

Standard Summary Project Fiche for the Transition Facility

Unification of the jurisprudence of courts and prosecutor offices in Romania

1. Basic Information

1.1. CRIS Number: 2007/19343.01.01

Twinning Contract RO /2007-IB/JH/01

1.2. Title: Unification of the jurisprudence of courts and prosecutor offices in Romania

1.3. Sector: Justice Home affairs

1.4. Location: Romania – Bucharest

2. Objectives

2.1. Overall Objective:

To support the efforts for establishing a reliable, independent and predictable judicial system in Romania, in compliance with EU standards.

2.2. Project purpose:

To improve the consistency of the jurisprudence, through an increased process of unitary interpretation and application of the law by judges and prosecutors.

2.3. Justification

The Comprehensive Monitoring Reports on the Romania preparations for membership (CMR) issued by the Commission in May and September 2006, acknowledged the progress registered in the field. Although important developments have taken place, the reports show that further progress is still necessary in the area of judicial reform: "A consistent interpretation and application of the law at all levels of courts throughout the country has not yet been fully ensured. This issue will have to be addressed as a priority. [...] *Further efforts are needed to ensure a more consistent interpretation and application of the law in order to create legal certainty.*"

The Commission Decision of 13th of December 2006, establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption underlines the necessity for the Superior Council of Magistracy to establish some measures for the unification of the jurisprudence.

One of the major deficiencies that the Judiciary is currently facing, with direct and adverse impact on the quality of the act of justice and on the credibility of the judicial system, is the non-unified jurisprudence and often inconsistent enforcement of the current legislation. In order to remedy this situation according to the principle of legal certainty laid down by the

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jurisprudence of the European Court of Human Rights, the present Strategy is considering the following measures: enforcing the present procedural mechanisms, namely promoting the appeal in the interest of the law and improving the access of the magistrates to jurisprudence and Official Journal. Access of magistrates to legislation and jurisprudence will be ensured mainly by connecting the Courts to the specific databases and by publishing the relevant jurisprudence on their websites.

To the same end, legislative amendments are equally projected, according to the Strategy, in order to establish a mechanism for unifying the jurisprudence of the High Court of Cassation and Justice (HCCJ) and for notification of HCCJ by other courts, in order for the former to express its legal opinion on a given legal matter. Unifying the jurisprudence will result in improving the quality of court rulings, in view of reducing the number of cases in which the ruling was reversed subsequent to appeal procedures.

The specialized training of the magistrates has a direct impact on the quality of the act of justice, against the background of diverse legal fields and the necessity to ensure sound legal knowledge in this respect. For this purpose, the present Strategy focuses on training of judges functioning within specialized sections and panels, as well as of prosecutors, through continuous training programmes organized by the National Institute of Magistracy (NIM) and by the Courts of Appeal, as well as through improving access to legislation, jurisprudence and legal literature.

Furthermore, article 6 of the European Convention on Human Rights states that "In the determination of his civil rights and obligations or of any criminal charge against him, *everyone is entitled to a fair and public hearing within a reasonable time* by an independent and impartial tribunal established by law". Unified jurisprudence is significant to the applicability and interpretation of the legal provisions set by the Romanian legislation. Establishing a uniform judicial practice – one of the major directions of judicial reform – is particularly important for supporting the justice system and for addressing also the complex problem of prolonged court cases. Thus, in the case "*Paduraru against Romania*"¹ (the case no. 63252/00), the European Court for Human Rights underlined the inconsistent jurisprudence and the lack of coherence of the Romanian judicial system. The various judicial procedures origin in this legal and juridical uncertainty, which induces multiple juridical interpretations and different conclusions over the same legal issue brought before several national courts. In the case mentioned above, the Court also stated that not even the High Court of Cassation and Justice have a unitary and consistent jurisprudence related to the matter concerning the case. "The Court considers that, in the absence of a mechanism able to ensure the coherence of the jurisprudence of national courts, this type of profound jurisprudence inconsistencies, which are persistent and concern issues of great social interest, may generate permanent uncertainty and may decrease the public trust in the judiciary, one of the fundamental components of the rule of law.

A unified judicial practice is one of the most important instruments of ensuring the predictability of rulings and the public trust in the judiciary and also a fundamental condition for the mutual recognition of judicial decisions, as it is also underlined in the European Convention 850/03 from Bruxelles - draft treaty establishing a Constitution for Europe – "The Union shall constitute an area of freedom, security and justice by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions" (article 41). Furthermore, the Union shall develop judicial cooperation in civil and criminal matters having cross-border

¹ Published in the Romanian Official Journal no. 514/ 14th of June 2006

implications, based on the principle of mutual recognition and enforcement of judgments and decisions in extrajudicial cases.

The Tampere European Council, October 1999 on the creation of an area of freedom, security and justice in the European Union strengthens the idea of establishing legal certainty (also by mean of unitary jurisprudence). "Judgements and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators. Better compatibility and more convergence between the legal systems of Member States must be achieved." "Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities."

3. Description

3.1. Background and justification

A reliable, independent and predictive justice for all the actors involved is one of the major commitments within Romania's accession process to European Union, from the perspective of ensuring the full access to justice and enhancing the quality of the act of justice.

The approval of the Strategy for the Reform of the Judiciary 2005 – 2007² has been followed by important developments within the Judiciary and also considers the systemic problems within the Judiciary, as revealed by several reports issued by the European Commission. A first significant legislative step was the adoption of the legal package on the statute of magistrates, organization of the judiciary and the Superior Council of Magistracy. The same issues are also underlined by the National Development Plan for 2007-2013.

