



**R O M Â N I A**

---

**R E P O R T**

**on the activity of the Prosecutor General  
during her term of office**

**2006 – 2012**

This document is a synthetic account of my activity as Prosecutor General within the Prosecutor's Office attached to the High Court of Cassation and Justice for two consecutive terms. Particular emphasis was placed on:

- the measures designed to organize the activity of the institution based on efficiency criteria;
- the implementation of a coherent and unitary policy regulating criminal matters, for the benefit of the entire society;
- the actions in support of the fulfillment of Romania's obligations with regard to the judicial reform and the fight against corruption.

One of the chapters highlights the key measures that are necessary for the ongoing strengthening and development of the Public Ministry (MP), regardless of the person who will be appointed in this position.

<b>CHAPTER I</b>	
<b>PRIMARY AND STAGE TARGETS. INSITUTIONAL REALITIES, MEASURES AND RESULTS .....</b>	<b>3</b>
I.1. The situation existent at the appointment to office .....	6
I.2. Immediate measures.....	8
I.3 Reached Goals.....	9
I.4. Dynamic Overview. Quantifiable results.....	11
<b>CHAPTER II</b>	
<b>ACTIVITY MANAGEMENT .....</b>	<b>13</b>
II.1. Coherent and unitary penal politics. Identifying the priorities of the Public Ministry and the measures to be adopted .....	13
II.2. Unifying the judicial practice .....	26
II.3. Actions to help improving the efficiency of the judicial inspection...	29
II.4. Harmonization with the international judicial environment.....	29
<b>CHAPTER III</b>	
<b>ORGANIZATIONAL MANAGEMENT .....</b>	<b>33</b>
III.1. Reshaping and streaming of the Public Ministry .....	33
III.2. Initiatives In The Human Resources Area .....	39
III.3. Information Technology Process of the Public Ministry .....	45
III.4. Better Prosecution Standing in the Judicial Proceedings .....	51
III.5. Management of financial and logistic resources .....	52
III.6. Protection of classified information.....	53
<b>CHAPTER IV</b>	
<b>PERFORMANCE, COORDINATION AND TRANSPARENCY .....</b>	<b>55</b>
IV.1. Steps towards Complying with the EU Accession Conditions set for the Public Ministry .....	55
IV.2. Contribution to the improvement of the legal framework .....	57
IV.3. Strengthening and protecting the prosecutors' status .....	60
IV.4. Strengthening the national institutions relations .....	61
IV.5. Measures for Sustaining Professional Training .....	63
IV.6. Project Implemented from 2006 to 2012 .....	64
IV.7. Improvement Public Communication and Mass Media Relations...	70
<b>CHAPTER V</b>	
<b>CONCLUSIONS. FUTURE CHALLENGES. SUGGESTIONS FOR POSSIBLE APROACHES .....</b>	<b>72</b>
V.1. Conclusions .....	72
V.2. Future Challenges. Suggestions of Possible Approaches.....	76

## CHAPTER I

### PRIMARY AND STAGE TARGETS. INSTITUTIONAL REALITIES, MEASURES AND RESULTS

*The main goals undertaken after the appointment as Prosecutor General and validated by the Superior Council of Magistracy (CSM) during the interview given to the prosecutors' section of this body were:*

- increasing the efficiency and promptness of the criminal prosecution activity;*
- optimizing organizational management, by adopting a number of measures aimed at reorganizing the Public Ministry;*
- implementing advanced models of human resources management, based on the professional training of prosecutors in light of the new characteristics of crimes, which require higher forms of specialization;*
- increasing the confidence in the Public Ministry by enhancing transparency and improving communication with the public, the civil society and the media;*
- amending the relevant legal framework by identifying any legal shortcomings and recommending solutions to these problems;*
- developing technical support instruments, by implementing computerized technologies and improving the specialized infrastructure.*

*Drawing on the expertise gained during my first time in the office as General Prosecutor, and based on the implementation stage of the reform as well as on the institutional development requirements, the following lines were added to the initial plan of action:*

- setting up a partnership with the Superior Council of Magistracy, the Ministry of Justice and the other institutions of the judicial system in order to speed up the implementation of reforms planned for my second term in the office;*
- subordinating the judicial police to the Public Ministry. The judicial police officers were both subordinated to the Police and to the Public Ministry in the activity of criminal prosecution which limited the efficiency of this body tasked with performing of criminal investigations in over 95% of the registered criminal cases;*
- fund allocation to each Prosecutor's Office unit to organize searches and domiciliary visits;*
- hiring of experts who can perform technical and scientific evaluations at the level of every Prosecutor's Office unit, the same as for DNA and DIICOT;*
- access of every Prosecutor's Office unit to criminal proceedings data bases;*
- extending a specialized approach to different types of crimes (violent crimes, road regulation crimes, environment and forest related criminal activity) by appointing groups of prosecutors, especially trained either internally or with the*

*help of INM, and working towards standardized practices;*

- simplifying statistic forms and reviewing the relevant indexes for the Prosecutor's Offices units;*

- continuing the coordination between the Public Ministry and IGPR (General Inspectorate of the Romanian Police) databases and issuing of common criteria for the evaluation of the two bodies. There is no reason to have different statistics for the two institutions as there is a single criminal prosecution and different efficiency criteria can lead to different priorities;*

- restructuring the auxiliary personnel to allow for new hiring of clerks who are supposed to take over the extra-judiciary work overload of the prosecutor and thus speed up the prosecution files;*

- improving the efficiency of debates on the legal framework organized by the Public Ministry;*

- implementing an electronic documents management system which will allow easy access to files or documents stored by the prosecution units, and guarantee the security of the documents;*

- developing an electronic file archive in order to allow the prosecutors defending cases in Court to access files and statistic data in order to draw up pertinent conclusions;*

- extending the electronic monitoring of decisions made by courts in different cases and setting up of an electronic Intranet library with a view to reaching a unified judicial practice at the level of the Prosecutor's Office units;*

- a more efficient and unitary employment of security measures in order to guarantee criminal prejudice recuperation;*

- strengthening the cooperation with the police bodies to better define competences and tasks within the criminal proceedings and set up specialized teams. This measure should aim at the implementation of new provisions of the Criminal Procedure Code regarding the procedural institutions that had a bad impact on the criminal proceedings in the past due to the lack of conformity with the secondary legislation standards.*

*The inter-institutional cooperation aiming at a better response time in the criminal prosecution process and a unitary communication with other institutions (both national and international), by producing standard documents for the domestic and international communication networks were also very important goals.*

- obtaining financial means to cover for the real necessities of the system and, at the same time, improving the allocation of the existing funds;*

- improving the public image of the Public Ministry.*

## **I.1. The situation existent at the appointment to office**

After being appointed as Prosecutor General, I took a personal interest in initiating an assessment of the state of affairs in the Public Ministry, in order to identify the key priorities for the following years.<sup>1</sup>

In order to substantiate the conclusions of the assessment, we carried out an analysis of the statistical data regarding the activity performed between January 1, 2006 and October 2, 2006 by the various departments within the Prosecutor's Office attached to the High Court of Cassation and Justice (PICCJ), by the subordinate prosecutors' offices and by other institutions that are closely related with the Public Ministry's activity (the Ministry of Justice – MJ, the Superior Council of Magistracy, the National Institute of Magistracy – INM).

*The dysfunctions that were identified affected almost all areas of the Public Ministry's activity, i.e. the criminal prosecution and judicial activity, the organizational activity and the institutional development strategies, as well as the management of human resources.*

***The following conclusions were drawn:***

► ***the lack of a unitary regulatory system and the inadequacy of the internal regulatory framework***, which, at that time, consisted of a variety of orders, notifications and memoranda, some of which were contradictory or even obsolete;

► ***the marked imbalance in the distribution of tasks among departments***<sup>2</sup>, generated by the failure to adapt the criminal procedure code and the judicial organization law to contemporary social realities;

► ***the lack of a coherent personnel policy and an inadequate management of the existing human resources.***

Within the Public Ministry (MP), the distribution of staff was not subject to an analysis of the need for prosecutors at every level of jurisdiction, given the actual workload.

---

<sup>1</sup> By visiting other subordinate prosecutors' offices, organizing videoconferences with the heads of the local prosecutors' offices and initiating consultations with the prosecutors within the Prosecutor's Office by the High Court of Cassation and Justice.

<sup>2</sup> Some local prosecutors' offices have to solve around 201 cases each year (the Prosecutor's Office by the court of Făget), whereas others are confronted with a number of 1,643 cases (the Prosecutor's Office by the court of Cluj-Napoca).

*Thus:*

- ***the Public Ministry did not have a job title list in place***, as this document was drafted after the approval, in 2004, of the Internal Regulations. Consequently, the number of prosecutors for each department or unit within the prosecutor's office could not be determined, and the distribution of personnel was carried out according to the previous job title list, which was no longer aligned with the new functions;
- ***the number of employees, including those in management positions, was too large*** (81 out of the 209 positions, i.e. about 40%). The organization chart included many departments, sections and offices that were not justified in terms of the functions they fulfilled, while the prosecutors' distribution by departments was not tailored to the actual needs;
- ***the performance of the local prosecutors' offices was affected by the lack of sufficient prosecutor positions<sup>3</sup>*** (even though they make up 80% of the Public Ministry's activity);
- ***the practice of filling vacant management positions by successive delegations of responsibilities*** (often belatedly), resulting in the inefficient management of territorial structures;

► ***the faulty prioritization in the distribution of available resources*** to the criminal prosecution activity and ***insufficient commitment to important cases***, which resulted in a small number of cases solved by indictment;

► ***the lack of consistency of the public debate on legislative proposals***, with a direct impact on the prosecutors' activity, which was not institutionalized and inconsistent;

► ***the existence of dysfunctions in the control and quantification of efficiency<sup>4</sup>***, with a direct effect on institutional management;

► ***the infringement of a number of legal provisions regarding the protection of classified information***, both in terms of procedures and physical protection<sup>5</sup>, resulting in information leaks;

► ***deficiencies in the judicious planning and distribution of financial and material resources<sup>6</sup>***, along with the lack of interest in attracting EU funds<sup>7</sup>;

---

<sup>3</sup> In October 2006, the Public Ministry had a total number of 2,611 prosecutor positions, out of which 20% were vacant (538).

