards **legal assistance free of charge** for crime victims, taking into account the fact that the observance of the victims' rights within judicial procedures depends to a great extent on the legal assistance granted.

According to the law, legal assistance free of charge is granted, upon request, to several categories of victims, taking into account, on the one hand, the seriousness of the perpetrated crime and, on the other hand, the financial condition of the victim.

Thus, legal assistance free of charge is granted, in the first place, to direct victims of serious crimes perpetrated with violence (the attempt to the crimes of murder, first degree murder and particularly serious murder, serious battery and intentional crimes which resulted in the serious injury of the victim) or of serious crimes related to sexual life (the crimes of rape, sexual intercourse with a minor, sexual perversion inflicted on a minor or perpetrated with violence). Legal assistance free of charge is granted also to indirect victims of certain serious crimes (spouse, children and persons provided for by direct victims deceased as a result of a crime).

Secondly, legal assistance free of charge is granted to the victims of other crimes than those mentioned, irrespective of the nature of the crime, if the monthly income per family member for the victim's family is at most equal to the minimum gross national salary established for the year when the victim made the request for legal assistance free of charge.

In both cases, the granting of legal assistance free of charge is conditioned by the perpetration of the crime on Romanian territory or, in the case of crimes perpetrated outside the national territory, by the victim's capacity as a Romanian citizen or as an alien who domiciles legally in Romania and by the carrying out of the penal proceeding in Romania.

Also, the granting of legal assistance free of charge is conditioned by the notification of criminal investigation bodies relative to the perpetration of the crime, within certain due times provided by the draft law. Through the notification of the criminal investigation bodies within due time, the victim gives his support in the acknowledgement of crimes in time. The victims who have not reached the age of 18 and those who are placed under interdiction do not have the obligation to notify the criminal investigation bodies relative to the perpetration of the crime.

In order to ensure the applicability of provisions relative to judicial assistance free of charge, the draft law regulates, in detail, the procedure of granting judicial assistance free of charge and establishes the limit of the sum to be granted to two minimum gross national salaries.

### Problems to be addressed

First, as presented before the legal provisions related to this topic are not uniformly regulated in the existing norms, which makes their enforcement to be performed at a very low standard. Another aspect that must be taken into account is the lack of public information on the existence and enforcement of legal aid provisions in general.

In order to increase the quality of the legal aid into the Romanian legal system it is necessary as a first step to improve the legal framework in the field. Building an efficient legal aid scheme at the European standard in the Romanian legal system has to align with the principles stated in the *Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such dispute* as well as other European regulations referring to legal aid.

Another issue refers to the quality of the legal assistance granted by lawyers, which is directly linked to the fees provided by the state for this activity. As noted by the European Commission in the 2003 Regular Report, "Remuneration of the lawyers providing legal aid is low and is not dependent on the time spent on the case. The motivation for lawyers to provide legal aid is therefore limited, especially in complicated and time/consuming cases".

Because of the insufficient public information on the right to receive legal aid, through access to legal advice, legal assistance/representation in the courts and tax-exempted situation, a public awareness campaign and the creation of information offices in the courts could bring an improvement.

Keeping in mind all these aspects of legal aid, MAP assistance will improve the level of awareness among diverse categories of population will test the socio-economic, budget and statistical impact of legal aid provisions and would contribute to the improvement of access to legal aid.

With the view to increase the quality of the legal aid in the Romanian legal system, Romania should extend legal aid and adopt other measures in order to facilitate the access to justice by:

- elaborating and adopting a statute regarding legal aid;

- applying the necessary measures in order to extend legal aid in accordance to the legislative framework;
- amending the law no.178/1997 on the authorisation and fee for the interpreters and translators.

### **“Increasing the transparency of the act of justice”**

Access of citizens to justice, as an essential objective and right within the Rule of Law, refers also to the possibility to get information on the organization and operation of the judiciary as well as on the rights that persons have according to the law or that they can obtain through justice.

The **Strategy for the reform of the judiciary** included a full chapter to the transparency of justice to the public providing **for setting up in all courts and prosecutor's offices the offices for information and public relations to provide connections between the court or prosecutor's office and the public and the media, in order to ensure transparency of the judicial activity. Any information on the activity of magistrates can be provided only through them (chapter 10).**

Access of the citizens to justice is also provided by the revised Constitution, art. 21.

**Law no. 544/2001 on access to public information** provides - in art. 4 - the obligation of the all-public institutions to organize specialised departments for information and public relations or to nominate a person with attributions in the field.

In this respect, the draft Law on *judicial organization* provides for setting up of offices for information and public relations in all courts and prosecutor's offices in order to connect judiciary activity with the public and the media.

“(1) The office for information and public relations shall ensure the connections of the court or the prosecutor's office with the public and the media, in order to ensure transparency in the judicial activity.

(2) The office shall be run by a magistrate designated by the court president, who also serves as a spokesperson. (Art. 105)”

These offices will offer information on individual's rights and will provide access to the list of lawyers which is updated annually by the Union and Lawyers. Also, the offices will provide public information with regard the activity of bailiffs and Ombudsman.

In September 2003, the Government approved the creation of 56 positions for the offices for information and public relations at the level of courts of appeal and tribunals. The spokespersons have been already nominated, and their name and contacts are available on the Ministry of Justice's website.

Also, SCM has already established its own public relation office.

The institution in charge with magistrates training - NIM – did not include in the curricula any specific training – initial or continuous – in aspects regarding the PR field, so that the spokespersons have to attend sporadic conferences and seminars – like that organized in the framework of RO 9910.05 Phare programme.

The project is meant to increase the professionalism of magistrates, spokespersons and civil servants in the office through providing systematic training on issues related with their new competencies: PR matters, writing press releases etc The project is designed also for the training of the civil servants working within the a specialized office created at the MoJ level.

Through the MAP assistance, the new created offices should also be endowed with communication facilities (telephone, fax, IT equipment) for the good accomplishment of its

duties. Information desks with digital information could be placed in the courts for public use, containing information of interest for the citizens.

The proposed Phare multi-annual assistance will also support the conclusions of the 2003 Regular Report that: "Romanian legislation on the free access to public information was adopted in 2001. However, application of the law is partial and a significant number of authorities have failed to respond to requests for information. This situation has led to court cases being brought against public institutions for non-respect of the law although the situation remains unresolved".

### **3.1.4 Priority 4 Building an efficient management system**

#### **"Continuation of the automation of the courts and prosecutor's offices"**

In the **2003 Regular Report**, the European Commission noted that "there has been some progress in the introduction of computers into courts and prosecutors' offices, although actual needs are far from being met. The introduction of the Integrated Case Management System has been disappointingly slow and training of magistrates and clerks in the use of the system is at a very early phase.

As the **Government strategy for the reform of judiciary** states, "the rapid and efficient accomplishment of the justice act as well as the obtaining in due time of various connected information requires the development of an integrated IT system".