The present Strategy aims at adjusting the mentioned deficiencies, through guaranteeing the independence of justice, ensuring the quality and efficiency of the act of justice, as well as through establishing a modern system, able to implement the *acquis communautaire* and to align to European Union requirements. The provisions of the present Strategy are complemented by the Action Plan, which details the measures for achieving the established objectives, the deadlines, the responsible institutions, the necessary financial resources, as well as indicators to assess the fulfilment of these measures.

Strengthening the rule of law and ensuring the quality of the act of justice require the approach of several components of the reform process, aiming at establishing a coherent legislative framework, unifying the judicial practice, specialization of the judicial activity, as well as training of magistrates and of other categories of personnel within the Judiciary. The accent is placed upon simplifying the judicial proceedings, reducing their duration, as well as reducing the various current judicial reviews for certain categories of cases.

One of the major deficiencies the judiciary is currently facing is the non-unified jurisprudence and often inconsistent enforcement of the current legislation. In order to strengthen the methods of increasing the unification of the jurisprudence, present efforts are considering measures to enforce existing procedural mechanisms or to create others new.

² Government Decision no. 232/2005 on the approval of the Strategy for the Reform of the Judiciary

The non-unified jurisprudence has major implications upon the effectiveness and efficiency of the judiciary. The non-unitary solutions rendered by the national courts concerning the same law problem brought before them lead to increased court proceedings (there is a very high number of cases overturn on appeal, second appeal and extraordinary means of judicial review). The Strategy addresses the issue of the efficiency of the judiciary, and its main targets in this respect are to reduce the duration of court proceedings and to improve the quality of judgments. Moreover, the constitutional amendments adopted in October 2003, provide for the citizens' right to a fair trial within a "reasonable time". The duration of court proceedings represents a critical issue. Many courts, particularly in big cities, have excessive backlogs, which seriously undermines the ability of litigants to obtain a final judgment within a reasonable time. The quality of judgments also remains a problem: the proportion of cases overturned on appeal is about 30%. The European Commission for the Efficiency of Justice (CEPEJ) addresses the issue of the length of judicial proceedings, considering this to be a priority concern within the objectives of the Council of Europe relating to the Human Rights and Rule of Law. The processing of each case within an optimum and foreseeable timeframe should represent a necessary objective for any judicial system. The premises are ensured by the article 6.1 of the European Convention of Human Rights (ECHR) which provides for the "reasonable time" requirement for court proceedings duration.

Access of magistrates to legislation and jurisprudence was ensured mainly by connecting the courts to the specific databases and by publishing the relevant jurisprudence on their websites.

In order to achieve these objectives and to resolve the problems identified as existing in this field, significant developments have been registered.

As such, on the 31st of July 2006, the Superior Council of Magistracy updated the Action Plan concerning the unification of the jurisprudence, with special regard to the measures for raising the awareness of magistrates on the importance of a unitary jurisprudence.

Another objective of the Updated Action Plan regarding the unification of the jurisprudence is to improve the access of magistrates to jurisprudence. In this regard, collections of jurisprudence for each court of appeal are published on a yearly basis. Also, the High Court of Cassation and Justice publishes, on a quarterly basis, the Bulletin of Cassation.

To the same end, legislative amendments have to be equally implemented in order to establish a mechanism for unifying the jurisprudence through preliminary rulings brought before the High Court of Cassation and Justice by the lower courts, in order give its legal opinion for a unitary interpretation of a legal matter. Moreover, the existing procedure of the second appeal in the interest of law has to be improved by amending the law.

The project³ amending and completing the Regulation on the internal order of the courts mainly envisage the obligation to organise at the level of each court monthly meetings of judges (at the level of the courts of appeal the meetings will be held also on a quarterly basis, with all the courts from their jurisdiction), in view of discussing the law issues which led to non-unitary solutions, in order to unify the jurisprudence and increasing the judicial stability. The project also provides for the obligation of courts of appeal to purchase collections of jurisprudence of the upper level courts (courts for judicial control), also within the framework of the periodical meetings of judges.

³ The project was approved by the Plenum of the Superior Council of Magistracy by the SCM's Decision no. 46/2007, published in the Official Journal no. 107 from February 13th, 2007 and is currently being implemented.

According to the Action plan, the Superior Council of Magistracy approved a draft law regarding the unification of the jurisprudence. The draft law proposes the amendment of the Law no. 304/2004, regarding judicial organization, republished, by establishing the competence of the sections of the High Court of Cassation and Justice for solving the preliminary rulings brought by the second appeal courts regarding the interpretation of the legal provisions (similar to the preliminary rulings addressed by the national courts to the Court in Luxembourg). The draft law is being currently subject to the consultation of all actors involved.

The specialized training of the magistrates has a direct impact on the quality of the act of justice, having in view the necessity to ensure good knowledge in different fields of law. For this purpose, judges functioning within specialized tribunals, sections or panels, as well as of prosecutors, need specialised training.

These measures have to be supported by an increased awareness among the magistrates in order to create a "working culture" regarding the predictability of the judgements and the citizens' trust in justice.

According to the Action Plan, starting with September 2006, the courts organized regular meetings in order to debate upon the law problems that have or could have a non-unitary application. The documents provided by the courts are analyzed by the Legislative Directorate of SCM, in order to elaborate reports as a basis for the Ministry of Justice or the General Prosecutors' Office attached to the High Court of Cassation and Justice to promote the second appeals in the interest of law.

In the framework of the Program for continuous training of magistrates adopted by the Superior Council of Magistracy for 2007 one of the priorities of the project is training judges and prosecutors in the field of unifying jurisprudence. In spite of the efforts made, the National Institute deals with several problems, such as the insufficient number of trainers specialized in the issue of non-unitary practice, the lack of training materials and the reduced number of magistrates who can be trained by mean of NIM. The training is also hindered by the lack of an inventory of the law issues generating non-unitary practice and possible proposals of standardization (resulting from the conclusions of these meetings).