<sup>4</sup> In spite of the existence of an IT system, the activity was not computerized and the statistical records were drawn up on paper.

<sup>5</sup> For instance, by not establishing security areas.

<sup>6</sup> Main goal of the budgetary policy was the payment of compensations, although the premises of some of the local prosecutors' offices had been claimed by former owners and the car fleet was old and insufficient.

<sup>7</sup> Although the number of pre-accession programs was high, the Public Ministry only benefited from 2 PHARE programs.

► *the constant yearly increase in the number of criminal cases pending resolution*<sup>8</sup>.

Each of the identified problems had a negative impact on the quality and promptness of the criminal prosecution activity, triggering negative feedback from the citizens on the quality of the justice system.

## **I.2. Immediate measures**

Based on these institutional findings, *the first decisions that were adopted focused on:*

► *ensuring continuity in accordance with managerial changes implemented, as well as avoiding any drawbacks in the activity of PICCJ and its subordinate structures, while gradually increasing quality and efficiency.*

This led to the enforcement of *the new internal regulations of the Prosecutors' Offices*, providing for:

- *the decrease of the existing bureaucracy, particularly within P.I.C.C.J, by a 40% cut in the number of departments, sections and offices with overlapping functions;*<sup>9</sup> - *82 subordinate positions*<sup>10</sup> and *33 executive positions*<sup>11</sup> were cut;

- *these vacant positions were redistributed*, mainly to the prosecutors' offices by the courts of first instance, which are still faced with a high deficit of personnel, while their workload is significant. *Other measures were aimed at increasing efficiency and relieving prosecutors from additional bureaucratic tasks;*

- *the monitoring of the prosecutors' current activity* by the prosecutors holding executive positions;

- *the improvement of the internal regulatory framework*, to which end 36 orders stipulating various extrajudicial functions to be fulfilled by the prosecutors were rescinded;

- *the speeding up of the implementation of computer technology* (ever since the beginning of the term of office the Department of Information Technology was established), which enabled the implementation of modern means designed to keep a record of criminal cases and provided prosecutors with new working tools, thus optimizing the resolution of cases and speeding up the process.

<sup>8</sup> In 1996 the Public Ministry had to solve around 430,000 cases, while the number of prosecutors was 1950. In 2006 the number of prosecutors only increased by 100, but the workload doubled, reaching 913,000 cases. In 2007 there were over 1 million cases pending resolution, while in 2008 their number was of approximately 1.2 million.

<sup>9</sup> The number of sections was cut from 8 to 3, that of departments from 20 to 11 and that of offices from 33 to 16.

<sup>10</sup> From 209 to 127.

<sup>11</sup> From 81 to 38.



► *initiating a reform aimed at contributing to the institutional development of the Public Ministry*, with a view to strengthening, optimizing and increasing its reliability in the performance of justice.

### **I.3. Reached Goals**

The **main goal** of the Public Ministry since the beginning of my tenure was to **increase the efficiency, the response time and consistency of the criminal proceedings** mainly in cases of corruption, organized crime, tax evasion, and smuggling. Special attention was paid to **the recovery of damages and security measures. Improving the public image of the institution by means of increasing transparency** was also a major goal during my time in office. To these purposes, the following **key measures** were in place:

► **new evaluation criteria for the Prosecutor's Office Units**, based on the efficiency of the criminal investigations performed. We looked at the number of indictments, number of persons accused, the general value of the security measures in place, in the main areas of interest as presented by the General Prosecutor in the annual activity report. During 2007 – 2012 the priority areas were the fight against corruption, organized crime, tax evasion, money laundering, smuggling, infringements against life and actions of damages;

► **prioritize and direct funding towards important cases in targeted areas.** Staffing specialized units with trained personnel and properly funding the activity was a major concern. Proper funding was distributed to all Prosecutor's Office Units to allow them continue the investigation of serious crimes and less money was allotted to auxiliary activities such as report writing, statistics, assessments and so on;

► **restructure the Prosecutor's Office Units and redistribute staff to the local units with work overload.** By means of successive modifications of the job title list, over 115 employees in PICCJ and 20 in the Prosecutor's Office attached to the Court of Appeals were cut and redistributed to local units with personnel deficit;

► **teams of specialized prosecutors trained for certain categories of crimes** were set up. These prosecutors were trained in EU programs on corruption countering, fight against organized crime, programs regarding the use of covert investigators and of other investigative means, financial investigations and

recovery of damage. The specialized prosecutors in investigating corruption cases and judiciary police officers in the local DGA office and county police inspectorates participated to regular workshops in order to optimize the criminal proceedings in this field;

► **Strategies for countering the criminal activity in areas of corruption and financial crimes tailored for specific regional needs** were implemented. Each local strategy included a risk assessment, identification of priority areas and the scoop of each unit, means to allow the monitoring of these areas and performance criteria based on the number of cases investigated, number of indictments and categories of crimes;

► **Standardization of the investigative methods** by means of guides of good professional practice in cases of corruption, financial crimes, use of covert investigators, forensic activities and recovery of damage;

► **Decisions made by prosecutors nationwide were monitored in order to identify problems leading to non-unitary judicial practice.** The response of PICCJ in such situations was materialized in the form of memoranda/notes to the local units or recommendations issued by the Prosecutor General;

► **The goods that can be laid distraint upon** were listed in a common Order designed by the Public Ministry and the Ministry of Interior;

► **IT and data processing within the Public Ministry.** A communication network was created allowing the institution access to confidential information, to electronic mail and transfer of information. **Prosecutors got direct access to 15 databases. The Public Ministry uses a web application for gathering and centralizing data** on the investigated cases in areas of corruption, tax evasion, smuggling, money laundering, thus allowing the access to files registered countrywide and a timely listing of the statistics on relevant topics. Moreover, the prosecutors can access **a virtual library including guidelines of best professional practices and jurisprudence. A video-conference system** was implemented in order to allow for a more efficient, safe and rapid exchange of information as well as a base for remote professional training;

► **Cooperation protocols with our main institutional partners** were drawn up in order to formalize a proper environment for the exchange of information, to define common goals and good judiciary assessments of the cases. Among the signatories of these protocols were CSM, Ministry of Justice, the High

Court of Cassation and Justice, the Ministry of Interior and Administration, the National Office for Money Laundering, SRI, the National Administration of Penitentiaries, the Ministry of Defense, Competition Council, the National Bar Union, the National Union of Public Notaries, the National Union of Executors and the Mediation Council;

► **A new procedure and rigorous criteria** applied to the selection, promotion and release of judicial police officers;

► **Legal drafts regarding efficient judiciary instruments provided to the prosecutors** were presented to the Ministry of Justice, some of which were adopted. The Act on measures designed to accelerate the criminal cases includes recommendations regarding simplified procedures. Hiring of experts by the Prosecutor's Office Units and strengthening of the prosecutor's control over the judicial police officers activity were provisions included in the draft act implementing the new Criminal Procedure Code. Other recommendations on special seizure were included in Law 63/2012 regulating extended seizure;

► **The main rules regarding communication with the mass media** were formalized in an Order of the Prosecutor General with a view to increasing the transparency and the public level of trust. In 2006 there were issued less than 100 press releases, while in 2011 the number mounted to 800. Training sessions with the spokespersons were held and a **standard in public communication** was set up by implementing a unified model for different types of public communication. Moreover, the press department within PICCJ draws up a daily bulletin with relevant news which is circulated inside the Public Ministry.

#### **I.4. Dynamic Overview. Quantifiable results**

Recent developments show a radical change in the prosecutors' practice, an essentially proactive approach that was constantly appreciated by the European experts assessing the judicial filed.

**Structuring the activity based on priorities led to a constant and solid increase in the number of defendants sent to trial and of those who were convicted** for corruption, organized crime, tax evasion and smuggling.

A general indicator of the improvement in efficiency and consistency of the criminal proceedings shows **an increase by 27% in 2011 as compared to the previous year of the defendants sent to trial** (over 60 000 defendants presented to Court in 2011). This is **the fourth year in a row when an increase is registered and before 2008 it used to drop constantly**.

### **Defendants sent to trial**

<b>Year</b>	<b>Defendants sent to trial</b>
2007	47787
2008	45073
2009	49743
2010	56949
2011	60980

A relevant index for an increased consistency of criminal prosecution is the constant increase in number of the defendants in preventive arrest – up to 8.941 at present, more than 70% as compared to 2007.

### **The number of defendants in preventive arrest**

<b>Year</b>	<b>Arrested defendants</b>
2007	5205
2008	5473
2009	6984
2010	8659
2011	8941

In terms of response time, we may say that the number of finalized cases is 25% bigger in 2011 than in 2007, as in the 600.000 cases solved in 2011, more than 70% of them were given a decision in less than 6 months from opening the case.

### **The number of cases solved**

<b>Year</b>	<b>Cases solved</b>
2007	462397
2008	492474
2009	497119
2010	518219
2011	579322

All indexes mentioned above would be relatively relevant in the absence of a quality index, indicating the correct approach of penal cases. As a consequence, we may say that the main quality index, given by the percentage of the defendants definitively exonerated by court, diminished and remained constant under 2%, which is significantly above the European average.