More, the modern IT technology shall ensure the procedure standardisation within the whole system. **(chapter 9.5.1)**

Through **Phare 97 Programme** a complex case and document management system was created in order to register cases (judiciary's files) electronically, to keep the evidence of the stage of a case, to communicate statistics and other documents with upper level courts or prosecutor's offices and with the Ministry of Justice. The Legal Library and Documentation System, also created through Phare 97 is a software application, which allows a quick spread of the decisions of the High Court of Justice and Cassation and the Constitutional Court to lower jurisdictions. **The Ministry of Justice acquired for the whole judiciary system 5.500 licenses for case management, 5.500 licenses for the legislative database, 5.500 licenses for database/client and 489 licenses for database/server.**

Under **Phare 2000 Programme**, the hardware (2719 PC-s, 60 servers, modems, 1845 printers, 89 scanners, and cabling materials) was acquired as support for the installation of the CDMS and LLDS applications. **The equipment covered 121 locations**, between them: the Supreme Court of Justice, 9 courts of appeal (from a total of 15 at national level), a second instance court (from the 41 at national level), all the 6 first instance courts located in Bucharest, the prosecutors offices attached to this courts, the penitentiaries, probation offices. Phare 2000 provided hardware equipment for 17 courts and 17 prosecutorial offices. Presently, CDMS is installed in 25 courts (17 courts endowed by Phare and additional 8 courts) and 38 prosecutorial offices (17 endowed by Phare and additional 21 locations). **The total numbers of computers existing in the prosecutorial offices through different funding means is 652 and 48 servers.**

During 2003, the Ministry of Justice has finalized a tender regarding the implementation of a data communication infrastructure interconnecting all units contributing to the achievement of justice. This infrastructure shall allow for the duration of data transfers, their analysis and also the decision-making process to be considerably reduced. Currently, the communication infrastructure is implemented and functional in all 15 tribunals, all 41 courts of appeal, 41 courts of first instance, 4 land book offices, the Ministry of Justice, the General Department of

Penitentiaries and all penitentiaries. The process of installing WAN communication shall continue during 2005-2006 in order to integrate the remaining locations

Aware about the importance of the automation process, the Ministry of Justice approved an **increase of 241 IT posts** at all the courts financed through the national budget starting 2004. The cabling process of the courts is also on going and will continue in the remaining courts. The same is available for the prosecutor's offices.

The computerisation process shall continue in the period 2005 – 2007, in order to achieve an integrated IT system, the implementation of the case management system and the legislative library, and in order to increase the degree of computerisation of the activities carried out in the penitentiary system.

The continuation of Phare assistance for completing the automation of the courts is a matter of primary urgency, in line with the general evaluation made by the European Commission in the **2003 Regular report** (chapter 1,4): “ the judicial system needs to improve the management of cases and the consistency of judgements as well to increase the independence of the judiciary. These key issues must be urgently addressed.”

In line with these recommendations, the Ministry of Justice adopted a new **IT strategy for 2004 - 2007** stating the next steps provide for the full automation of the judiciary system. Phare assistance will have an important input in supporting the completion of the automation. (see annex 4 )

The main support will focus on developing the existing software applications, procuring hardware for the remaining locations and developing new complex software application .

As regard the management of courts, the **Strategy for the judiciary** provides the following “The court manager institution is to relieve the courts’ presidents of their present administrative duties. This requires new posts for court managers and court clerks. Moreover, the existing human resources are to be used after intensive training and through professional re-conversion according to their competencies and professionalism (in the case of tribunals). Where necessary, court managers will be employed (courts of appeal).” (para. 9.4.1.1).

According to the Law on the Organization of the Judiciary, a position of “court manager” shall be established at the High Court of Cassation and Justice, the Prosecutors’ Office attached to the High Court of Cassation and Justice, the National Anti-corruption Prosecutors’ Office, courts of appeal, prosecutors’ offices attached to the courts of appeal, tribunals and prosecutors’ offices attached to the tribunals.

The managers shall have the statute of public servants and they shall have the rights and duties provided by the law for the latter

The economic, financial and management department of the tribunals and prosecutor’s offices attached to the tribunals ensures the economic, financial and management support for the specialized tribunals and courts of first instance or, upon the case, for the prosecutor’s offices attached to these from within their jurisdiction.

Law 92/1992 on judicial organization provides for existence of specialized financial-administrative departments at the level of Tribunals (second instance courts), in charge with the financial activity of the respective Tribunal, of the first instance courts under its jurisdiction and, in specific cases, of the Court of Appeal.

**Through the actual draft Law on judicial organization, it is provided that specialized financial-administrative departments** will be created also at the level of the High Court of Cassation and Justice, Prosecutor’s Office attached to the High Court of Cassation and Justice, at the level of National Anticorruption Prosecutor’s Office and at the level of specialized courts.

Even decentralized, this activity is extremely difficult due to the lack of automation of the described departments. All the information and data are being kept on written format, in the form of registers. This makes the gathering and processing the information very difficult, having negative impact on the activity of the courts in general. Consequently, international assistance for automation of the financial departments would constitute a significant factor for improving the functioning of the judicial system.

**The project will provide assistance for purchasing of computers for the Financial Departments of the Tribunals, but will also facilitate the creation of a software application to be used by the accountants of the courts, prosecutorial offices. The application could be also made available for penitentiary system. Also the software should be more complex incorporating other tasks such as the management of human resources, inventory etc . The software will provide an efficient cost management tool, by integrating a financial application, a human resources application, a procurement and stocks application in an ERP solution.**

The software will provide an efficient cost management tool, by integrating a financial application, a human resources application, a procurement and stocks application in an ERP solution. All applications will be tailored to the judicial system characteristics and will be customizable to fit the specific needs of any of the components of the judicial system.

Its source code will be the property of the ministry of the justice and will require no additional licenses.

The IT system will have the following characteristics: Integrated system, open, able for scanning, WEB compatibility and unitary. The architecture of the system needs to allow subsequent development and interface with other systems dedicated/specific with financial / accounting implications

The system will use a modern architecture (3 tiers type)

All users will access the system through a WEB browser, preferably IE most updated version  
Financial-accounting and budgeting management must:

- Implement modern methods of evidence and control, methods and models of private economy
- Comply with the Romanian legislation and recommendation of the Ministry of Finance as regards the software applications
- Be easy to reconfigure / reshaped according to legislative changes

The integrated system of financial/accounting management must promote responsibility, support patrimonial integrity of the public institution (public and private patrimony), ensure the accounting in double system, and allow registering economic/financial operations when a credit or debit appeared, according to EU standards.

Organization of an institution will involve justification of decision so that the integrated system of financial/accounting management system to allow implementation of a set of procedures and accounting practices, in line with the basic requirements of accounting:

- Accounting of financial commitments
- Principles of accounting
- Financial records
- Financial situation (balance) and its annexes
- General budgets and simplified budgets for operative control
- Account of budgetary execution

- Situation of revenues and expenditures
- Analyzing the performances of institution base don economic criteria

The results of the system operations must be available to decision making level through specialized access to the system or transcriptions.

Management of personnel data will ensure the evidence of relevant data of employees, professional career, annual awards and sanctions, statistics, prognosis with regard to increasing the trust level in judicial system and anti-corruption. The system must allow the registration and extract of payments through an integration with the financial application.

Application of procurement and inventory will allow an objective evidence of all acquisitions, reducing the costs.

Efficient management is a key factor in a smooth functioning of the courts, being therefore of significant contribution to the consolidation of the institutional capacity of the judicial system.

A manager should use the software application in order to have an overall picture of both the financial and endowment aspects and the human resources policy. Such software application could be further used by courts, prosecutorial offices and penitentiaries units.

All the investment should be accompanied by relevant training for IT experts and for the final users.