Although important progress were made, the **Comprehensive Monitoring Reports on the Romania preparations for membership (CMR) issued by the Commission in May and September 2006**, acknowledged the progress registered in the field. Although important developments have taken place, the reports show that further progress is still necessary in the area of judicial reform: "A consistent interpretation and application of the law at all levels of courts throughout the country has not yet been fully ensured. This issue will have to be addressed as a priority. [...] Further efforts are needed to ensure a more consistent interpretation and application of the law in order to create legal certainty."

In order to meet the requirements of membership, Romania is committed to continue the reform of the relevant sectors, in line with the recommendations issued by the European Union and with the overall sector strategy and objectives established in the Accession Partnership 2003 and the Roadmap for Romania.

The main existing instrument provided by the Law no. 304/2004, regarding judicial organization, republished and by the Criminal Procedure Code for unifying the jurisprudence is the second appeal in the interest of law. In 2006 only 37 decisions were rendered in the procedure of the second appeal in the interest of law, out of which 35 at the request of the

General Prosecutor and 2 at the request of the courts of appeal (also competent in this procedure). The statistical data show a reduced degree of awareness of the issue of non unitary practice on the part of Romanian magistrates, who are the main responsible body for drawing attention to this problem, significantly important for the reform of the Romanian judiciary and the efforts of delivering faire, qualitative and predictable decisions. This leads to the conclusions that it is imperative to increase to efforts towards establishing a framework for the dialogue between all the actors involved and for debating the arguments and contra-arguments in order to harmonize the different opinions.

Furthermore, it was underlined a certain reserve on the part of magistrates regarding the process of unifying the jurisprudence, even within the jurisdiction of the same court, due to an improper interpretation of the principle stated by the law, according to which judges are independent and also because in Romania the jurisprudence is not a law source.

The legislative framework is not clear and unanimously accepted. The draft law regarding the unification of the jurisprudence is not agreed upon by the Ministry of Justice, who insists that the adoption of such a mechanism shall have a negative impact on the length of judicial procedures. The procedure of the second appeal in the interest of the law is often viewed by the Superior Council of Magistracy as an inefficient instrument, because it is used *post factum* (after the non-unitary practice is created).

Care and attention will be paid to ensure that the objective or outcome of each subproject, section and activity will directly result in a specific contribution to the Romania's statute of Member State of the European Union.

No overlap exists with Structural and Cohesion Funds. The given project does not fall under the European Regional Development Fund priorities.

3.2. Linked Activities

- 1) Phare RO 02/IB/JH-09 – Twinning arrangements for the Superior Council of Magistracy contained no relevant activities for this project.
- 2) Phare RO 04/IB/JHA-01 - Twinning arrangements for the Superior Council of Magistrates contains no relevant activities for this project.
- 3) Loan Agreement no. 4811-RO regarding the implementation of the World Bank Program "Reform of the Judiciary" – component II, elaborating a study in order to reduce the duration of cases. The project outcome will consist in the increased capacity of the court system to adjudicate disputes (in terms of fairness, speed and ability to enforce decisions).
- 4) Phare RO 9705-01 - Technical Assistance for NIM provided training, procurement and institutional building.
- 5) Phare RO-9905-01 continued the components of Phare 97 in terms of training, procurement, and institutional building.
- 6) PHARE 2003/005-551.04.16 "Support for the improvement of the justice for minors" - Twinning and Investment.

3.3. Results

- 1 - Assessment study on the current stage of the Romanian legal provisions and practical methods sustaining a unitary interpretation and application of the law throughout the country, according to the best practices of the European Union

2 - Trained judges nationwide for improving the consistency of the jurisprudence, in view of reducing the number of cases in which the judgment is reversed subsequent to appeal and/or second appeal procedures.

3 - Elaboration of collections of jurisprudence in the identified fields (to be officially launched in the framework of the final conference of the program).

3.4. Activities

The project will be implemented through a Twinning contract.

Component 1 - Assessment study on the current stage of the Romanian legal provisions and practical methods sustaining a unitary interpretation and application of the law throughout the country, according to the best practices of the European Union

1. The experts (foreign and local) will assess the current stage of the legal provisions and practical methods sustaining the unitary interpretation and application of the law throughout the country. They will draw-up proposals to increase the efficiency of the methods for unification of the jurisprudence, according to the best practices of the European Union.
 - 1.1. Studying the existing legislative framework in the field of unifying jurisprudence, the up to date statistical data, strategies and practices of the courts (different levels of jurisdiction);
 - 1.2. Identifying all the categories of cases overturn and fields of law generating non-unitary jurisprudence, also having in view the current legislative framework;
 - 1.3. Performing a gap analysis between the Romanian current stage of affairs and comparable assessments conducted in EU Member States countries; Observing and presenting the main recommendations and research studies drafted and/or adopted by the relevant European institutions (e.g. Council of Europe resolutions and recommendations concerning the matter of non-unified jurisprudence; ECHR related case-law; CEPEJ reports and documents, if any);
 - 1.4. Consultations with all stakeholders.
2. The experts will draft a proposal containing at least ten (10) law areas which are most likely to generate non-unitary practice and need to be prioritized in the magistrates training programs; the proposals will include a thorough justification and practical aspects.
3. The experts will organize and conduct at least ten public debate sessions (in the form of e.g. joint meetings, round-tables and other similar) in each of the law areas identified for discussing with the relevant stakeholders (including magistrates, practitioners and representatives of the institutions involved -SCM, NIM, HCCJ and MoJ) the proposals made by the experts.
 - 3.1. In order to organizing the public debates the experts will make the selection of participants;
 - 3.2. Drafting the agenda of the public debates;
 - 3.3. Elaboration of the discussion papers;
 - 3.4. Drafting the report of the debating sessions containing the results of the discussions upon the list of the training priorities for judges in at least ten (10) most sensitive law areas generating non-unitary jurisprudence.
4. The experts will carry on the Training Needs Analysis and curricula for each of the ten law area identified.