### **The number of defendants exonerated**

<b>Year</b>	<b>Exonerated defendants</b>
2007	2.53%
2008	2.62%
2009	1.64%
2010	1.39%
2011	1.81%

## **CHAPTER II ACTIVITY MANAGEMENT**

### **II.1. Coherent and unitary penal politics. Identifying the priorities of the Public Ministry and the measures to be adopted**

*Implementing coherent and unitary penal politics at a national level is one of the main tasks of the Public Ministry, deriving from the legal principle of hierarchic control and the unitary structure of prosecutor's offices.*

*From a practical perspective, establishing the priorities of penal politics is based on the need for the investigative resources to focus mainly on the relevant domains of society.*

In order to reach this target, the priorities of the Public Ministry<sup>12</sup> were established annually and assumed accordingly by all the prosecutor's offices, based on the analyses of social aspects and dysfunctions in the activity of judiciary bodies. At the same time and as far as the prerogatives of the General Prosecutor

<sup>12</sup> The priorities of the Public Ministry were publicly presented in the annual reports of activity.

reach, the prosecutor's offices were sustained in accomplishing this target, as they were also given the right instruments.

Those priorities were mainly targeted at countering certain types of crimes of high incidence and social dangerousness (offences of corruption, financial crimes, crimes perpetrated in violence or offences hindering the performance of justice) and taking more rigorous judgment before adopting preventive measures; they also referred to the way judiciary expertise is conducted and the adoption of a unitary set of rules in the activity of the prosecutor's offices.

### **Major priorities and adopted measures**

During the term of office, the *major priorities* identified are:

► *Consolidating the institutional capacity of the Public Ministry in countering corruption and organized crime.*

This was one of the most significant challenges during the term, as this criminal phenomenon was generally viewed as being widespread throughout all levels of society and judiciary bodies are not efficient in containing it, while competence for opening prosecution for this type of crimes lies exclusively with the prosecutor's office. Moreover, fighting corruption is one of the main requirements to Romania's European Union accession.

*At the time of the appointment of office, there were little high level corruption cases solved by indictment by PICCJ, while corruption cases solved by prosecutor's offices referred mostly to less significant offences (especially bribery).*

In order to change the approach to corruption and organized crime, the Public Ministry adopted the following **measures**:

• *optimizing the activity of the National Anticorruption Department and the Department for the Investigation of Organized Crime and Terrorism by focusing their interest on finalizing major cases.*

Within the General Prosecutor's prerogatives, DNA and DIICOT were allocated the necessary human and material resources, and their management became stable, while prosecutors were guaranteed total independence.

In order to allow judiciary bodies to make inquiries as to establish truth, in cases where there were indications that ministers or former ministers may be involved, the Parliament and the President of Romania were requested to ask for the opening of prosecution against such persons.

*Therefore, the dominant typology of the offences circumscribed to the scope of the two specialized bodies changed so that between 2006 and 2012 the General Prosecutor pf PICCJ submitted 19 requests to the Parliament and the President of Romania to ask for the opening of prosecution according to the law on the liability of the members of the government or to ask for approval of search /preventive arrest of members of the parliament or ministers/former ministers acting as members of the parliament.*

As a consequence of legislative modifications and the adoption of the Regulation for the organization and functioning of DIICOT, DIICOT became an autonomous body, with its own legal status, independent from all other structures within the Public Ministry, under direct control of the General Prosecutor.

The new modifications aimed at re-organizing the territorial departments and offices and, therefore, 15 territorial offices were established, while other 15 territorial offices were dismantled in the counties where territorial departments were also in place, and the corresponding management positions were cut. An office for curbing street-level drug trafficking and illegal drug consumption was established in Bucharest. Within the main structure, a Bureau for human resources, studies and professional refresher courses and also a Financial Department were established, thus DIICOT gaining financial and administrative autonomy. The General Prosecutor has taken the necessary steps to strengthen the administrative and institutional capacity of DIICOT by opening 50 more positions of prosecutors<sup>13</sup>. Due to those extra positions open, DIICOT could establish a department specialized in judicial proceedings, it could have prosecutors exclusively specialized in judicial proceedings at local level, and it could also re-allot some of the new positions to those territorial offices that registered an increase in their workload<sup>14</sup>.

DIICOT was constantly supported in terms of administrative issues, its territorial departments and offices developing their activities in optimal conditions in rented locations<sup>15</sup>.

Due to all those management and administrative measures adopted, DIICOT had a consistent evolution, focusing its activity on complex cases. This improvement is not obvious only in statistics, but also in the areas where the prosecutors actively involved: terrorism, frauds at the level of the national energetic

<sup>13</sup> By Government Decision 54/2011, DIICOT was supplemented 50 positions of prosecutors (20 positions financed since 01.06.2011 and the other 30 positions as with 01.01.2012).

<sup>14</sup> Territorial office of Timisoara, Territorial office of Cluj, Territorial office of Mehedinti.

<sup>15</sup> Locations were rented for the Territorial Office of Bucharest, the Territorial Department of Bucharest, the Territorial Office of Cluj, the Territorial Department of Valcea, the Territorial Department of Craiova.

system, espionage, IT crimes, drug-trafficking or trafficking in human beings or illegal interceptions.

### **Relevant statistics on the activity of DIICOT**

<b>Year</b>	<b>Nr. of indictments</b>	<b>Nr. of defendants sent to trial</b>	<b>Nr. of persons convicted by final sentence</b>
2007	757	2061, 905 of which in preventive custody	1078
2008	747	2412, 1014 of which in preventive custody	1160
2009	739	2304, 1181 of which in preventive custody	1189
2010	908	3178, 1586 of which in preventive custody	1489
2011	961	3315, 1609 of which in preventive custody	1704
<b>Overall</b>	4.112	13270, 6.295 of which in preventive custody	6620

### **Value of confiscated drugs**

<b>Year</b>	<b>Value of confiscated drugs</b>
2006	3 million euros
2007	5.6 million euros
2008	20 million euros
2009	167 million euros
2010	3.5 million euros
2011	15 million euros
<b>Overall</b>	<b>214.1 million euros</b>

• *The Criminal Procedure and Forensics Section within PICCJ became an operational department.* This is one of the best examples of how the institution succeeded to reorganize and optimize its activity and therefore, if in 2006 there was a relatively small number of penal cases and only 19 indictments, in 2011 the number of indictments tripled.



A number of 458 persons were sent to trial and 281 indictments issued between 2006 and 2011<sup>16</sup>.

53 persons were given a temporary decision so far, while 211 persons were given final decisions. Prosecutors working with the Criminal Procedure and Forensics Section got involved in the most difficult cases<sup>17</sup> and actively tried to recover damages. For example, in a single case<sup>18</sup>, the prosecutors levied distraint upon 135 buildings and other goods in order to recover damages of approx. 80 million Euros and those were the most important security measures ever instituted in a penal case.

***• a national network of public prosecutors appointed to handle corruption cases, was established by the General Prosecutor's Order no.332/2007, and therefore two public prosecutors were appointed at the level of each prosecutor's office attached to the tribunal and the court of appeal.***

These public prosecutors specialized in investigating and inquiring corruption offences, exchanging professional expertise with the prosecutors working with DNA territorial offices in sessions held quarterly – since 2008 – at the level of each court of appeal.

The launch of the professional training program<sup>19</sup>, which was drafted in cooperation with INM and primarily aimed at getting this category of prosecutors specialized in the methodology of investigating corruption offences, was postponed until the beginning of 2010 due to budgetary restrictions.

***• a manual containing a set of specific tools aimed at testing the integrity of undercover investigators was elaborated by law enforcement agencies, in cooperation with the judicial system and EU academics.*** This approach was taken within a training program held between 2011 and 2012<sup>20</sup> and it aimed at assessing the legal provisions and jurisprudence related to the use of integrity testing practices in the investigation of corruption offences within EU and also at training prosecutors in cooperation with DGA officers. Two “lex ferenda” law drafts were issued and they were meant to integrate practices related to integrity tests and standard use of undercover investigators in corruption cases.

---

<sup>16</sup> 4 members of the parliament/or of the European Parliament, 4 police generals/generals, 2 magistrates, 7 managers of public or private institutions.

<sup>17</sup> The Giulesti Case, the FNI Case, the Petromservice Case, the “Murder at Perla Hairdresser” Case, the “Explosion at Sighetu Marmatiei” Case, the Case of Illegal Hires to the Ministry of Interior, the Case of Theft in Gutai Clough, aviation accidents, complex car accidents, medical malpractice cases, environmental pollution cases.

<sup>18</sup> Penal case no. 916/P/2011.

<sup>19</sup> It stipulates the organization of 14 workshops that should last maximum 3 days, so that each prosecutor within the national network should participate in two workshops.

<sup>20</sup> HOME/2010/ISEC/AG/FINEC-019 – Developing new investigation techniques for corruption offences.

***• ordering the elaboration by each Prosecutor's office attached to the tribunal of a local strategy of counteracting corruption offences (in accordance with the General Prosecutor's order nr.331/2008)***

Each local strategy comprises the following compulsory elements:

- a risk analysis meant to identify the risk factors incident to the activity of public institutions within the scope of each prosecutor's office;
- defining priority domains in the activity of counteracting corruption and the vulnerable institutions within the competence area of each unit;
- methods meant to allow the monitoring of those fields by a systematic exploitation of open and covert information sources so that relevant data regarding a potential perpetration of a corruption offence should be obtained. Monitoring focused on identifying patterns of corruption offences related to institutions acting in fields of interest or to persons whose responsibilities made them vulnerable to corruption. This monitoring activity revealed data that allowed the prosecutors to take on time decisions related to the measures which were to be adopted. Therefore, they could begin investigations each time there were indications that corruption offences had been perpetrated within a public institution, before the briber would make an official complaint;
- the performance indicators referring to the number of indictments, preventive measures adopted (arrests), types of offences investigated, social positions of the defendants, methods used for informing the prosecuting authorities, amounts of money involved, complexity of evidence, and whether the measures taken by the prosecution influenced criminality in the respective fields.

Strategies have been updated according based on results and new aspects, such as information available from other sources or new statistics on each type of crime.