### 3.2 Sectoral rationale

The **Strategy for the reform of the judiciary** clearly mentioned all the objectives of reform until the accession into European Union. Chapter 2.3 of the Strategy stated the main steps to achieve the objectives of the Strategy:

- “amending *the Constitution* and adopting *the new legislation* on the organisation of law courts, the statute of magistrates and the organisation and operation of the Superior Council of the Magistracy, in order to consolidate the independence of the judiciary
- safeguarding *the independence and impartiality* of the magistrates’ career – by way of recruitment, training, promotion and leaving the post
- applying IT in each unit of the system and interconnecting them
- constant *professional training and specialisation* for magistrates and auxiliary personnel
- ensuring the *financing* of the reform process”

Some of these steps started at the end of 2003 or advanced in the first half of 2004 until the final drafting of the MAP (i.e amending the Constitution, transposing the relevant *acquis* under JAI chapter, recruiting new magistrates and court clerks, providing training , continuing the automation process, drafting laws on judicial organization, mediation etc) . Other steps are permanent and require that the Government effort be doubled by EU assistance.

There will be 3 stages of Phare assistance. Under Phare 2004 assistance for SCM, TCC, mediation, automation and assistance for legal aid would be more appropriate. Phare 2004 will focus on the most pressing needs for assistance necessary to set up solid basis for the functioning of the justice.

Phare 2005 will be dedicated to automation (step 2) and specialized courts.

The final assistance Phare 2006 will focus on transparency, automation (step 3) and specialized courts (step 2)

#### 3.2.1 Identification of needs and necessary action

##### 3.2.1.1. Priority 1 Building an independent judiciary in Romania

### **"Strengthening the role of the Superior Council of Magistracy (SCM)"**

Currently, the MoJ is drafting new laws on judicial organisation, statute of magistrates and organization of Superior Council of Magistrates (including competences, election of members, staff, logistics etc).

In 2004 Phare assistance will support the SCM in terms of enforcing the new laws by

- providing training to staff,
- strengthen the relations with similar structures in EU,
- endowment with IT equipment and furniture
- creation of a law journal,
- promoting meetings with local associations of magistrates,
- improving and fine-tuning the regulative and administrative groundwork of the SCM,
- the creation of a web site of SCM as well as a data base on the results of its activities.

### **"Assistance for the functioning of the specialized courts"**

*The creation of specialized courts is an important objective mentioned in the Action Plan to be achieved in gradual steps until 2008. Until now steps were taken to create specialised panels and sections.*

In order to allow the specialized courts be functional, increased human resources, training of personnel and adequate infrastructure are necessary to ensure an appropriate work climate.

#### *3.2.1.2. Priority 2 - Building a professional judicial system*

### **"Further development of the National Institute of Magistracy (NIM)"**

Presently, NIM is regulated by the judicial organisation law and in house regulation. NIM planned a strategy of initial and continuous training, set up a network of trainers and allocated human resources and funds for setting up regional centres of training. However, NIM needs further enhancement in terms of providing training of new recruited judges on extraordinary exams and building a solid core of trainers for each field.

- MAP will continue the reform of NIM taking into consideration the future needs: strengthening the network of trainers at regional level,
- fostering the access to information for NIM trainees living in dormitory,
- providing training for specialized magistrates
- providing best accommodation facilities to a regional training center

Phare 2004 supporting further institutional development of NIM and training for magistrates will continue the assistance of the 2002 Twinning project and will complement the national effort.

### **"Further development of the Training Centre for Clerks (TCC)"**

TCC is still a young institution. Until now, steps were taken to improve both the initial and continuous training policy and improving the network of trainers. Since 1999, through initial training period of 8 months, there will soon be 3 generations of trainees who will become court clerks and more than 2000 sitting court clerks shall have been professionally trained on the continuous training component of the academic pursuit of the TCC.

A network of 40 trainers had to be developed in order to sustain professional training; among them, judges, prosecutors and IT experts.

The curricula for both initial and continuous training have been elaborated.



For future development of training policy, the starting period of 8 months of initial training had to be prolonged to 9 months in order to be adapted to an extended curricula required by a training scheme in line with the developments manifested in the Member States' legal systems.

In the nearest future TCC will have a special law of organisation and will focus on, improving the initial and continuous curricula, strengthening the trainers networks, facilitating the training process with both teaching materials and furnishing. MAP will have an important input in supporting some of these measures with both expertise and facilities.

### 3.2.1.3 Priority 3 Improving the administration and access to Justice

#### **“Promotion of mediation as alternative dispute resolution (ADR)”**

The actual draft law provides that mediation is a public service with specific characteristics (voluntarism, impartiality and neutrality, confidentiality) and defines the statute of mediators as a quasi/liberal profession similar to the one of the notaries). Until now, the efforts were made to define the draft law and to create a core of future mediators. However, after the adoption of the new law, the mechanism of training of mediators should be replicated nationwide.

*The Phare MAP assistance will provide support for creating a network of mediators, improving the institutional framework and fine-tuning the regulatory framework of mediation*

#### **“Support for enhancing the legal aid in Romania”**

Legal aid is regulated in the Romanian Civil and Criminal Procedural Codes, the Lawyers Law and the Statute of Lawyers and represents the guarantee of the right to defence and furthermore of the access to justice in a rule of law society.

The legal provisions related to this topic are not uniformly regulated in the existing norms, which makes their enforcement to be performed at a very low standard.

The Phare assistance will improve the level of awareness among diverse categories of population will test the socio-economic, budget, institutional and statistical impact of legal aid provisions and would contribute to the improvement of access to legal aid.

#### **“Increasing the transparency of the act of justice”**

In September 2003, the Government approved the creation of 56 positions for the offices for information and public relations at the level of courts of appeal and tribunals. The spokespersons have been already nominated, and their name and contacts are available on the Ministry of Justice's website.

Also, **SCM** has already established a public relation office.

The institution in charge with magistrates training - NIM – did not include in the curricula any specific training – initial or continuous – in aspects regarding the PR field, so that the spokespersons have to attend sporadic conferences and seminars – like that organized in the framework of RO 9910.05 Phare programme.

The MAP assistance is meant to increase the professionalism of magistrates, spokespersons and civil servants in the office through providing systematic training on issues related with their new competencies: PR matters, writing press releases etc The project is designed also for the training of the civil servants working within the a specialized office created at the SCM level.

Through the Phare 2004 project, the new created PR offices should also be endowed with communication facilities (telephone, fax, IT equipment) for the good accomplishment of its duties. Also, information desks for citizens will be placed at the entrance of courts .

### 3.2.1.4      *Priority 4 - Building an efficient management system*

#### **“Continuation of the judiciary ‘automation’”**

The continuation of Phare assistance for completing the automation of the courts is a matter of primary urgency. Automation of the judicial system will follow the strategic lines incorporate in the IT Strategy adopted in 2003 by the Romanian Ministry of Justice

The main support will focus on developing the existing software applications, procuring hardware for the remaining locations and developing new management software application. The proposed software will provide an efficient cost management tool, by integrating a financial application, a human resources application, a procurement and stocks application in an ERP solution.

### **3.2.2      *Identification of projects***

#### 3.2.2.1      *Priority 1 - Building an independent judiciary in Romania*

In this moment there is an ample reform aiming to increase the independence of judiciary and its representative body, Superior Council of Magistrates. It is envisaged that the package of law related to judiciary will pass end June 2004 and a new SCM will be set up with more competences in guarantying and supervising the independence of the judiciary.