Component 2 - Trained judges nationwide for improving the consistency of the jurisprudence, in view of reducing the number of cases in which the judgement is reversed subsequent to appeal and/or second appeal procedures

1. The experts shall organize seminars on specific law areas at the level of courts, with the participation of at least 560 judges from all courts nationwide, according to the best practices and experience in the European Union.

1.1. The expert shall assist the beneficiary in selecting the participants (at least one judge from all tribunals and courts of appeal nationwide), by drawing up relevant selection criteria;

1.2. The experts will draft the training curricula and training documentation;

1.3. The experts will conduct the seminars and draw up reports at the end of each activity comprising the main findings and proposals of the seminar. Also the reports will underline the arguments and contra-arguments for the different opinions in the law areas identified.

2. Training courses/seminars/workshops will be organized for groups of 20 participants. There will be a total of 30 seminars organized in appropriate centres all over the country, mainly the premises of the courts of appeal or other appropriate locations (i.e. the training centres of the National Institute of Magistracy in Timisoara, Sovata and Barlad). Phare experts will be joined (if necessary) by Romanian experts.

3. The experts will identify and draw up collections of jurisprudence for each of the 10 minimum law areas, containing case law from all courts, which will be used as a teaching material for the NIM training activities.

3.1. The experts will draw up and publish the collections of jurisprudence;

3.2. The experts will organise the final conference of the program when the collections are to be launched officially.

3.5. Lessons learned:

See annex 5.

3.6. Profile of the RTA

Qualifications and skills

- University Degree in Law;
- Excellent management skills, including managing a team of international and local specialists and organizing and overseeing administrative and logistical support;
- Excellent command of English ;
- Skills and minimum three (3) years experience in analyzing the matter of efficiency of justice;
- Conducting comparative law studies regarding the judiciaries and law systems in Europe;
- Previous experience in developing training programs, particularly for magistrates;
- Computer literate;
- Excellent communication and social abilities;
- Capacity to demonstrate innovative approach by abstracting from own experience and adapting the needs, constraint and culture of the beneficiary.

The assignment is expected to be carried out during the period of 12 months. The RTA may be assisted by international and local hired experts who will be selected on a competitive basis and upon consultation with the RTA as per professional qualification of such experts.

The obligations of the RTA may be further detailed in the twinning contract. The RTA in collaboration with the BC will identify in the framework of the provisions of the Twinning Covenant a pool of experts (at least 10), for each of the identified law areas generating non-unitary jurisprudence (each expert specialized in the different fields identified).

Qualifications and skills of the pool of experts – 10 training experts

- University Degree in Law;
- Excellent communication and social abilities;
- Excellent command of English and French languages;
- Computer literate;

General professional experience

- law graduate with minimum 10 years experience in the judicial system or as an academic in law area;

Specific professional experience

- Previous experience in developing training programs and providing relevant training on specific law fields, particularly for magistrates (at least 3 projects).

4. Institutional Framework

The project beneficiary will be the Romanian Superior Council of Magistracy.

According to article 1, paragraph 4 of the Romanian Constitution, republished "*The State is organized according to the principle of separation and balance of powers – legislative, executive and judicial – in the framework of constitutional democracy*". Article 133, paragraph 1 of the Constitution granted the Superior Council of Magistracy the noble mission of "*guarantor of the independence of justice*". By the new constitutional provisions, the Council witnessed a natural and important extension of its competences, which led to a strengthened independence of the institution and, as a consequence, to a more independent judiciary in relation to the legislative and executive.

The Superior Council of Magistracy is a collegial body, composed of 19 members, the majority of them magistrates elected by the direct vote of all Romanian magistrates. According to the constitutional and legislative provisions, the Superior Council of Magistracy defends the magistrates' body and its members against any act liable to infringe upon their independence and impartiality in delivering the act of justice or to create such as supposition/presumption. The Council defends the professional reputation of magistrates and ensures the observance of the law and the criteria of competence and professional ethics in the professional career of magistrates.

In the exercise of its attributions, the Superior Council of Magistracy ensures the efficient functioning of the judiciary and the observance of the law in matters regarding the career of magistrates. The Council performs its attributions concerning the magistrates' career, recruitment, evaluation, the exams of the magistrates, the organization and proper functioning of courts and prosecutor's offices, competences related to the adoption of the Deontological Code of judges and prosecutors and of the secondary legislation. Furthermore, the Council coordinates the activities of the National Institute of Magistracy and of the National School of Clerks; their mission is to deliver the initial and continuous training for magistrates, respectively for clerks and the other auxiliary personnel of courts and prosecutor's offices.