*First, they expected the strategies to result in an increased number of investigations of corruption cases in the fields of interest, followed by an ex officio approach of the prosecution, and therefore, an increased number of indictments.*

*The final target was a significant decrease of corruption in those fields to be identified in the studies and assessments conducted in each field, in accordance with the National Anticorruption Strategy for Vulnerable Fields and Local Public Administration.*

Prosecutor's Office attached to the High Court of Cassation and Justice constantly monitored how local strategies have been implemented in order to counteract corruption crimes, through specially designated prosecutors. They received copies of all decisions taken by prosecutors, both indictments or non-

indictments, and compared them with the strategy issued by each local office in order to establish if there was a proper monitoring of the vulnerable fields, as established by the strategy. All solved cases have been assessed every six months in order to render a bird's eye view of the way criminality had been dealt with.

This approach has resulted in an increased efficiency in investigating corruption cases, as the number of indictments and defendants sent to trial grew larger every year.

For example, over 1119 persons were brought to prosecution over corruption offences in 2011 and the number is double as compared to 2007.

**Defendants sent to trial over corruption offences<sup>21</sup>**

<b>Year</b>	<b>Defendants sent to trial over corruption offences</b>
2007	541
2008	698
2009	662
2010	934
2011	1119

Besides the increased number of cases and defendants sent to trial, we have to point at the complexity of the cases investigated by DNA prosecutors and by prosecutors working with the prosecutor's offices attached to the courts of law. Those cases referred to large networks of corrupted public servants, working with local administration. Lately the prosecutors also conducted various investigations in a series of new fields, such as corruption in penitentiaries, health system or education or investigations related to the acquisition of citizenship or driving licenses or sales of petrol products. Local prosecutors have also been actively involved in investigations related to public acquisitions and conflictual interests.

As a consequence, the institutions under the Public Ministry sent to trial a number of persons holding high public positions or management positions in central or local administration, such as: 29 acting or former members of the parliament, 11 acting or former ministers or state secretaries, 40 mayors of municipalities or villages, 36 magistrates, 130 servants in central or local public administration, 540 policemen.

---

<sup>21</sup> All statistics belonging to prosecution offices, including DNA, are referred to.

In the corruption cases related to persons who held important positions in central or local public administration / public institutions (policemen, customs officers, revenue officers and so on), 713 judicial decisions of conviction were pronounced of 818 cases sent to trial between 2007 and 2011, of which 302 temporary decisions (40,3%) and 447 final decisions (59,7%).

• ***The General Prosecutor issued an Order No. 19/30.01.2012 referring to the PICCJ budget management and use methodology in case of measures and actions to be taken for the identification of obvious corruption offences.*** This Order increased the efficiency and conspiracy of the activities undertaken by prosecutors in relation with the corruption offences that come within the scope of the prosecutor's offices attaches to the courts of law.

► ***An increased efficiency in cases of money laundering, tax evasion and smuggling.***

In order to increase efficiency in cases of money laundering, tax evasion and smuggling, the General Prosecutor implemented a work pattern meant to encourage a proactive approach in this matter. This approach was based on the need for specially trained prosecutors, able to identify crime patterns and develop specific investigative strategies as to detect high risk money laundering areas and monitor them in order to collect relevant information.

• ***Adopting Order no.162/5 July 2010 of the General Prosecutor of Romania, concerning the designation of specialized prosecutors for the investigation of money laundering cases, fiscal fraud and smuggling in all offices attached to tribunal, their training and the elaboration of local strategies meant to counteract this type of crime.***

According to the Order, the strategies shall contain: risk assessments; identification of areas of interest; methods to be used in monitoring those areas and the results obtained following its implementation.

The risk assessment took into account the predictability of economic crimes by examining risk factors and specific problems, such as area specificity, its location near the land or sea border, the main economic activities in the county.

*The assessment was mainly, but not exclusively based on the data collected by the prosecutor's office following a thorough evaluation of statistic information and data conveyed by the agencies dealing with information collection and processing, of local and national studies on this criminal phenomenon and the information provided by mass media. Based on the risk assessment, each prosecutor's office prioritized its resources focusing them on the areas of interest.*

Those measures resulted in personnel training and refresher courses, standard investigative methods and the adoption of guidelines of best practices and procedures in the field which, besides an improvement in the personnel's professional training, brought a coherent approach to procedures and practices at a national level.

Results assessment reference points referred to the number of indictments elaborated, difficulty of cases, preventive measures adopted in the case and security measures ordered as to recover damages.

- *establishing a complex reporting system used by the prosecutors' offices with a purpose to ensure the accuracy of the statistic data.*

For that reason, **a web application containing a database with detailed specific information** on the cases instrumented by the Public Ministry has been developed and put to use in order to promptly document cases of smuggling, fiscal evasion and corruption. Moreover, assessments of data on smuggling, fiscal evasion and corruption are being conducted every three months by PICCJ prosecutors especially designated to this purpose.

- *Data analysis on offences of smuggling, tax evasion, money laundering and corruption, conducted every three months by special prosecutors within the Prosecutor's Office attached to the High Court of Cassation and Justice.*

- *implementing international instruments and best practices, by applying for EU funding programs for carrying out joint actions with institutional partners.*

For having the best practices from U.E., the Public Ministry implementing a program<sup>22</sup> whose purpose was to train professional investigators able to conduct investigations of serious financial crimes and organized crime in Romania. As a result, best practices guidelines in financial crimes investigations have been issued and a training module for financial investigators has been devised for the curricula of the National Institute of Magistrature, as well as the Police Academy. Therefore, 121 prosecutors and police officers were trained to investigate financial crimes, while 20 and police officers were trained to become trainers in the same area.

---

<sup>22</sup> HOME PROJECT/ISEC/2010/AG/FINEC-022 – *Developing professional financial investigators in Romania.*

• *taking the necessary measures to implement the Decision of the Supreme Council for National Defense (CSAT) no.69 of 28.06.2010 on combating tax evasion through collaboration and mutual cooperation with all competent institutions in order to identify the main features of tax evasion, to set priorities, to organize operations and to assess performance.*

In this way:

► all competent institutions coordinated their activity focusing on the operational priorities in the main vulnerable fields identified<sup>23</sup>;

► **joint working panels**, as well as **technical working panels** have been set up at **national and local levels**<sup>24</sup>;

► a **joint Order**<sup>25</sup> with the **Ministry of Administration and Interior** has been signed, providing **joint investigation measures of economic and financial crimes and joint assessments of results.**

• *taking the necessary measures to implement the Decision of the Supreme Council for National Defense (CSAT) no. 38/22.03.2011 on the identification, prevention and counteracting of criminality in sea ports*<sup>26</sup>.

Prevention and counteracting of tax evasion and smuggling in the Black Sea Ports are based on the same guidelines, similar priorities and joint assessment indexes as provided under the CSAT Decision 68/2010<sup>27</sup>.

**The Joint Working Panel – Constanta Ports** became operational in August 2011. By Order of the General Prosecutor of PICCJ trained prosecutors were

---

<sup>23</sup> *Prevention and counteracting tax evasion in the production and sales of **energy products**;*

*Prevention and counteracting tax evasion in the sales of **tobacco products**;*

*Prevention and counteracting tax evasion in the production and sales of **food stuffs**;*

*Prevention and counteracting tax evasion in the production and sales of **alcohol and alcoholic drinks**;*

*Prevention and counteracting tax evasion in **transportation**;*

*Prevention and counteracting tax evasion in **tourism**;*

*Prevention and counteracting tax evasion in **constructions and construction materials**;*

*Prevention and counteracting tax evasion in **wood industry**;*

*Prevention and counteracting tax evasion in **grey and black labor market**.*

<sup>24</sup> *A Joint Working Panel on prevention and counteracting of tax evasion (GLI) made up of representatives from the Public Ministry, Ministry of Public Administration and Interior, Ministry of Public Finances, Ministry of Justice and the Romanian Intelligence Service has been set up at a national strategic level. Operational Working Panels have also been set up at a local level.*

<sup>25</sup> *Order no. 1249/C/06/07.2010.*

<sup>26</sup> *The CSAT Decision no. 38/22.03.2011 on the identification, prevention and counteracting of criminality in sea ports was adopted as a result of the significant damages to the general state budget, triggered by repeatedly introducing and distributing illegal merchandise through illegal networks established in the Black Sea Ports.*

<sup>27</sup> *The same priorities for the institutions involved, the same strategic plan and common indicators for evaluating the results.*

designated to work with the Panel and solve the penal cases registered as a result of its activity.

- *strengthening cooperation among all institutions involved in the prevention and counteracting of tax evasion, by providing full access to an updated specific database, managed and controlled by the law enforcement agencies;*

- *holding regular meetings between the managers of the institutions within the working panel in order to assess operational needs and review the portfolio of penal cases which resulted from the panel's activity, to analyze the existing judicial practice and coordinate specific joint actions.*

As a result of the measures adopted by the joint working panel, we could notice **positive developments** at a judicial level (an increased number of indictments and persons arrested or put in custody, an increased quantity and value of confiscated goods, fines, prosecutions and so on), as well as at a fiscal level (revenues to the state budget and value of the recovered damages increased).

### **Data on money laundering**

In **2006**, **18 indictments** related to money laundering, while **56 indictments** related to money laundering and referring to **242 natural persons** and **29 legal persons** were issued in **2011**.

### **Data on fiscal evasion**

In 2011, a number of 1387 persons were prosecuted on grounds of fiscal evasion, **three times more persons** than in 2007 and 28% more than in 2010.

<b>Year</b>	<b>Number of defendants sent to trial on grounds of fiscal evasion</b>
2007	386
2008	361
2009	493
2010	1111
2011	1387

### **Data on smuggling activities**

Similar developments were noticed in relation with prevention of smuggling activities. The number of the defendants sent to trial was 10 times bigger in 2010 than in 2007 and almost 3 times bigger in comparison with 2010.