The proposed assistance will support the new institutional and legislative framework related to the functioning of the new SCM

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
1	<u>Twinning arrangements for SCM</u>	1

The proposed assistance assume that the SCM will be set up and function in terms specified now by the draft laws on judicial organization, on the statute of magistrates and on the organisation and functioning of the SCM will take effect.

This task will support the fine-tuning of the legislative and institutional framework of SCM after the adoption of the new legislative package, training of the staff and members of the council and assistance to promote legal debates by means of a law journal.

Also, independence of the judiciary is connected to the structure of the courts. Specialised courts will definitively sustain an Independent Judiciary.

#### **Tools**

- The first task will consist of 1 twinning covenant PHARE 2004

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
2	Endowing SCM with appropriate facilities	1

This task will ensure appropriate endowment support for an efficient functioning of SCM

## Sector Programme Fiche 2004-2006

### Tools

This task will be implemented by 1 supply contract PHARE 2004

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
3	Further assistance to improve the juvenile justice system	1

This task will be a follow up of the Twinning 2003 project on juvenile justice in terms of further training multidisciplinary teams and creating psychological tests for the personnel in charge with minors

### *Tools: Phare 2005 Twinning Contract*

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
4	Endowment with specialized equipment and furniture for minors	1

This task will provide appropriate facilities (equipment and furniture) for personnel working with minors

### *Tools Phare 2005 supply contract*

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr1</i>
5	Support for the functioning of the new created specialized courts	1

This task will provide technical assistance and facilities for future specialized courts in other fields of law following an assessment on the necessity to set up new courts

### *Tools: Phare 2005 Supply*

#### 3.2.2.2. *Priority 2 - Building a professional judicial system*

In this moment there is an ample reform aiming to increase the professionalism of the whole judiciary. It is envisaged that the package of law related to judiciary will pass in June 2004 and specialized courts will be set up. In this respect more training for all magistrates and court clerks will be necessary to accompany the measure of setting up specialized courts. Also, Romania's accession to EU in the upcoming years implies permanent training in EC law and updating in the new acquis .

The proposed assistance will support further development of the NIM and TCC as institutions in charge with training of the magistrates and court clerks and the establishment of specialized courts (training and endowment of premises)

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
6	Improving the access of NIM trainees in dormitory to information and the	2

## Sector Programme Fiche 2004-2006

	access of magistrates to information	
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This task will facilitate the access to information for trainees and sitting magistrates

### Tools

Phare 2004: - 1-supply contracts for IT equipment and printing house (printing equipment)

Task nr	Title	Relates to priority nr
7	Ensuring appropriate facilities for trainees in accommodation space of one regional centre	2

This task will provide appropriate endowment for the future trainees' accommodation facilities to be established close to Timisoara regional centre

### Tools

:Phare 2004:

- 1-supply contracts for furniture

Task nr	Title	Relates to priority nr
8	Further assistance for NIM	2

This task will contribute to the enforcement of the training policy for magistrates created under Twinning 2002 by delivering intensive training for trainers among judges and prosecutors.

Tools: Phare 2004

- 1 TA contract

Task nr	Title	Relates to priority nr
9	Further assistance for developing TCC	2

This task will contribute to a further fine-tuning of institutional framework of TCC to deliver continuous training of court clerks and to create a solid network of trainers for both the initial and continuous training

Tools : Phare 2004 TA contract

Task nr	Title	Relates to priority nr
10	Improving the teaching process at TCC	2

This task will contribute to a an improved dissemination of the legal and IT knowledge to court clerks

Tools: Phare 2004

- 1 supply contract split in 3 lots (IT equipment, teaching materials and printing house (printing equipment))

Task nr	Title	Relates to priority nr
11	Providing adequate facilities for training of clerks	2

This task will contribute to the endowment of accommodation facilities for Barlad regional centre for court clerks

Tools: Phare 2004

- 1 supply contract

### 3.2.2.3 Priority 3 - Improving the administration and access to Justice

In this moment there is an comprehensive reform aiming to increase the administration of justice. It is envisaged that the package of law related to judiciary will pass in June 2004 and will support the administration and transparency. Also releasing the workload of the courts is a priority for the reform and therefore promotion of alternative dispute resolution measures are welcomed and necessary.

The proposed assistance will support promotion of mediation, access and transparency of justice .

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
12	Further assistance to promote mediation	3

This task will contribute to a decrease of the workload on the justice system by creating an alternative resolution system

Tools: - There will be one Phare project 2004 - 1 TA contract

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
13	Assistance to set up an efficient legal aid system	3

This task will contribute to the improvement of an effective an accessible access to justice

Tools

There will be one Phare project 2004 – 1 TA contract

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
14	Assistance to create an efficient public information system	3

This task will refer mainly to the creation of a professional body of public relation professionals in charge with representing the courts in front of public and media.

Tools

Phare 2006 Twinning contract

<i>Task nr</i>	<i>Title</i>	<i>Relates to priority nr</i>
15	Endowment of public relation offices with appropriate equipment and information desks for citizens	3

This task will contribute to the creation of appropriate facilities for staff within the public relation offices in the courts and SCM, as well as information desks at the entrance of courts.

Tools

Phare 2006 supply contract

## 3.2.2.4 Priority 4 - Building an efficient management system

In this moment there is a comprehensive reform aiming to increase the efficiency of judiciary. It is envisaged that the package of law related to judiciary will pass by end June 2004 regulating the activity of the judicial system.

The proposed assistance will add a new step in the process of automating the remaining locations of the system and creating new software applications

Task nr	Title	Relates to priority nr
16, 17	Continuing the automation of the courts	4

This task will finalize the automation process of the system with hardware

Tools:

Phare 2004 - Investment split in 3 lots for MoJ and prosecutorial offices: cabling, IT equipment, IT training

Phare 2005 - Investment, split in 3 lots for MoJ and prosecutorial offices: cabling, IT equipment, training

Task nr	Title	Relates to priority nr
18	Improving the financial, economic and human resources management, of the judicial system and completing endowment with hardware	4

This task will finalize the automation process of the system with relevant software applications

B. Phare 2006 - There will be 1 supply contract with 2 lots (software and corresponding training in IT)

Tools:

Phare 2006 supply contract

Project Nr	Title	# of tasks	Relates to priority	Total cost €Mio	Starts at DD/MM/YY	Ends DD/MM/YY	Implementation tools
1	<b>Building an independent judiciary in Romania</b>	5	1	4,15	1-10-2005	20.10-2009	2 Twinning, 2 Supply
2	<b>Building a professional judicial</b>	6	2	2,8	1-10-2005	30-10-1007	1 TA 4 Supply

## Sector Programme Fiche 2004-2006

3	<b>system Improving the administrati on and access to Justice</b>	4	3	3,9	1.10.20 05	20.10- 2009	2 TA 1 Twinning 2 Supply
4	<b>Building an efficient managemen t system</b>	3	4	49,11	1.10.20 05	20.10- 2009	3 Supply

### 3.2.3 Activities and Means

Any details in the sector programme fiche and its annexes referring to number of contracts, experts' number and profile, as well as mandays, are only for planning reasons and will be more precisely defined during the implementation stage.