The principles, the structure and the manner of organization of the Romanian judiciary are established by the Romanian Constitution and Law no. nr.304/2004 regarding the judicial organization, republished. Justice is made in the name of law and is accomplished through the following courts: **High Court of Cassation and Justice, Courts of Appeal, tribunals, specialized tribunals, military courts and first instance courts.** The **High Court of Cassation and Justice** is the only supreme court that functions in Romania, with the premises in the capital of the country, and has 4 sections (civil and intellectual property, criminal, commercial and fiscal and administrative claims), the 9 judges panel and the joint sections. The **courts of appeal** are courts have in jurisdiction tribunals and specialized tribunals. At present, there are **15 courts of appeal**. Within the appeal courts there are sections or, as the case may be, specialized panels for civil cases, criminal, commercial, minors and family cases, fiscal and administrative claims, labour conflicts and social insurances, as well as maritime or fluvial cases or for other matters. The **tribunals** are organized at every county level and in Bucharest and have the premises in the county residence city. In the jurisdiction of every tribunal (**42 tribunals** established by law) there are first instance courts. Within tribunals, there are sections, or panels for civil cases, criminal, commercial, minors and family cases, fiscal and administrative claims, labour conflicts and social insurances, as well as maritime or fluvial cases or for other matters. At present, there are **4 specialized tribunals**: Brasov Tribunal for minors and family cases, Cluj Commercial Tribunal, Mures Commercial Tribunal and Arges Commercial Tribunal. First instance courts (**188 first instance courts**) are organized at county level and in districts of Bucharest.

5. Detailed Budget

€M	Transition Facility support			Co-financing			Total cost
	Investment	Institution Building	Total Transition Facility (=I+IB)	National Public Funds (*)	Other Sources (**)	Total co-financing of the project	TF plus cofinancing
Project 01 twinning	0.00	0.6	0.6	0.2**	0.00	0.2**	0.8
Total	0.00	0.6	0.6	0.2**	0.00	0.2**	0.8

(*) contributions from National, Regional, Local, Municipal authorities, FIs loans to public entities, funds from public enterprises. All the co-financing is joint co-financing and will be provided from the state budget. The requested sum will be earmarked for the beneficiary institution in its budgetary appropriations for the year 2008-2009. In the case where the final overall cost is lower than foreseen in the project fiche, the national public and Transition Facility co-financing shall be reduced proportionally so as to maintain the agreed rate of co-financing.

(**) Joint co-financing

VAT is not an eligible expenditure under both the Transition Facility and national cofinancing funds indicated in the above budget table. Where contracts are subject to VAT due to provisions of national legislation, these funds have to be provided from national resource outside and in addition to the amounts indicated in the budget table.

6. Implementation Arrangements

6.1. Implementing Agency

Implementing Agency will be Central Finance and Contracts Unit (CFCU) which will be responsible for tendering, contracting, administration, accounting, payments and financial reporting.

PAO Carmen ROȘU, director CFCU

Mircea Vodă Boulevard, no. 44, entrante B, sector 3, Bucurest

Tel 315 35 31

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Implementing Authority will be Superior Council of Magistracy

Florica Bejinaru, member of the Superior Council of Magistracy, SPO

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Raluca Gâlea, director of the Directorate for European Affairs, International Relations and Programs, DSPO

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A Steering Committee will be set up to oversee the program implementation. The Steering Committee will meet at least one a quarter and it will include representatives of the Superior Council of Magistracy, Ministry of Justice and other institutions which will be invited to take part in the work of the Steering Committee. The Steering Committee will be composed of: two representatives of the Superior Council of Magistracy (one expert on recruitment and professional and training and one expert on program management), one representative of the National Institute of Magistracy (expert on continuous training), one representative of the High Court of Cassation and Justice (member of the United Sections of the High Court who has the competence to solve the second appeals in the interest of law) and one representative of the Ministry of Justice (expert on legislative issues).

6.2. Twinning

The project will be implemented through a Twinning contract in value of 0.8 Meuro (0.6 Meuro EC contribution and 0.2 Meuro cofinancing).

6.3. Non-standard aspects

The provisions to be applied to this Twinning contract are those from the Twinning manual.

6.4. Contracts

The project will be implemented through a Twinning contract in value of 0.8 Meuro.

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7. Implementation Schedule

7.1. Start of tendering/call for proposals
September 2007

7.2. Start of project activity
April 2008.

7.3. Project completion
Expected date of completion of the Twinning project is March 2009.

8. Sustainability

Contributions from the Romanian administration for effective implementation of the twinning may be further detailed in the twinning contract.

The Superior Council of Magistracy, as the Implementing Authority for this Twinning, plans to manage the project within the framework of the existing human and financial resources, which is considered to be adequate and sufficient. The PIU within the Superior Council of Magistracy will assist the Twinning partner as regards the technical implementation of the project.

The Superior Council of Magistracy will see to the inclusion of the co-financing of the project in its budget. Resources in terms of staff and budget to secure the sustainability of the project after their completion will be ensured.

The sustainability of the acquired training will be ensured through its further dissemination to the other magistrates. Also, the judiciary will benefit on a long term through the quality of the information provided during the training sessions, which will be applied in the daily activity of the trainees.

The collections of jurisprudence provided will be properly disseminated among all magistrates and serve as a basis for a unitary approach in solving cases.

9. Conditionality and sequencing

There is no conditionality that must be satisfied before the project can start.

Sequencing:

- Tendering/call for proposals started by September 2007;
- Tendering for Twinning project started by October 2007;
- Twinning Contract ready and signed by March 2008;
- Project activities will be carried out by March 2009.

The present contract is not linked to any contracts and/or other projects with the same objective.