<b>Year</b>	<b>Number of defendants sent to trial on grounds of smuggling activities</b>
2007	73
2008	78
2009	124
2010	275
2011	727

Illegal tobacco market decreased from 36% to 13% in 2011, and therefore efforts to simultaneously investigate tax dodgers and corrupted public servants<sup>28</sup> resulted in an increased GDP generated by an increased volume of the budgetary taxes collected.

#### **► *Optimizing damage recovery activity.***

Goods recovery became a priority of the Public Ministry. A joint Order<sup>29</sup> signed by the General Prosecutor and the Minister of interior set up standard procedures to be applied to all penal cases in order to identify goods that can be placed under distraint based on a questionnaire containing the main steps of financial investigations.

**A similar program<sup>30</sup> aimed at strengthening the Romanian legal framework and practice in the area of goods recovery was implemented by the Public Ministry** in 2010. This program comprised an analysis of the current investigation and operational instruments used in Romania in order to freeze, sequesterate and confiscate the goods originating from the perpetration of offences, and recommendations, training and the development of a strategy concerning the recovery of goods.

As a result of these measures, the amount of the precautionary measures established by the prosecutors of the Public Ministry increased every year. For example, in 2007 the amount of the precautionary measures was of **RON**

---

<sup>28</sup> <http://economie.hotnews.ro/stiri-companii-11556100-gilda-lazar-tvr-info-contrabanda-tutun-scazut-13.htm>.

<sup>29</sup> Order 637/C/2011 on preparative acts to security measures in criminal cases.

<sup>30</sup> TF 2007/19343.07.01/IB/JH/23T.



158,530,113, and following the implemented measures their amount increased to 1,024,979,707 in 2011.

► *increased effectiveness of the forensic activity*

On the basis of the **Order no. 32/2009 dated 30.01.2009 regarding the organization and performance of the forensic activity within the Public Ministry** the virtual documentation fund was created, and it comprises all the prosecution decisions made by criminal prosecutors throughout the country, which are made available to every prosecutor by means of the Intranet system.

Beside the fact that the fund may represent a useful database for criminal prosecutors and others as well, another objective was obviously the unification of the judicial practice concerning the prosecution of highly violent offences. The judicial classification of the same offences was frequently different, depending on the county the criminal prosecutor in question was coming from.

Another important order for the forensic activity is the **Joint order<sup>31</sup> regarding certain measures designed to increase the effectiveness of the National Institute of Criminalistics and of the other forensic laboratories of the Romanian Police**. The order sets the priorities regarding the expert opinions ordered by prosecutors so as to increase the effectiveness of the National Institute of Criminalistics and of the forensic laboratories of the Romanian Police, and to reduce the time needed to complete the expert opinions and the technical and scientific findings regarding the evidence collected during the on-site investigation.

Having in view the periodical analyses conducted with regard to the highly violent offences perpetrated by organized groups and which do not fall within DIICOT's jurisdiction, an **Order<sup>32</sup> was issued for the appointment of specialized prosecutors** within the prosecutors' offices attached to the courts of second instance in București, Brașov, Bacău, Bihor, Constanța, Craiova, Cluj, Iași and Timiș, in order to perform the prosecution in the case of offences against the life, physical integrity and/or liberty of an individual, involving members of certain criminal groups and which do not fall within DIICOT's jurisdiction. The Order stipulates the performance of an analysis concerning the action patterns, the types of the offences perpetrated by these criminals, as well as of all criminal cases in which such groups have been or are involved. At the same time, local action plans have been drawn up together with the police forces, focusing on the territorial approach to the phenomenon.

---

<sup>31</sup> A document registered under no. 91/C2/27.02.2012.

<sup>32</sup> A document registered under no. 54/March 26, 2012.

## II.2. Unifying the judicial practice

*Inconsistent jurisprudence represents one of the major problems of the judicial system and is one of the main reasons for the citizens' lack of confidence in the Judiciary, an element that may generate suspicions as to the corruption of the magistrates, and also one of the reasons why the Romanian state has been condemned by the European Court for Human Rights.*

In order to identify such dysfunctions, both in the criminal and civil law, ***the judicial practice is constantly monitored by the Judicial Department within P.I.C.C.J., which submits proposals to the General Prosecutor regarding the lodging of appeals in the interest of the law.***

Concomitantly with the notification of the High Court of Justice and Cassation, the appeals in the interest of the law are published on the webpage of the Public Ministry.

During 2007 – May 2012, the General Prosecutor lodged 125 appeals in the interest of the law in criminal matters and 142 in civil matters, requesting that the High Court of Justice and Cassation solve the legal issues which had not been settled in a uniform manner by the courts. The fact that more than 95% of those appeals were admitted reveals the correctness of the actions and a rigorous analysis of the documents.

The effectiveness of the General Prosecutor's activities was emphasized in the country reports issued by the experts of the European Commission, the reports making a special reference to this problem of the judicial system. In this respect, the Report submitted by the Commission to the European Parliament and to the Council regarding the progress made by Romania within the Cooperation and Verification Mechanism, issued on 22.07.2009, concluded that: ***“The General Prosecutor actively lodged appeals in the interest of the law with the High Court of Justice and Cassation, appealing against decisions that were inconsistent with the existing jurisprudence, and this resulted in a more uniform jurisprudence.***

In order to ***identify the problems that generated conflicting solutions, the decisions made across the country with regard to certain types of offences*** (corruption, tax evasion, smuggling, money laundering, offences against life, offences related to copyright, forestry, road traffic regulations, etc.) In all these

cases P.I.C.C.J. expressed its opinion in memoranda sent to the local units<sup>33</sup> or in the messages conveyed by the General Prosecutor.

In order to identify a common interpretation of the legal provisions, a proposal was submitted to CSM to organize a professional debate in which prosecutors and judges were to be involved; this debate was meant to identify the reasons behind the court decisions to refer the cases<sup>34</sup> back to reconsider the prosecution or to deny the proposals regarding the arrest on remand.

**In order to unify the judicial practice, flexible and viable measures have been adopted, along two main lines:**

### **1. Unifying the judicial practice within the Public Ministry**

**A virtual library was set up** by posting on the Intranet all the prosecution decisions concerning offences related to corruption, tax evasion, smuggling, money laundering, offences against life, copyright-related offences.

**All best practice handbooks<sup>35</sup> issued by the Public Ministry** and all the **guidelines<sup>36</sup>** issued by the Human Resources and Documentation Section within the Prosecutor's Office attached to the High Court of Justice and Cassation have been posted as well.

**Training sessions** have been organized with a view to unifying the judicial practice and standardizing the procedures within the Public Ministry.

---

<sup>33</sup> For example, in 2008, 15 memoranda were drafted. They referred to the conditions in which a criminal case within the jurisdiction of a lower prosecutor's office could be solved by a higher prosecuting unit, the interpretation of the provisions of art.209 para 4<sup>1</sup> of the Criminal Procedure Code, the possibility provided by the law for the second appeal lodged by a prosecutor to be withdrawn by his superior, the admissibility of the complaint under art. 275-278 of the Criminal Procedure Code against the ordinance regarding the enforcement of judicial fines, the definition of the phrase „the location where the perpetrator was caught”, the rules for examining the documents included in the prosecutor's office files, the incrimination as outrage of any insult to or defamation of a magistrate in the exercise of his/her duties and the categorization as „prosecution” of the prior investigation undertaken during the review procedure.

<sup>34</sup> The analysis of the cases sent back by the courts in order to reconsider the prosecution revealed the need to amend the existing legislation by eliminating the relevant provisions or by limiting their applicability to certain cases, since the current regulations lead to significant delays in the prosecution and can result in the impossibility of reconsidering certain means of evidence. This recommendation was part of the comments on the draft Criminal Procedure Code submitted by the Public Ministry.

<sup>35</sup> 18 best practice handbooks have been issued and posted.

<sup>36</sup> During 2007-2011, more than 160 guidelines were issued and they referred to corruption, smuggling, road traffic offences, money laundering, forgery, the European arrest on remand warrant, precautionary measures, forestry-related offences, cyber offences, proof production, means of attack, the penal responsibility of ministers, the prescription of penal responsibility, tax evasion, the right to defense, expert opinions given in the prosecution stage.

## 2. Unifying the judicial practice outside the Public Ministry

**Regional and national meetings meant to unify the judicial practice** have been organized every year, with the participation of prosecutors, judges, police officers.

On the occasion of important legal amendments, **guidelines<sup>37</sup> regarding the uniform interpretation and implementation of the new legal provisions** have been also issued, as in the case of the Law no. 202/2010 regarding certain measures designed to accelerate lawsuits.

**A new working method has been implemented with a view to unifying the judicial practice**, namely a requirement to monitor the domains in which the verifications for lodging appeals in the interest of the law revealed isolated non-uniform or insufficient judicial practice in order to lodge the appeal in the interest of the law, the problems being monitored on a long-term basis<sup>38</sup>.

The representatives of the Prosecutor's Office attached to the High Court of Justice and Cassation have been actively involved in the debates on the non-uniform practice organized by the Superior Council of Magistracy or by other institutions in the judicial system.

When the non-uniform practice was identified in a single Court of Appeal jurisdiction, **the Prosecutor's Office attached to the High Court of Justice and Cassation notified the management of the courts of appeal with regard to the implementation of the internal practice unification mechanism**, according to art.51 para 1 letter c in the Law<sup>39</sup> no.304/2004, and the developments were subsequently monitored.

Starting with 2012, the notifications addressed to the courts of appeal have been communicated to the management of the High Court of Justice and Cassation as well, so as to be aware of the legal problems in matters in which the High Court of Justice and Cassation has no material jurisdiction.