#### 3.2.3.1 Priority 1 - Building an independent judiciary in Romania

#### Task 1 (Twinning arrangements for SCM ):

##### Activities

- training activities (seminars and workshops) for SCM administrative staff in order to improve their management skills (budget planning for the SCM and the courts, accounting, procurement, international cooperation, press- and public relations, staff management , project management, data and statistics analysis, etc.), including internships for 5 persons of the SCM in SCM/court administrations of EU Member States. Training on budgeting will also involve administrative staff from the courts and prosecutorial offices in charge of budgeting and accounting ;
- legal training activities for Members of the SCM, and for the judicial staff of the SCM involved in preparing the files for the Plenum and the Sections ( in the field of disciplinary law; in the field of constitutional law concerning justice in general and the SCM in particular; in the field of administrative law, with special regard to the proper handling of personnel issues, i.e, criteria for decision-making when several candidates compete for the same position, to the proper handling of complaints of magistrates against the results of evaluations and of complaints about infringements of judicial independence, etc.);
- seminars on law drafting and basic aspects of judicial administration to SCM Members and juridical staff of the SCM unit in charge of legislative matters and basic issues concerning judicial independence and the functioning of the judiciary;
- promoting visits of delegations of the SCM at comparable institutions and at Courts in other European States in order to establish contacts and have exchanges of experience; fostering activities and co-operation of the Council in the framework of the European networks in the field of justice; encouraging visits of representatives of comparable institutions from EU Member States in Romania;
- supporting the establishment of good working relations with magistrates associations and professional associations of other stakeholders in the field of justice by promoting and

hosting regular joint meetings for exchanges on issues of common interest concerning the justice system;

- continuously assessing and, eventually, assisting in improving and fine-tuning the regulative and administrative groundwork of the SCM, according to the needs that will be experienced in any process of implementing new and yet untested attributions of the SCM, providing best practice expertise.
- promoting the creation and assisting in the starting phase of a law journal to be published under the auspices of the SCM, as a forum for juridical discussion and as a source of information on legislative changes and leading court decisions.

Means: long term expertise of a PAA

Profile of the PAA

- Experienced judge with administrative knowledge and skills
- 15 year experience and broad judicial and administrative background to enable him to cover the whole range of activities of the project
- Very good communication skills
- Computer skills
- English/French speaker

### **Task 2:** Endowing SCM with appropriate facilities

Activities

- To procure legal documentation
- To endow the SCM head quarter with some IT and office equipment and furniture (NB A part of endowment will be provided by MoJ when the SCM will be installed in the new headquarter)
- To create a LAN network between SCM and courts, respectively prosecutorial offices

Means:

The second component project will consist of 1 supply contract that will achieve:

- Romanian and Foreign legal documentation procured for a centre of documentation within the Council
- IT equipment for SCM procured (servers, PC, printers etc)
- Office furniture for SCM procured: chairs, desks, meeting tables, drawers, racks
- LAN network created using the infrastructure existing at the courts and prosecutorial offices at that moment

### **Task 3:** Further assistance to improve the juvenile justice system

Activities

- assessment of enforcement of the new primary law and secondary legislation with regard to the establishment of specialised courts for minors.
- strengthening the local specialized structures to be created under Phare 2003
- specialized training for magistrates and trainers and trainees lawyers from Institute for Training of Lawyers in specific areas such as: ECHR and Un Convention on the Rights of the Child standards, juvenile psychology, psychology of family, social work, biology and



physiology of a child, detection of signs of abuses on child, special issues for minors offender.

- further training of multidisciplinary teams at local level to be created under Phare 2003 in very focused areas (e.g. victimology, criminology, international standards for the treatment of juveniles)
- designing, testing and distribution of a psychological test for the personnel working with minors as part of a regular psychological evaluation
- deliver specialized inputs in order to develop methods and techniques for working with victim minors, part of the general victim protection policy.

Means:

Phare 2005- Twinning:

Profile of the PAA

- Experienced judge in minors and family matters
- 15 year experience and broad judicial and psychological background to enable him to cover the whole range of activities of the project
- Very good communication skills
- Computer skills
- English/French speaker

**Task 4:** Endowment with specialized equipment and furniture for minors

Activities

- procurement of recording equipment (audio, video etc) and endowment of hearing chambers for police, prosecutor office and specialized courts for minors affairs with furniture, surveillance equipment for minors' behaviour.

Means Phare 2005 supply contract for the following

- equipment (recording equipment), surveillance equipment
- furniture (desks, chairs, racks, etc)

**Task 5:** Support for the functioning of the newly created specialized courts

This task will be funded under Phare 2006

Activities

- assessment of the needs of the future created specialized courts under a PPF
- procurement of IT equipment, furniture and other equipment that might be necessary and result after the assessment

Means:

PPH funded -technical expertise/assessment report

Phare 2006 supply contract for the above mentioned procurement

3.2.3.2 *Priority 2 - Building a professional judicial system*

**Task 6:** Improving the access of NIM trainees in dormitory to information and the access of magistrates to information

This task will facilitate the access to information of NIM trainees in the study rooms placed in the dormitory

### Activities

- Installing IT equipment in the NIM dormitory that would allow the trainees to have direct access to information.
- Procuring printing house for the multiplication of materials for the use of magistrates

The dormitory accommodates 135 trainees each year, out of a total of 200 trainees studying in the initial training module, there are three study rooms inside the dormitory

Means: Phare 2004 supply contract for 20 computes and 3 printers and printing house

**Task 7:** Ensuring appropriate facilities for trainees in accommodation space of one regional centre

Activities: Endowment of the continuous training centre of Timisoara with accommodation facilities

Means: Phare 2004 supply contract for procuring furniture for Timisoara regional centre

**Task 8:** Further assistance for NIM

### Activities

- training of trainers - continuous training for the improvement of the 120 trainers' network (existing 80 trainers on civil law, criminal law, commercial law and the 40 to be created trainers on EC law, ethics and human rights under the current 2002 Twinning Program). The training will include seminars on will include topics on civil law, criminal law, commercial law, EC law, ethics and human rights but more focus will be on covering the organised crime sector - judicial cooperation, money laundering, economic crimes, anti-corruption, cyber crime, competition law, fight against traffic of human beings, fight against terrorism. The training of trainers will include the 2 existing networks on judicial cooperation in civil and criminal matters and the network of EC law correspondents.
- workshops on didactical techniques and modern techniques of communication for the trainers' network for improving teaching skills of the NIM trainers.
- internships for NIM trainers to similar institutions in Europe (Ecole Nationale de la Magistrature, France; Judicial School, Spain etc)
- Continuous training seminars – concentrating on the future judges for the specialized courts/panels (such training will not include the training for juvenile justice for which a separate project is envisaged) The main topics envisaged are (European) labour law, administrative law, commercial law, intellectual property.
- Training for prosecutors working during the investigative or trial phase (EC law, Cyber-crime, organized crime, money laundering, terrorism etc)
- Elaboration of practical guides on specific fields of law (money laundering, economic crimes, anti-corruption, cyber crime, competition law, fight against traffic of human beings, fight against terrorism) designed for NIM continuous trainers but also addressed to all judges and prosecutors.
- Further endowment of NIM library with new legal titles, in the above fields, updated until 2004-2005, to help both trainers and future magistrates in improving their knowledge in the fields of money laundering, economic crimes, anti-corruption, cyber crime,

competition law, fight against traffic of human beings, fight against terrorism , EC law, human rights.