ANNEXES TO PROJECT FICHE

1. Logical framework matrix in standard format (compulsory)
2. Detailed implementation chart (compulsory)

3. Contracting and disbursement schedule by quarter for full duration of programme (including disbursement period) (compulsory)
4. List of relevant Laws and Regulations (optional)
5. Lessons learnt from previous years (compulsory)

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Log frame
Transition Facility programme for Romania
Superior Council of Magistracy

LOGFRAME PLANNING MATRIX FOR Project Fiche		Programme name and number	Disbursement period expires
Title of the project		2007/19343.01.01	15.12.2010
<i>Assistance in unifying the jurisprudence of courts and prosecutor offices in Romania</i>		Contracting period expires 15.12.2009	TF budget 0,6 Meuro
Overall objective		Total budget : 0,8 Meuro	
To support the efforts for establishing a reliable, independent and predictive justice for all the actors involved	Relates to Copenhagen criterion and acquis chapter⁴	List of other projects with same objective	
	Ensuring a more consistent interpretation and application of the law in order to create legal certainty throughout the country The Comprehensive Monitoring Reports on the Romania preparations for membership (CMR) issued by the Commission in May and September 2006	Phare RO 02/IB/JH-09 - Twinning arrangements for the Superior Council of Magistracy contained no relevant activities for this project. Phare RO 04/IB/JHA-01 - Twinning arrangements for the Superior Council of Magistrates contains no relevant activities for this project. Phare RO 9705-01 - Technical Assistance for NIM provided training, procurement and institutional building. Phare RO-9905-01 continued the components of Phare 97 in terms of training, procurement, and institutional building. PHARE 2003/005-551.04.16	

⁴ Please specify here the recommendation made in Comprehensive Monitoring Report or other relevant documents (SIGMA (financial control, procurement, Peer Reviews, Evaluation reports, Final reports of TW projects))

			"Support for the improvement of the justice for minors" - Twinning and Investment.	
Project purpose	Objectively verifiable indicators	Sources of Verification	Assumptions	
To improve the consistency of the jurisprudence, through an increased process of unitary interpretation and application of the law by judges and prosecutors	By 2009, the process of interpretation and application of the law will be improved	Evaluation of the improvement of activity in courts and prosecutor offices; statistics Quarterly, by-annual and final project reports which will be sent to all the responsible institutions.	Good collaboration between the relevant institutions Willingness and active interest of the participants	
Results	Objectively verifiable indicators	Sources of Verification	Assumptions	
Result 1 - Assessment study on the current stage of the Romanian legal provisions and practical methods sustaining a unitary interpretation and application of the law throughout the country, according to the best practices of the European Union	<ul style="list-style-type: none"> - One assessment study elaborated - At least ten (10) law areas which are most likely to generate non-unitary practice and need to be prioritized - At least ten (10) public debate sessions organized 	Reports of the Superior Council of Magistracy which will be sent to all the responsible institutions Project quarterly and final reports which will be sent to all the responsible institutions Training seminars/public debating sessions participation lists, conclusions and reports Collections of jurisprudence in at least law fields published		
Result 2 - Trained judges nationwide for improving the consistency of the jurisprudence, in view of reducing the number of cases in which the judgement is reversed subsequent to appeal and/or second appeal procedures	<ul style="list-style-type: none"> - 30 seminars organized - At least 560 magistrates trained - Training curricula for each of the 30 seminars elaborated 	All training activities finalised.		
Result 3 - collections of jurisprudence for each of the 10 minimum law areas, containing case law from all courts, which	<ul style="list-style-type: none"> - Minimum 10 types of jurisprudence collections elaborated and published 	The collections of jurisprudence published and available for all magistrates		

will be used as a teaching material for the NIM training activities	- One final conference organised		
Activities	Means	Assumptions	
<p>5. The experts (foreign and local) will assess the current stage of the legal provisions and practical methods sustaining the unitary interpretation and application of the law throughout the country. They will draw-up proposals to increase the efficiency of the methods for unification of the jurisprudence, according to the best practices of the European Union.</p> <p>5.1. Studying the existing legislative framework in the filed of unifying jurisprudence, the up to date statistical data, strategies and practices of the courts (different levels of jurisdiction);</p> <p>5.2. Identifying all the categories of cases overturn and fields of law generating non-unitary jurisprudence, also having in view the current legislative framework;</p> <p>5.3. Performing a gap analysis between the Romanian current stage of affairs and comparable assessments conducted in EU Member States countries; Observing and presenting the main recommendations and research studies drafted and/or adopted by the relevant European institutions (e.g. Council of Europe resolutions and recommendations concerning the matter of non-unified jurisprudence; ECHR related case-law; CEPEJ reports and documents, if any);</p>	<p>Twinning</p>	<p>Monitoring reports which will be sent to all the responsible institutions</p>	

<p>5.4. Consultations with all stakeholders.</p> <p>6. The experts will draft a proposal containing at least ten (10) law areas which are most likely to generate non-unitary practice and need to be prioritized in the magistrates training programs; the proposals will include a thorough justification and practical aspects.</p> <p>7. The experts will organize and conduct at least ten public debate sessions (in the form of e.g. joint meetings, round-tables and other similar) in each of the law areas identified for discussing with the relevant stakeholders (including magistrates, practitioners and representatives of the institutions involved -SCM, NIM, HCCJ and MoJ) the proposals made by the experts.</p> <p>3.1. In order to organizing the public debates the experts will make the selection of participants;</p> <p>3.2. Drafting the agenda of the public debates;</p> <p>3.3. Elaboration of the discussion papers;</p> <p>3.4. Drafting the report of the debating sessions containing the results of the discussions upon the list of the training priorities for judges in at least ten (10) most sensitive law areas generating non-unitary jurisprudence.</p> <p>8. The experts will carry on the Training Needs Analysis and curricula for each of the ten law area identified.</p>		
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Result 2:

2. The experts shall organize seminars on specific law areas at the level of courts, with the participation of at least 560 judges from all courts nationwide, according to the best practices and experience in the European Union.

1.1. The expert shall assist the beneficiary in selecting the participants (at least one judge from all tribunals and courts of appeal nationwide), by drawing up relevant selection criteria;

1.2. The experts will draft the training curricula and training documentation;

1.3. The experts will conduct the seminars and draw up reports at the end of each activity comprising the main findings and proposals of the seminar. Also the reports will underline the arguments and counter-arguments for the different opinions in the law areas identified.