In criminal matters, the issue of the isolated non-uniform practice has been approached as well through recommendations made to prosecutors' offices, the use of means of attack, the reopening of verifications concerning the judicial practice when the initial verification revealed an insufficient, insignificant practice.

---

<sup>37</sup> The document no.11104/2010; the document no.751/C/2010.

<sup>38</sup> For example, in matters concerning the devolutionary effect of the appeal, when the decision of the first court was pronounced in the simplified procedure stipulated in art. 320<sup>l</sup> of the Criminal Procedure Code, a guideline registered under no. 440/C3/4206/III-13/2011 was issued and sent to prosecutors' offices attached to the Courts of Appeal so as to be taken into account in the judicial activity and to correct the isolated non-uniform or insufficient judicial practice solutions in order to lodge an appeal in the interest of the law.

<sup>39</sup> Article 51, para 1 c.

### II.3. Actions to help improving the efficiency of the judicial inspection

With a view to increasing the effectiveness of the judicial inspection, a proposal was made to **establish a network of specially appointed prosecutors from the prosecutors' offices attached to the courts of appeal, who are to conduct prior verifications in order to determine whether there is evidence of disciplinary offences.**

The proposal was accepted through the Decision no. 123 of 25.05.2011 of the Prosecuting Section, and consequently the **Order no.133 of August 1, 2011 regarding the appointment of the prosecutors who conduct prior verifications with a view to taking disciplinary action** was issued.

At the same time, proposals<sup>40</sup> have been put forward for the amendment of the Decision of the Superior Council of Magistracy Plenum no.201/2006 setting up the selection procedure for those who apply for the position of inspector within the Judicial Inspection, requiring that the selection of inspectors be made following a competition or exam, which means an objective selection.

Proposals<sup>41</sup> have been submitted to the Superior Council of Magistracy regarding the methodology used for conducting verifications by the judicial inspection.

With regard to the activity of the Judicial Inspection, proposals<sup>42</sup> have been also made on the occasion of amending the law on the disciplinary responsibility of magistrates, and with reference to the regulations for the selection of the chief inspector and deputy chief inspector<sup>43</sup>.

### II.4. Harmonization with the international judicial environment

The main pursuits with regard to the international cooperation consisted of:

- *the organization in Bucharest during March 23-25, 2009 of the third World General Prosecutors Summit*, attended by general prosecutors and chief prosecutors from 115 states (the largest attendance in the history of this event).

*The topics addressed during the meeting were related to:*

- *the role of the General Prosecutor in strengthening public confidence in the criminal justice system – the investigative independence of the prosecutors;*
- *mitigating internal and external pressure elements on the work of*

<sup>40</sup> The document no. 2186/C/2009.

<sup>41</sup> The document no. 241/C/3.03.2010.

<sup>42</sup> The document no.2135/c/12210/09.12.2010 and the document no.925/C/2010.

<sup>43</sup> The document no.615/C/2012.

*prosecutors;*

- *United Nations conventions against corruption and organized crime;*
- *strengthening the international and regional cooperation in criminal matters;*
- *ensuring the principle of good governance in managing investigations;*
- *boosting the transparency of decision making, especially if prosecutors have wide discretion, and promoting their responsibility through judiciary and public checks;*
- *increasing public awareness about the problems encountered in ordinary administration of criminal justice system, including through the media.*

***• the proposal of the General Prosecutor of PICCJ to establish at Bucharest a Permanent Summit Office, the proposal being validated by voting in the Plenary Session.***

According to the proposal, Permanent Summit Office is going to follow:

- future debates in the next sessions of this international event
- the technical support required for the next sessions of the World General Prosecutors Summit, (databases management and Summit information network administration);
- the scientific approach of the event intended to create the fundamentals of the public policies of the states on countering global crime;
- correlating the results of the Summit activities with the UN structures and initiatives (U.N. Office on Drugs and Crime, Conference of the Parties to the UN Convention against Transnational Organized Crime, Conference of the State Parties to the U.N. Convention against Corruption).

***• participation of the General Prosecutor of Romania, as a founding member, in establishing the organization of the European General Prosecutors*** (founded in February 2009, in Paris);

***• participation of the general prosecutor*** during June 29 – July 1, 2011 ***at the fourth session of the World General Prosecutors*** Summit organized by the Supreme Office of the Prosecutors of the Republic of Korea, which was held in Seoul.

*The opening of the summit debates was preceded by an official ceremony in which the General Prosecutor of Romania, Mrs. Laura Codruța Kovesi, handed over the chairmanship of the fourth session of the World General Prosecutors Summit to Mr. Joon Gyu Kim, the General Prosecutor of the Republic of Korea.*

• ***creating the premises for the proper development of international legal assistance and cooperation with similar institutions in other states***, by signing cooperation protocols with the prosecution authorities in France, the Netherlands, Switzerland, Hungary, Bulgaria, Cyprus, the Republic of Moldavia, Armenia and Ukraine.

*The passive legal assistance activity has been promptly realized with the observance of the relevant legislation and applicable international conventions and, when the prosecution authorities required the foreign prosecution authorities to conduct technical procedures, they got in contact with Eurojust and the liaison officers working with the embassies of the respective states in order to get a timely answer.*

*At the same time, there were instances in which the investigating prosecutor participated in conducting the required technical procedures.*

• ***designation of the Romanian Public Ministry in April 2012***, along with other 59 EU institutions, **by the European Commission, as a framework-partner in preventing and countering criminality, terrorism, organized crime and in seizing goods originating from the perpetration of offences<sup>44</sup>.**

*In this capacity, the Public Ministry will participate in requests for projects designed exclusively for the framework-partners in fields such as:*

- the prevention and countering of criminality and terrorism;*
- the countering of organized crime by using financial investigations;*
- seizing the goods originating from the perpetration of offences;*
- the prevention of criminality (especially the juvenal one, related to drug trafficking and consumption, the urban criminality).*

*The selection as a framework-partner of the General Directorate for Internal Affairs of the European Commission represents an acknowledgement of the experience acquired by the Public Ministry in planning and implementing EU-funded projects.*

---

<sup>44</sup> [http://www.mpublic.ro/presa/2012/c\\_03\\_04\\_2012\\_4.htm](http://www.mpublic.ro/presa/2012/c_03_04_2012_4.htm)

At the same time, the Public Ministry established or improved its international contacts in the context of the meetings with:

- **The US Attorney General, Mr. Eric Holder**, in April 2009 and April 2011, in Washington;
  - **The General Prosecutor of the Russian Federation, Mr. Yuri Yakovlevich Chaika**, in January 2012, in Moscow;
  - **The General Prosecutor of the Paris Court of Cassation, Mr. Jean Louis Nadal**, in June 2007, in Paris;
  - **The Federal Prosecutor General by the German Federal Court of Justice, Mrs. Monika Harms**, in August 2008, in Munich;
  - **The General Prosecutor of Netherlands, Harm Brouwer**, in March 2009, in Bucharest and Herman Bolhaar, in September 2012, in Bucharest;
  - **The General Prosecutor of Italy, Vitaliano Esposito**, in March 2009, in Bucharest.
  - **The Attorney General of Delaware – US, Mr. Joseph R. Beau Biden III**, in March 2012, in Bucharest;
  - **The Director of the Secret Service, Mr. Mark Sullivan**, in April 2011, in Washington;
  - **The Director of the FBI, Mr. Robert S. Mueller III**, in April 2009 in Washington and December 2011 in Bucharest;
  - **The General Director of the US Drug Enforcement Administration (D.E.A), Mrs. Michele M. Leonhart**, in April 2012, in Bucharest;
  - **The deputy Attorney General of the US, Mr. Lanny A. Breuer**, in October 2011, in Bucharest;
- *international recognition of our efforts in business reorganization and modernization of the Public Ministry.*

**In 2011, Laura Codruța Kovesi, the General Prosecutor of Romania, was decorated<sup>45</sup> by the president of the French Republic for merits in serving the justice, being awarded the “National Order of Merit with the rank of officer.”**

<sup>45</sup> [http://www.ambafrance-ro.org/index.php/fr\\_FR/l-ambassadeur/discours-et-interventions-de-l-ambassadeur/remise-des-insignes-d-officier-dans-l-ordre-national-du-merite-a-madame-laura-kovesi.procureure-generale-de-roumanie-mercredi-6-juillet-2011](http://www.ambafrance-ro.org/index.php/fr_FR/l-ambassadeur/discours-et-interventions-de-l-ambassadeur/remise-des-insignes-d-officier-dans-l-ordre-national-du-merite-a-madame-laura-kovesi.procureure-generale-de-roumanie-mercredi-6-juillet-2011).



## CHAPTER III ORGANIZATIONAL MANAGEMENT

### III.1. Reshaping and streamlining of the Public Ministry

The need for this process was demonstrated by the existence of a major imbalance between the workload of the prosecutors' offices attached to the courts of first instance and that of the Public Ministry's structures attached to other higher courts<sup>46</sup>.

*The underlying reasons for this situation are:*

- *the failure to adapt the judicial organization law to the social realities;*
- *the small number of positions within local prosecutors' offices, combined with the low employment rate;*
- *the regulation of competence in the Criminal Procedure Code;*
- *the lack of commitment of some heads of prosecutors' offices in the prosecution activity.*

#### ***Organizational measures consisted in:***

- ***the drafting of a new organization chart and of a new Regulation for the organization and functioning of P.I.C.C.J.*** (approved by the Order of the minister of Justice no. 1047/C/2007), by which 33 executive positions and 82 subordinate positions were cut;

- ***the redistribution to the local offices confronted with the highest deficit of personnel in relation to their workload***, through successive modifications of the job title list (approved by the Order of the minister of Justice no. 3067/C/2007 and no. 1874/C/2009 respectively) ***of the positions<sup>47</sup> cut from P.I.C.C.J. and from the prosecutors' offices attached to the courts with a reduced workload;***

<sup>46</sup> There are situations when a prosecutor from the prosecutor's office by the court of appeal solves only 20 cases in a year, while the prosecutors from the local offices within the jurisdiction of the same court of appeal solved more than 1,000 cases in the same period of time (the maximum number of cases distributed to a prosecutor attached to a court of first instance may exceed 1600). By comparison, in EU member states the workload is smaller, e.g. in Germany a prosecutor receives an average number of cases of 450 per year.