Means: Phare 2004 TA contract

### **Task 9:** Further assistance for developing TCC

#### Activities

- Training seminars for 40 training staff of the initial training and 60 trainers for the continuous training with a view of further developing this profession in new fields of interest required by the harmonisation process of the national legislation with the *acquis communautaire* and by the necessity to set up specialised courts (EC Law, Human Rights, commercial law, labour law, administrative and financial law, n )
- Training seminars for sitting clerks in the above mentioned fields (training will be organised at the regional centres and will be moderated by both EU experts and trainers previously trained)
- Organizing an international conference on the role of court clerk in EU

Means Phare 2004 TA contract

### **Task 10:** Improving the teaching process at TCC

#### Activities

- Purchase teaching materials, legal documentation, equipment and printing house for TCC in Bucharest and training centres in Bârlad, Sovata și Timișoara.

Means Phare 2004 supply contract split in 3 lots (IT equipment, teaching materials and printing machine)

### **Task 11:** Providing adequate facilities for training of clerks

#### Activities

Endowment of the accommodation space attached to Barlad centre with furniture

Means Phare 2004 supply contract for procuring the furniture necessary for the accommodation centre

#### *3.2.3.3 Priority 3 - Improving the administration and access to Justice*

### **Task 12:** Further assistance to promote mediation

#### Activities

- Elaboration of a guiding curriculum for training of mediators to be followed by the associations and NGO/s and other institution authorized to deliver training for mediators
- Assessment of the law on mediation and proposals for secondary rules and regulations
- Assessment of the methodology used by the Council of Mediators to perform each of its attributions (accreditation, training curriculum and activities, recruitment of trainers, issuance of licenses for practice, procedure of withdrawal of licenses, disciplinary actions

- Design and implementation of an extensive awareness campaign regarding the alternative dispute resolution means (mediation)
- Specialized training of trainers on legal, psychological, communication and negotiation issues as well as on teaching methods in order to create **a network of trainers** (Trainers under Twinning light 2002 and Craiova pilot centre will be also included in this project)
- Training of future mediators on legal, psychological, communication and negotiation issues delivered by EU experts and Romanian trainers previously trained
- Workshops for judges on the advantages of mediation

### Means

Phare 2004 TA contract

### **Task 13:** Assistance to set up an efficient legal aid system

- Assessment in 3 courts/prosecutorial offices and 3 bar associations of the existing legal aid provisions in civil and criminal cases. Such assessment will include also a picture of how many civil decisions are enforced by bailiffs and if impediments could arise related to the payment of the honorarium of bailiffs.
- Organize workshops with judges, prosecutors, sitting and trainees lawyers from the National Institute of Lawyers, bailiffs and Ombudsman personnel in order to present the conclusion of the assessment, to identify alternative proposals for ensuring an effective and quality legal aid for persons in need based on the models existing in EU states, to identify training needs and proposals for ensuring continuing education of legal rights.
- Elaboration of a feasibility study on the socio-economic, budgetary, institutional and statistic impact brought by the new provisions on legal aid, as well as on the impact and cost benefit analysis implied by the increasing of the fee levels for lawyers
- Create a pilot court in which a system of legal aid discussed in workshops would be provided (legal advice, information with the list of lawyers, list of interpreters, list of bailiffs etc). The running cost could be supported by Phare funds, including the honorarium of a lawyer) for 1 year
- Support for drafting and enactment of the secondary legislation describing the concrete way and criteria of implementing the new provisions on legal aid.
- Awareness campaign among lawyers, magistrates, bailiffs and general public on the enforcement of new provisions on legal aid

### Means:

Phare 2004 – TA contract

### **Task 14:** Assistance to create an efficient public information system

#### Activities

- Elaborate a human resources policy for the public relations personnel
- Training of the future spokespersons of the courts and of the civil servants in charge with providing the public information (544/2001) : techniques of replying upon request to public information, techniques to draft press releases, standards of conduit in relation to public information
- Create a core of trainers selected among the persons previously trained and organize a seminar for these trainers on techniques to teach PR issues
-

Means

Phare 2006 – twinning covenant

**Task 15:** Endowment of public relation offices with appropriate equipment and information desks for citizens.

Activities

Creation and endowment of the SCM office and the 56 public relation offices with audio/video(recording instruments) and office equipment (fax, telephones, printers etc).  
Endowment of 20 courts with information desks for citizens

Means:

PPH funded -technical expertise/assessment report

Phare 2006 supply contract for procuring recording and office equipment

3.2.3.4 *Priority 4 - Building an efficient management system*

**Tasks 16, 17:** Continuing the automation of the courts

Activities:

Procurement of IT equipment (hardware, software, cabling) and training in IT as follows:

- Cabling material and installation services for the remaining 6 courts of appeal, 40 tribunals and all first instance courts and similar prosecutor offices attached to these courts
- additional RDBMS licenses
- IT equipment (hardware and additional basic software) and servers for 6 courts of appeal, 40 tribunals and 178 first instance courts and prosecutorial offices attached to these courts
- Training courses IT experts from the courts
- IT equipment(hardware and additional basic software) and servers for the 146 prosecutorial offices
- Cabling materials and installation services for the remaining prosecutorial offices
- Training courses for IT experts at the prosecutorial offices.
- Training for magistrates and clerks in order to get familiarised with the IT system (CDMS, LLDS, Office software, Web browsing)
- 

Means: Task 16

Phare 2004 supply split in 3 lots for MoJ and prosecutorial offices: cabling, IT equipment, training

Task 17

*Phare 2005 supply* split in 3 lots for MoJ and prosecutorial offices: cabling, IT equipment, training

**Task 18:** Improving the financial, economic and human resources management, of the judicial system and completing endowment with hardware

### Activities

- IT equipment (hardware and additional basic software) and servers for the remaining first instance courts and prosecutorial offices attached to these courts
  - creation of a software application for the financial departments of the courts, SCM
  - training for managers and administrative staff for the best use of software applications and modern financial management techniques

### Means

Phare 2006 - There will be 1 supply contract in 2 lots (software and hardware).

All the details in the sector programme fiches referring to number of contracts, experts' number and profile, as well as mandays are only for planning reasons and will be more precisely defined and agreed at the implementation stage.

### 3.3 Linked Activities:

#### Priority 1

**Twinning project RO 02/IB/JH-09** "Strengthening the functioning of the Romanian Judiciary and its representative body - Superior Council of Magistrates"

**PHARE 2003/005-551.04.16** "Support for the improvement of the justice for minors" - Twinning and Investment

**A pilot Juvenile Court** has been set up in March 2001 in Iasi, the capital of the northern region of Moldavia. The objectives of the project are to ensure an optimal climate for hearing and judging minors' cases, to form teams of specialists in judging cases involving minors and to reduce the consequences suffered by minors-victims and their families.

The project included the Iasi Court of Appeal and the Prosecutorial office attached to the Iasi Court of Appeal, the Iasi Probation Service, the Iasi County Police Inspectorate, the Iasi Judge Association and 2 local NGOs that run activities in the field of juvenile delinquency. The institutions involved appointed policemen, probation staff, prosecutors and judges: the county police and the prosecutor's office took the responsibility of closely monitoring the penal cases in which minors are parties in trials as defendants as well as victims, of speedy solving the respective cases and of supervising prevention activities of juvenile delinquency and social delinquency.