2. Training courses/seminars/workshops will be organized for groups of 20 participants. There will be a total of 30 seminars organized in appropriate centers all over the country, mainly the premises of the courts of appeal or other appropriate locations (i.e. the training centers of the National Institute of Magistracy in Timisoara, Sovata and Barlad). Phare experts will be joined (if necessary) by Romanian experts.

Result 3:

3.1. The experts will draw up and

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publish the collections of jurisprudence; 3.2. The experts will organise the final conference of the program when the collections are to be launched officially.			
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Adoption of the new statistical acquis communautaire provisions

D = Design
C = Contracting
I = Implementation

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Annex 3a - Cumulative contracting schedule

	31/03/08	30/06/08	30/09/08	31/12/08	31/03/09	30/06/09	30/09/09
CONTRACTED Twinning	0,6 MEURO						

NB: All contracting should normally be completed within 6-12 months and must be completed within 24 months of signature of the FA.

	31/03/08	30/06/08	30/09/08	31/12/08	31/03/09
DISBURSEMENT Twinning	0,2 MEURO	0,35 MEURO	0,46 MEURO	0,54 MEURO	0,6 MEURO

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Annex 4 – List of relevant Laws and Regulations

- Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania (2003/397/EC)
 - Comprehensive Monitoring Report on Romania preparations for membership (CMR), May 2006
 - Comprehensive Monitoring Report on Romania preparations for membership (CMR), September 2006
 - Commission Decision of 13th of December 2006, establishing a Mechanism for Cooperation and Verification (MCV) of progress in Romania
 - European Convention on Human Rights
 - European Convention 850/03 from Bruxelles - draft treaty establishing a Constitution for Europe
 - The Tampere European Council, October 1999 on the creation of an area of freedom, security and justice in the European Union
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- Strategy for the Reform of the Judiciary 2005-2007 (Government Decision no. 232/2005 on the approval of the Strategy for the Reform of the Judiciary and the Action Plan for the implementation of thereof)
 - National Development Plan for 2007-2013
 - Law no. 304/2004 regarding judicial organisation, amended and republished
 - Criminal Procedure Code

Annex 5 - Lessons learnt from previous years

Note to the attention of the Head of PIU

Identified Gaps or Recommended courses of intervention	Action for covering the Gap or implement the recommended intervention	Phare Programming (Project Reference)	Transition Facility
<p>“However, certain concerns persist. A consistent interpretation and application of the law at all levels of courts throughout the country has not yet been fully ensured. [...] This issue will have to be addressed as a priority. [...] Further efforts are needed to ensure a more consistent interpretation and application of the law in order to create legal certainty.” - Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, published by the European Commission on the 26th of September 2006</p>	<p>In order to interpret and apply the law in a unitary manner, the <i>Strategy for the reform of the judiciary 2005 – 2007</i>, focused mainly on ensuring a wider access to legislation and jurisprudence through the development of adequate facilities for magistrates.</p> <p><i>During 2005 and in the first part of the 2006</i>, the following measures were implemented: a) the daily briefing of magistrates on the new legislation published in the Official Journal; b) the development and distribution of quarterly bulletins of jurisprudence of High Court of Cassation and Justice (HCCJ); c) the establishment of courts' web portal, so that each court could publish its decisions; d) the development of quarterly booklets of case-law; e) the distribution of HCCJ decisions on appeals in the interest of law; f) the organization of meetings of judges and prosecutors at local, regional or national level in order to discuss problems of non-unitary case-law; g) the widening of the area of institutions that may lodge an appeal in the interest of law (this competence was given to the leading</p>	<p>Phare RO 02/IB/JH-09 – Twinning arrangements for strengthening the functioning of the Romanian judiciary and its representative body – Superior Council of Magistrates – <i>The purpose of this project is to contribute to devising and establishing an organizational and administrative structure that will guarantee the independence of the Romanian judiciary and improve the operation of the Romanian judicial system, by assisting in the legislative process of redefining and strengthening the role of the Romanian Superior Council of Magistrates, and by enhancing the Council's institutional capacity and operational performance in accordance with its extended responsibilities and best practice in the EU Member States.</i></p>	<p>Assistance in unifying the jurisprudence of courts and prosecutor offices in Romania TW</p>
<p>“To the expert, the most important remaining problem of</p>		<p>Phare RO 2004/IB/JHA-01 -</p>	