<sup>47</sup> A number of 127 positions were redistributed.

• ***the adoption of the Regulation for the organization and functioning of the Department for the Investigation of Organized Crime and Terrorism***<sup>48</sup> (in order to increase the flexibility<sup>49</sup> of this Department and to ensure the adequacy of its operational capabilities to the dynamics of organized crime.

*To this end, the Ministry Of Justice put forward a proposal regarding the amendment of the Law no.508/2004 on the organization and functioning of the Department for the Investigation of Organized Crime and Terrorism. As a result, the GEO no.131/2006 was adopted, and on its basis the Regulation for the organization and functioning of D.I.I.C.O.T. came into force.*

• ***the restructuring of the National Anticorruption Department (DNA)***, in accordance with the Decision of the Superior Council of Magistracy no. 257/2007, regarding the oversight performed at the central headquarters of the Department.

The reorganization of the Public Ministry was considered a progress in the country reports of the European Commission.

*Legal limitations and conditionality of the adopted measures:*

- *the positive effects of the redistribution of prosecutor positions are conditional upon the actual filling of these positions after the examinations organized by the Superior Council of Magistracy (CSM);*

- *the powers of the General Prosecutor as far as the reorganization is concerned are limited, requiring the approval of CSM<sup>50</sup> and the ratification of the minister of Justice by means of an order;*

- *the interpretation of the principle regarding the stability of the prosecutor position allows for the redistribution of vacant positions only within the Public Ministry.*

The key *functional measures* designed to address the imbalanced distribution of cases within the Public Ministry were aimed at:

• ***taking over cases from the overloaded subordinate units; the legality of this decision was confirmed by Romania's Constitutional Court;***

The enforcement of this measure proved its efficiency in the case of the Criminal Prosecution and Forensics Section within P.I.C.C.J., which became an

<sup>48</sup> *The Order of the Minister of Justice no. 1226/C/2009.*

<sup>49</sup> *15 territorial offices were dismantled in the counties where territorial departments were also in place (and the corresponding management positions were cut). An office for curbing street-level drug trafficking and illegal drug consumption was established in Bucharest.*

<sup>50</sup> *The procedure for the approval by CSM of the PICCJ reorganization strategy is too cumbersome, given the need for a rapid reform of the system.*

entirely operational structure<sup>51</sup> tasked with investigating and solving complex cases of first degree murders with unidentified authors, money laundering, fraud, plane crashes, explosions or arson followed by fatalities, road traffic offences or intellectual property-related offences.

*The adopted measure was conditional upon:*

*- the issuance by CSM representatives/inspectors of recommendations (oral or included in reports) for the higher courts prosecutors (courts of appeal) not to investigate certain cases;*  
*- the limitations<sup>52</sup> of the Prosecutor General's functions with regard to sanctioning such attitudes, as disciplinary measures are the sole prerogative of CSM.*

- **determining<sup>53</sup> the optimal number of cases entrusted to a prosecutor**

Nowadays, the human resources policy of the Public Ministry does not rely on a practice based on the most appropriate volume of cases to be solved by each public prosecutor. This leads to the overloading and overtaxing of public prosecutors, a reduced quality of the criminal procedure, and a lack of expeditiousness. Therefore, the completion of such measures is a compulsory condition for the improvement of these parameters.

- **Identifying and solving older causes and focusing the activity on complex cases, with judicial completion.**

Another objective was the completion of the investigations with celerity<sup>54</sup>

---

<sup>51</sup> If there were only 19 indictments in 2006, their number tripled by 2011. Out of a total number of 281 indictments issued during 2006-2011, 458 individuals were sent to trial (out of which 4 parliamentarians/European parliamentarians, 4 high-rank police officers/generals, 2 magistrates, 7 persons holding management positions in public/private institutions. Up to this date conditional judgments subject to subsequent objections were pronounced in 53 cases, and final judgments in 211 cases.

<sup>52</sup> The General Prosecutor can only recommend to CSM the sanctioning of certain prosecutors.

<sup>53</sup> A study is currently underway regarding the optimal workload for a prosecutor. This initiative is included in the Judiciary Reform Strategy and is being carried out by CSM.

<sup>54</sup> In spite of the serious deficiency of personnel and the exponential increase in the volume of activity (which in 2011 reached a number of 1,656,130 cases to solve), the annual indicators of expeditiousness and quality improved as compared to the previous years. Both in 2007 and 2008, at the level of the Public Ministry, over 85% of the cases were solved in less than 6 months after the informing of the prosecuting authorities, and in 2009-2011 over 75% of the cases were solved in less than 6 months; less than 2% of the prosecuted defendants out of the total number sent to trial were acquitted, a number that remained below the European average.

*Consequently, the General Prosecutor ordered that operational or thematic controls be performed<sup>55</sup>, by appointed public prosecutors and by senior prosecutors, and asked CSM to initiate checks at the dysfunctional prosecution units. When cases of faulty management were identified, the removal from office of the senior prosecutors was required<sup>56</sup>.*

Other measures ordered by the General Prosecutor, aimed at increasing the efficiency of the Public Ministry, were the following:

- **updating and systematizing the General Prosecutor's order law package in order to provide a unitary character of the regulations related to the activity of the Public Ministry<sup>57</sup>;**

*The reorganization of the unitary informational system of the Public Ministry through the General Prosecutor's Order 229/25.09.2007 proved to be extremely important, as the bureaucracy of the reporting, centralization and analysis activities of the institution was diminished by keeping exclusively the activities related to relevant information categories.*

Relieving public prosecutors of the activities that lacked finality, of reporting data that did not form a basis for any analysis, allowed for a more applied focus on the operational activity;

- **Increasing rigor with regard to the appointment, promotion or dismissal of judicial police officers;**

Taking into account the fact that the activity performed by such officers has a major influence on the criminal procedure (in 95% of the cases solved at the level of the Public Ministry, the investigations are performed by judicial police officers), the General Prosecutor's Order no. 262/2008 was issued. This Order stipulated the

---

<sup>55</sup> During October 2006 –July 2012, the appointed prosecutors of the Criminal Procedure and Forensics Section performed 219 controls at the subordinated units. The themes approached by these controls were the following: checking the legality of the criminal procedure, identifying the situations in which investigations are delayed, checking if the legal provisions regarding the document circulation are abided by, checking the solutions reached with regard to a certain type of offence (economic and financial offences, corruption, road traffic offences, offences related to the piscicultural fund) or checking cases where more than 1 year had passed since the notification and more than 6 months had passed since the criminal procedure had been instituted.

<sup>56</sup> For example, at the Military Prosecutor's Office Sections and the Prosecutor's Office attached to the Argeş Court.

<sup>57</sup> The internal orders in effect at that moment were revised, and the Prosecutor General's Order no. 31/2007 stipulated the cease of the applicability of 24 orders and 10 notifications and circular letters, which had become inappropriate because of the legislative amendments and of the changes of competence or of an archival nature, involving useless activity reports and statistics.

procedure through which the General Prosecutor issues the approval for the appointment, promotion or dismissal of judicial police officers.

*Thus, there were created the pre-requisites for the exclusive appointment in this structure of police officers with competences that contribute to a good performance of the criminal procedure, the prime-prosecutors of the prosecutors' offices attached to the courts of second instance (as direct beneficiaries of the activity carried out by the judicial police) being empowered to submit proposals for the approval to be given. At the same time, public prosecutors were asked to cancel the approval in the all cases where a judicial police officer does not fulfil the professional and moral requirements<sup>58</sup>.*

- **creating a new statutory basis for the criminal prosecutor institution;**

A set of orders<sup>59</sup> issued by the General Prosecutor stipulated the **principles governing the performance of activities**, the responsibilities of criminal prosecutors and the way in which forensic technical means should be used. It also regulated the procedure regarding the registration and inventory of the cases involving unknown authors.

Since the laboratory processing activities within the quality assurance system is closely related to the investigation activity on site (as a source of revealing and collecting evidence), the General Prosecutor's Office and the Ministry of Administration and Interior signed a joint Order<sup>60</sup> regarding the unitary performance of the investigation activity on site by public prosecutors, judicial police and forensic experts, based on a **joint management procedure on site** in the form of a best practice manual.

Another important regulation for the forensic activity is the **Joint Order<sup>61</sup> regarding certain measures designed to increase the effectiveness of the National Institute of Criminalistics and of the other forensic laboratories of the Romanian Police**. The order sets certain priorities with regard to expert opinions and technical and scientific findings concerning the evidence collected during on-site investigations.

Having in view the periodical analyses conducted with regard to the highly violent offences perpetrated by organized groups and which do not fall within

---

<sup>58</sup> Until now 62 such approvals have been cancelled as a result of prosecutors' proposals.

<sup>59</sup> Order no. 32/2009, no. 1094/C/2009 of the General Prosecutor.

<sup>60</sup> Order no. 1754/C/2009.

<sup>61</sup> A document registered under no. 91/C2/27.02.2012.

DIICOT's jurisdiction, an Order<sup>62</sup> was issued for **the appointment of specialized prosecutors** within the prosecutors' offices attached to the courts of second instance in București, Brașov, Bacău, Bihor, Constanța, Craiova, Cluj, Iași and Timiș, in order to **perform the prosecution in the case of offences against the life, physical integrity and/or liberty of an individual, involving members of certain criminal groups** and which do not fall within DIICOT's jurisdiction.