In 2003, the activity of the project was spread in other 4 courts for Iasi department.

In the framework of a **bilateral programme with France**, for 2002-2004, a French judge for minors, was detached within the Romanian MoJ in order to assist and make recommendations in the process of adopting a coherent legal framework in the field. The French expert is involved also in training process of magistrates in the topic of minors' judicial protection.

**UNICEF** approved a small technical assistance program aiming to provide preliminary data on juvenile justice before the beginning of 2003 Twinning program

#### Priority 2

- 1) **Phare RO 9705-01** - Technical Assistance for NIM provided training, procurement, and institutional building
- 2) **RO 98/IB/JH/01/04** - The training component covered 'General training in EC Law'.
- 3) **Phare RO-9905-01** continued the components of Phare 97 in terms of training, procurement, and institutional building

- 4) **Phare 1999 Horizontal Programme** “Building Capacity for Training of Judges in EC Law” provided training for 24 judges in EC law and to support the elaboration of a EC practical manual for judges
- 5) **Netherlands Helsinki Committee in co-operation with SSR** (Dutch training center for the magistrates), provided training on the ECHR, EU law and ethics for magistrates and NIM trainers (training-of –trainers) and material support;
- 6) The German Foundation for International Co-operation (IRZ) offered training for sitting judges
- 7) Twinning covenant **RO02/IB/JH/101** will provide a National Strategy of NIM, in-service-training in line with EU-requirements drafted and approved by the NIM; Improvements in the in-service training curricula of NIM effectuated and approved by the NIM; a system of trainers for in-service training of magistrates in line with EU-model set up and functioning; training for up to 700 magistrates in both EC and national matters in line with EU standards delivered; legal documentation on best practices, jurisprudence and relevant EU legislation for each training seminar designed
- 8) Tempus Programme **IB JEP no. 14219** in the area of fighting corruption and organized criminality
- 9) **TAIEX programme**: 2 seminars in the filed of fighting terrorism and drug trafficking
- 10) **Luxembourg Ministry of Foreign Affairs** approved a 2 year project for training of magistrates in the area of Freedom, Security and Justice consisting in 10 seminars.
- 11) **Phare RO-9905-01**- provided assistance for TCC – drafting the initial and continuous course curricula, delivery of training for trainees and court support staff
- 12) **Twining covenant RO/IB/2002/JH/101**- An institutional policy of TCC, guaranteeing autonomous functioning, drafted and approved by the TCC; a system of trainers for in-service training of court clerks in line with EU-models set up and functioning; a national strategy of TCC for in-service training of court clerks in line with EU- requirements drafted and approved by TCC; training for up to 420 court clerks members in both EC and national legal matters in line with EU-standards delivered; legal documentation on best practice, procedural techniques and legal provisions for training courses designed drafting the TCC strategy, curricula, and the creation of a strong network of trainers, at the national level

### Priority 3

**Twining light RO2002/IB/JH-12 TL**: legislative assessment, training, manual of best practice and public awareness campaign

**ABACEELI** provided assistance and training for spoke persons in 1999, 2000 and 2001.

**A Study “Access to justice in Romania”** Centre for legal resources / 28 October 2002

Pilot project in Craiova (50,000USD ) sponsored by Cultural centre of USA to promote mediation

### Priority 4

- **Phare RO 9705.02** – software application for Case Document and Management System and Legal Library and Documentation System
- **Phare RO 0001.01** – hardware and cable

### CONNECTION WITH THE WORLD BANK PROGRAM (relevant for all priorities)

I. IDF GRANT (312.500 USD split as follows: 250.000 USD from World Bank and 62.500 USD co-financing).

### Components

1. Between 19.01-1.06 2004 WB will conduct an assessment study of the impact of the EU legislation on national law
2. Draft of an improved framework related to the drafting of normative acts
3. Set up a procedure to ensure the transparency of legal drafting process
4. Strengthening the financial management

### II. PIBL – PPIBL

490.000 USD procurement of IT equipment (approved in March 2004)

### III. Programmatic Adjustment Loan (PAL)

On going project: Court Rationalization Study (200.000 USD)

Projects submitted by MoJ for approval of the World Bank (to be decided)

PAL I: set up an automated system for MoJ and Superior Council of magistrates for collection, processing and analysis of statistics from courts (300.000 USD)

#### PAL II:

1. Assistance for improving the legislative and institutional framework against corruption (100.000 USD)
2. Assistance for assessing the legislation on commercial law (50.000 USD)
3. Training for court managers (100.000 USD)
4. Assistance for improving the institutional capacity of NIM (85.000 USD)

#### PAL III:

1. Assistance for enforcement of legislation related to the activity of economic/financial departments of courts and training in budgeting management (150.000 USDD)

### 3.4.Lessons learned:

All the proposals represent a priority of the judiciary and are part of the Strategy for the reform of the judiciary and Action Plan developed by Romania in line with requirements of the Road Map.

An adequate staffing of the PIU-s and coordination with all stakeholders will contribute to a successful implementation of the projects

Since the Ministry of Justice is following a strategic approach on reform, the impact of the proposed measures is likely to be much greater than before.

#### *Priority 1*

Better coordination with SCM

#### *Priority 2*

Maintain the interest of the trainers in order to ensure sustainability of the project

#### *Priority 3*

Cooperation with civil society

#### *Priority 4*

Provide adequate IT resources



#### **4. EXPECTED RESULTS OF THE PROGRAMME**

##### *Priority 1*

Building an independent judiciary in Romania

SCM fully functional and with sufficient means to perform its role as guarantor of independence

*Specialized courts functional*

##### *Priority 2*

Building a professional judicial system

NIM' institutional capacity and training policy improved

*TCC 'institutional capacity and training policy improved*

##### *Priority 3*

Improving the administration and access to Justice

Mediation system functional

Improved legal and institutional framework ensuring legal aid in civil and criminal cases

The act of justice is transparent

##### *Priority 4*

Building an efficient management system

The entire judicial system will be fully equipped with IT and will operate an automated court management system

#### **5. DETAILED BUDGET**

<b>Year 2004</b>	<b>EU Support</b>					
	Investment Support	Institution Building	Total EU (=I+IB)	National Co-financing*	IFI*	TOTAL
<b>Priority 1</b>						
<b>SCM</b>						
Task 1		1,2	1,2	0,3*		<b>1,5</b>
Task 2 supply	0,6		0,6	0,2		<b>0,8</b>
<b>Priority 2</b>						
<b>NIM</b>						
Task 6supply	0,075		0,075	<b>0,025</b>		<b>0,1</b>
Task 7 supply	0,045		0,045	<b>0,015</b>		<b>0,06</b>
Task 8 TA		1,1	1,1	<b>0,1*</b>		<b>1,2</b>
<b>TCC</b>						
Task 9 TA		1,1	1,1	0,1*		1,2
Task 10supply	0,135		0,135	0,045		0,18

## Sector Programme Fiche 2004-2006

Task 11 supply	0,045		0,045	0,015		0,06
<b>Priority 3</b>						
<b>Mediation Task 12</b>		1	1	0,15*		1,15
<b>Task 13 Legal aid</b>		1,2	1,2	0,05*		1,25
<b>Priority 4</b>						
<b>Task 16 automation (MJ+ MP)</b>	11,5		11,5	4		15,5
<b>Total 2004</b>	<b>12,4</b>	<b>5,6</b>	<b>18</b>	<b>5</b>		<b>23</b>

\* The amounts represent parallel cofinancing.