<p>the Romanian judiciary is to unify the jurisprudence in the country. The problem is already addressed by several legislative and practical measures. It has to be monitored whether the measures taken are sufficient." – The Report of the 3rd Peer Review Mission, March 2006</p> <p>"However, the problem is still far from solved, although the number of appeals in the interest of the law has risen. As the expert understood, SCM has prepared a law draft suggesting that trial courts should suspend the proceedings in an ambiguous question of law and should refer the question to the High Court for a preliminary ruling. The proceedings would be similar to art. 234 EC Treaty for the European Court of Justice.</p> <p>To the expert, this concept faces some disadvantages. First, it might just prolong cases. Then and maybe more disturbing is, that the trial court will receive an answer to an abstract question of law. This might prove not at all useful in solving the case.</p> <p>These are the present „problems“with the EuCJ's preliminary rulings and courts are quite reluctant to present cases/questions to the EuCJ if they are not obliged to do so by law.</p> <p>On the other hand, the problem of the not unified jurisprudence is significant and urgent. But to the expert it is not so much a problem of the law to invent further surveillance mechanism.</p> <p>It has to be the professional duty of the trial court judges to give reasons for deviation from court decisions of superior courts or of the common practise of the court.</p>	<p>boards of the Courts of Appeal); f) the monitoring of non-unitary case-law by elaborating certain documents containing proposals to lodge appeal in the interest of law. All these measures were supported in the first part of 2006 by the extension of IT system up to 99%.</p> <p>Within the second quarter of 2006 and in 2007 it is necessary to continue the process of developing the access of judges and prosecutors to legislation and jurisprudence, supported by supplementary measures in order to raise the awareness within judges and prosecutors regarding the importance of ensuring a unitary case-law, as an essential issue in raising public trust in the act of justice. In this respect the SCM shall focus on enhancement of the frequency of professional meetings of judges and prosecutors, in every specialized field, within which the legal problems that may lead to non-unitary case-law should be addressed. This measure shall also have a major impact as regards the process of awareness raising. These meetings shall be organized on regular basis, shall have clearly defined target groups, as it is mentioned in the plan below. Separately, the National Institute of Magistracy developed curricula addressing problems of non-unitary case-law for each specialized field, both within the framework of the initial and continuous training. In 2006/2007 seminars with a more practical approach are to be organized.</p>	<p>Twinning arrangements for the Superior Council of Magistrates – The purpose of this project is to provide the Superior Council of Magistrates (SCM) with a fine-tuned regulatory framework and professionally trained staff and members.</p>
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<p>This professional duty has to be established, it belongs to „the craft of writing correct decisions“ that the judge shows that he/she is aware of other precedence, but for explicit reasons cannot follow. It requires a sense of responsibility at all level of courts. Therefore, unifying the jurisdiction is not so much about „control“ or „surveillance“, but about knowing the craft of writing a judgement.</p> <p>Training is one means to achieve this, the others are quite indirect:</p> <p>Improving the access to jurisdiction, reducing the number and frequency of legal amendments, subsidizing legal magazines, in order to create discussion forums, improve legal education at university level.</p> <p>Otherwise, time and, hopefully, the discipline and quality of (High Court) judges will improve the present situation.</p> <p>To the expert this problem is urgent. The public trust in the judiciary will improve if the public has the impression that going to court will produce more predictable results.” - The Report of the 3rd Peer Review Mission, March 2006</p> <p>“All the existing remedies (regular meeting among judges in the courts, appeals in the interest of the law, documentation, initiative of the SCM etc.), in the expert’s opinion, can not be effective because there is a structural problem and probably it is worthwhile to start a deep reflection on the opportunity to find a solution by restructuring the system itself. To transform the HCCJ in a pure cassation court with unique and exclusive jurisdiction</p>	<p>The Judicial Inspection and Directorate of Legislation within SCM finalized documents presenting the problems of non-unitary case-law in 2005 and within the first half of 2006 and presented proposals for lodging appeals in the interest of law. These documents were subsequently sent to Public Prosecutor’s Office attached to HCCJ, Ministry of Justice and High Court of Cassation and Justice. As a consequence, several decisions were passed by High Court of Cassation and Justice on appeals in the interest of law. Similar documents shall be further elaborated by SCM, on quarterly basis.</p> <p>In order to ensure the possibility to acquire the relevant knowledge in each specialized field, further development of specialized training for judges and prosecutors represents another direction for action during the second half of 2006 and in 2007. In 2006/2007, NIM, the courts and the public prosecutor’s offices shall apply the Plan for decentralized training approved by SCM on the 9th of March 2006, by organizing more seminars at the level of courts and prosecutor’s offices. The number of seminars in each specialized field for each court/public prosecutor’s office has increased from 2 to a minimum of 4 seminars/year and the trainers within the network of NIM will be mainly used. The new decentralized method, coordinated by NIM, but conducted by courts/public prosecutor’s offices, shall also increase the level of awareness by</p>
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<p>on <i>recurs</i> and with a filter of admissibility is one possible option but of course this should be part of a broader reform of the system and not an isolated step otherwise there would be the risk to create again an enormous backlog at the HCCJ." - The Report of the 4th Peer Review Mission, August-September 2006</p>	<p>direct involvement of judges and prosecutors in the improvement of professional training.</p> <p>In order to achieve these measures, SCM shall have the direct support of HCCJ, the institution with the main role in ensuring the case-law consistency and the support of NIM, institution responsible for the initial and continuous training of judges and prosecutors. An updated Plan will be presented below, drafted on the basis of the Plan approved by the Romanian Government through G.D. 232/2005</p>		
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Note: The table should summarize all the interventions aimed at the application of the recommendations of the comprehensive Monitoring Report, SIGMA (financial control, procurement, Peer Reviews, Evaluation reports, Final reports of TW projects, specifying the sources of financing of the intervention, i.e. IFIs or state budget (see the examples in the table). Please insert in the table only those gaps/recommendations relevant for the interventions planned for current exercise, in a most synthetic way. Obviously, the column for PHARE 2004-2006 will be completed only if the intervention spans over all the three programming years – i.e. there are projects to be financed from Phare 2004, respectively 2005 and 2006 under the same recommendation.

Annex 6 – Detailed budget

€M	Transition Facility support			Total cost (TF + co-financing)		
	<i>Investment Support</i>	<i>Institution Building</i>	<i>Total Transition Facility (= I+IB)</i>	National Public Funds	Total co-financing of the project	Total cost (TF + Co-fin)
Twinning Contract						
Preparation of Twinning Covenant		10.000	10.000			10.000
RTA (12 months, approximately 290 working days)		250.000	250.000			250.000
10 STEs (per-diem - the current rates published by the Europe Aid Co-operation Office on their website at the time of the mission applies)		202.000	202.000			202.000
Translation, interpretation, training		100.000	100.000			100.000
Romanian Project management				200.000	200.000	200.000
Accreditation		10.000	10.000			10.000
Audit		5.000	5.000			5.000
Final conference		3.000	3.000			3.000
Contingencies		20.000	20.000			20.000
TOTAL		600.000	600.000	200.000	200.000	800.000