### Indicative budget for the budgetary years 2005 and 2006

<b>Year 2005</b>	<b>Indicative Investment</b>	<b>EU IB</b>	<b>Total EU (=I+IB)</b>	<b>National Co-financing*</b>	<b>IFI</b>	<b>Total</b>
<b>Priority 1</b>		1	1	0,2		1,2
Task 3 Specialized courts twinning						
Task 4 Specialized courts	0,1		0,1	0,1		0,2
<b>Priority 4</b>	<b>22</b>		<b>22</b>	<b>7,5</b>		<b>29,5</b>
Task 17 Automation						
<b>Total 2005</b>	<b>22,1</b>	<b>1</b>	<b>23,1</b>	<b>7,8</b>		<b>30,9</b>
<b>Year 2006</b>	<b>Indicative</b>	<b>EU</b>	<b>Support</b>			
<b>Priority 1</b>						
Task 5 Specialized courts	0,25		0,25	0,2		0,45
<b>Priority 3</b>						
<b>Task 14</b>		1	1	0,1		1,1
Twinning Transparency						
<b>Task 15</b>	0,3		0,3	0,1		0,4

Transparency						
<b>Priority 4 Task 18 Automation</b>	3,08		3,08	1,03		4,11
<b>Total 2006</b>	<b>3,63</b>	<b>1</b>	<b>4,63</b>	<b>1,43</b>		<b>6,06</b>
<b>Total general</b>	<b>38,13</b>	<b>7,6</b>	<b>45,73</b>	<b>14,23</b>		<b>59,96</b>

## 6. IMPLEMENTATION ARRANGEMENTS

### 6.1 Institutional Framework

- For the whole project the Implementing Agency will be Central Finance and Contracts Unit (CFCU) which will be responsible for tendering, contracting, administration, accounting, payments and financial reporting.
- PAO Jeana BUZDUGA, director CFCU  
Tel 315 35 31

Fax 315 35 36

### 6.2 Implementing authority

The Implementing Authority (IA) for task 1 (SCM), 2 (SCM), 3 (specialised courts), 4 (specialised courts), 5 (specialised courts), 6 (NIM), 7 (NIM), 8 (NIM), 9 (TCC), 10 (TCC), 11 (TCC), 14 (transparency) and 15 (transparency) is SCM.

SCM will take over the implementation of the projects after receiving an appropriate administrative personnel in line with the new responsibilities conferred by the actual draft law on SCM)

For task 12 (mediation), 13 (legal aid) and 16, 17 and 18 related to automation, Implementing Authority is MoJ

The PIU will be responsible for overall procedural and administrative management of the project. Responsible persons for each component will be appointed from the institutions directly involved in the respective components.

Direct beneficiaries will be: SCM, judicial system, Ministry of Justice probation services, but also NGO/s, media, citizens, Bar Associations, Bailiffs Union will be involved in these projects.

### Twinning

For priority 1, the main beneficiary will be SCM, while additional beneficiaries will be courts, prosecutorial offices, local and national magistrates associations, police, and probation services

For priority 3, the main beneficiaries will be MJ, SCM, the courts, prosecutorial offices, civil society, media

The Pre Accession Advisors and the TA Advisor will be based at the relevant Directorate level and will, within the Department, be answerable to the Secretary of State for EU Integration or other senior officers. In case of Twinning, the RTA will also report to the project leader based in the MS.

For the day-to-day implementation of the respective activities, close collaboration will be established with the directly concerned departments or institutes. The harmonization of the

national legislation with EU Regulations will be co-coordinated with the Director for the relevant Department and/or Institution and their legal adviser(s). Close co-operation will also be established with the Phare Implementation Unit (PIU) of the MoJ and SCM , in particular for any components related to the technical procedures.

SPO

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### 6.3 Implementation Schedule

We expect that 7 months after signature of the FM all ToR for contracts scheduled for contracts under the budgetary year 2004 be approved. For the projects included in the budgetary year 2004, tendering procedure (TA and supply contracts) and call for proposals (twinning project) can thus be launched by the end of the 3<sup>rd</sup> quarter 2004.

*For those contracts missing these deadlines a reallocation of funds is foreseen.*

### 6.4 Monitoring and indicators of achievement

MoJ through regular PIU meetings

Reports of the JMC, SMSC and the Phare programming 2005 and 2006 according to a pre set of benchmarks about the implementation/completion of the projects;

Some of the projects are under conditionality. Their contracting depends upon the successful implementation of Phare 2003 programs ongoing at the moment of drafting the MAP fiche. Others depend on the adoption of the laws under draft in this moment.

### Overall Programme indicator

The Romanian judicial system is in line with EU standards (as judged by European Commission, European Parliament, European Council)

Overall Priority indicators:

#### Priority 1

Package of laws on independence of judiciary passed and implemented

#### Priority 2

Parliament approves judicial reform

1200 new magistrates recruited and trained

150 judicial clerks trained

#### Priority 3

Ratio of judges to number of cases handled (benchmark for all indicators would be the EU average)

Average time taken to reach a judgement

Number of judgements per judge

No. of judgements going to revision

Number of disadvantaged persons gaining access to justice through specific support

### Priority 4

Ratio of judicial staff to number of cases handled at EU average

Costs per case at EU average

#### Detailed Indicators of achievement

##### Priority 1 – Building an independent judiciary in Romania

Formal training of SCM staff completed

Formal training of SCM members completed

Completion of study tours

Cooperation with local associations institutionalized

National secondary legislative framework further harmonized with EU Regulations

Legal debates and exchange of information established

Center of documentation set up

Equipment procured

Institutional communication process improved

National secondary legislative framework further harmonized with EU and UN standards on minors

Effective inter-institutional cooperation in the field of justice for minors

Formal multidisciplinary training completed

Formal training completed

Professional psychological testing strategy enforced

Professional working methods with minors set up

Equipment procured

Furniture procured

Equipment and furniture procured

##### Priority 2 Building a professional judicial system

Access to information improved

Printing house procured

Accommodation Furniture procured

Curricula in place

Completion of training seminars for trainers

Completion of training seminars for judges

Completion of training seminars for prosecutors

Practical guides elaborated

Completion of training seminars for trainers

Completion of training seminars for clerks

Equipment procured

Furniture procured

Teaching materials and documentation procured

Printing house procured

##### Priority 3 Improving the administration and access to Justice

Curriculum adopted

Proposals for improving the primary and secondary legislation delivered

Report on methodology drafted

Awareness activities completed

Completion of training the trainers

Completion of training the mediators  
Completion of training the judges  
Analysis of the status quo completed  
Consultation with stakeholders completed  
Feasibility study drafted  
Recommendation of legal aid tested and lawyer hired for public information  
Secondary legislation fine tuned  
Informative activities completed  
Human resources policy drafted  
Training of personnel completed  
Network of trainers selected  
Audio/video and office equipment procured  
Info-desks procured

### **Priority 4 Building an efficient management system**

IT equipment (hardware, software, cabling) installed  
Training in IT completed

### **Annexes to programme fiche**

1. Sector Programme Monitoring Sheet
2. Detailed implementation Chart
3. Contracting and Disbursement Schedule
4. Logical framework for 2004 projects
5. Legislative Framework and reference list of laws, regulations and strategic plan