The Order stipulates the performance of an analysis concerning the action patterns, the types of the offences perpetrated by these criminals, as well as of all criminal cases in which such groups have been or are involved. At the same time, local action plans have been drawn up together with the police forces, focusing on the territorial approach to the phenomenon.

*As a result of the numerous people that left the system and the numerous promotions, the legislative amendments and the fact that INM has not included among its training programs some programs in this field, which requires an extremely specialized training, **some prosecutors' offices started to lack specialized prosecutors.** In order to transfer expertise, a working group was established. This was made up of criminal prosecutors with a long practical experience, who delivered lectures to the public prosecutors in the territory.*

Another important activity was a **professional training program<sup>63</sup> in the field of forensics** where cases of extreme violence were presented as well as the methodology of managing and investigating these kinds of cases, lectures regarding the investigation techniques in this field, appraisements, technical and scientific findings, visits to institutions authorized to perform forensics investigations.

• **establishing national networks of prosecutors specialized in the investigation of certain categories of crimes;**

*Its aim was to give priority to combating those criminal phenomena that involve training in niche fields (offences concerning electronic commerce or intellectual property rights) or extremely relevant fields from a social point of view, such as violent and corruption offences (which are also monitored by the European bodies).*

---

<sup>62</sup> Order no. 54/March 26, 2012.

<sup>63</sup> The "Little Criminologists" program was designed for prosecutors that were promoted to the prosecutors' offices within the courts and that were about to investigate crimes against human life. This program trained four series of 25 prosecutors and lasted one week.

This initiative was also relevant from the point of view of the activities pertaining to the objectives of increasing the efficiency of the activity of the prosecutors' offices, of unifying the judicial practice, and of improving the professional specialization and training.

- **configuring the inter-institutional cooperation framework**

Since the activity of the Public Ministry is frequently conditioned by the way it relates to other institutions, a management policy regarding the signing of protocols was promoted, setting up the rules of collaboration.

Some of the institutions that signed such documents are:

- ▶ the Ministry of Administration and Interior for consolidating the institutional capacity to combat corruption and to investigate economical and financial cases; protocols that stipulate the assignment of some judicial police officers especially for this kind of activity. At the same time, these protocols establish common evaluation criteria, the number of indictments, the recovered prejudices or not, the number of ordered preventive measures;

- ▶ the Romanian Intelligence Service, as regards the investigation of the offences threatening the national security or as regards the performance of court ordered interceptions;

- ▶ the National Integrity Agency (ANI), in order to ensure a unitary practice for the cases in which the Agency notifies the prosecution bodies and to reduce the necessary period of time to solve these cases, the biannual analysis of the cases resulted from ANI's notifications and joint professional training;

- ▶ the Court of Audit, that contributed to the setting up of procedures aiming at ensuring the necessary celerity for solving criminal cases and capitalizing on the control documents drawn up by this institution, so as to counteract the offences that affect the financial resources of the state and public sector;

- ▶ the Anti-Fraud Department, with a view to regulating the conveying of assistance requests to the competent authorities within the Swiss Confederation in order to counteract fraud and any illegal activities that affect the financial interest of the European Community and the member states.

### III.2 Initiatives in the Human Resources Area

*According to the current legal framework, the Prosecutor General has very limited responsibilities in managing human resources, as he/she has virtually no managerial tools in this field. The main restrictions refer to:*

- appointing prosecutors;*
- ordering inspections at subordinated units or evaluations of the prosecutors' performance, and imposing sanctions<sup>64</sup>;*
- transferring subordinated prosecutors;*
- expanding / changing the organizational chart of subordinated units;*
- building a team meant to support the implementation of the management plan during his/her term in office.*

*Due to the fact that these fall under CSM's responsibility, this collegial body where responsibility is dissipated is in fact the actual manager of the national judicial system.*

*At the same time, this division of responsibilities hinders the optimization of activities, in line with priorities.*

This situation prevents the implementation of its own personnel policy, so that the key measures were aimed at identifying proper solutions meant to improve, from a quantitative and qualitative perspective, the management of human resources in the Public Ministry, and submitting these proposals to the decision-making institutions – the Ministry of Justice and the Superior Council of Magistracy.

Consequently, some of the proposals referred to providing the Prosecutor General with adequate management tools.

The main **dysfunctions regarding the promotion methods** are the following:

- the potential lack of a unitary managerial perspective, due to the inter-conditionalities in the mechanism used for making appointments in management positions within PICCJ (the General Prosecutor and the other chief prosecutors are not in a position to build their own management teams);

*The Minister of Justice nominates the candidates, CSM provides an advisory opinion, and the President of Romania appoints the General Prosecutor's deputies, the heads of departments, the heads of directorates and their deputies within PICCJ.*

<sup>64</sup> Only specific cases can be verified and it is not possible to impose sanctions in case of discovering faults of the prosecutors during the resolution procedure or an unsatisfactory performance.



- the current examination system does not guarantee that only prosecutors with adequate professional skills are promoted to management positions.

***The main flaws of the examinations are the absence of a professional test*** (although the candidates are responsible for checking the legality of the documents drawn up by subordinated prosecutors) ***and the excessive weight of the (theoretical) tests regarding the managerial skills*** (despite the fact that, in practice, they are not provided with basic managerial tools, for which CSM is responsible).

At the same time, ***there are no criteria for using different examination procedures depending on the prosecuting unit for which the candidates apply***, so that a prosecutor from a local prosecuting unit with only one or two positions (which may not even be filled) will end up having to submit a managerial project.

The managerial project of the first prosecutor's deputy could also be inconsistent with the project of the first prosecutor.

The examination curriculum includes subjects which are not relevant to the professional activity, and the procedures are difficult and prolonged, sometimes extending over 90 days.

During the General Prosecutor's term in office, ***deficiencies have been found in the following areas:***

#### ► **The appraisal of the prosecutors' performance**

The lack of effectiveness in this area derives from:

- The use of irrelevant criteria for conducting the appraisal, which resulted in rating the performance of 99% of the magistrates as “very good”;
- The provision in the Handbook<sup>65</sup> for the evaluation of the magistrates' professional activity, according to which the results of the evaluation cannot be used for taking disciplinary measures;
- The low relevance of the evaluation regarding the dismissal from the system of the prosecutors who do not rise to specific professional and moral expectations<sup>66</sup>;

<sup>65</sup> Chapter II - "The evaluation Process", page 63; The guide was adopted by Decision no. 10 of 17 January 2008 of the Plenum of the Supreme Council of Magistracy.

<sup>66</sup> Conducting assessments at long intervals of time (three years), coupled with a requirement of aggregation of two "inappropriately" qualifications, makes it that a prosecutor with performance or integrity problems can only be removed after 6 years.

## ► organizing the judicial inspection

*As the CSM does not employ personnel for these specific purposes, all inspectors are temporarily transferred from the magistrate corps.*

## ► putting inspections into practice

The inspections are put into practice with delay, even when there is a notification from the General Prosecutor, despite the fact that, in order to apply sanctions, real time determinations need to be performed. This generates situations in which certain disciplinary misconducts remain unsanctioned, because they are prescribed before being investigated by the judiciary commission<sup>67</sup>.

There are many cases in which the inspection is put into practice in an irregular manner, which generates confusion throughout the system, both with regard to the content of the reports, and to the measures provided<sup>68</sup>.

## ► Legislative regulations regarding the reasons for being sanctioned/excluded from magistracy

*The infringement of the deontological code does not constitute enough reason to be excluded from magistracy.*

In order for these management instruments to become effective, the modification of the regulation framework was suggested, as follows:

- modifying the regulation and the handbook for judicial inspection, which the CSM accepted;
- changing the control capabilities, by transferring internal control under the authority of the Public Ministry, while CSM is going to be capacitated to solve external notifications;
- equal distribution of authority with regard to applying sanctions at all management levels within the Public Ministry, allowing the possibility to contest them at the CSM;
- the implementation of sanctions for infringing the deontological code, in order to eliminate formalism;

---

<sup>67</sup> Disciplinary misconducts are prescribed two year after they were committed.

<sup>68</sup> Sometimes, inspectors suggest the revocation of the prosecutors who prove to be inefficient in a management position, while, in other circumstances this measure is not prescribed.

## ► Access to magistracy and the rigorousness of the selection process

The suggestions regarding these issues, aimed at:

- facilitating<sup>69</sup> the access of law graduates, which is why the CSM and the Ministry of Justice were suggested to propose the issuing of a Government emergency ordinance in order to be able to appoint the graduates directly, after passing an admittance test, while in parallel attending short term trainings at the National Magistrates Institute (INM);
- developing the administrative capacity of INM, in order to train a larger number of prosecutors and temporarily resizing the training courses;
- increasing the number of positions for justice auditors who are going to become prosecutors;
- implementing more rigorous selection criteria for those applying to become prosecutors by other means than the admission in the INM.

*The fact that certain individuals were allowed access to magistracy after passing a simple interview raised questions among the Community forums, and was heavily criticized in state reports, due to the fact that:*

- *no clear criteria and objectives were set, regarding the interviews and recruitments;*
- *no thorough analysis was performed with regard to the “good reputation” criteria;*
- *sometimes, the accepted persons only aimed at obtaining pecuniary advantages, and after only one year they applied for retirement with the full benefits of a magistrate.*

## ► The evolution of prosecutors – professional training and specializing

The requirements consisted of:

- updating the curriculum of INM and adapting it in order to contribute to a better professional training for prosecutors and to specialize them in accordance with the current real necessities<sup>70</sup>;
- eliminating formalism from professional training courses<sup>71</sup>;
- a more rigorous selection of trainers.

<sup>69</sup> The acceptance of law graduates into magistracy, based on an exam, presupposes the attendance of 2 year classes within INM, and the position being effectively occupied after that. The number of graduates from INM is insufficient for the needs of the system (about 70 prosecutors in one class, while the number of those leaving the system is almost equal).

<sup>70</sup> For example, there very numerous courses with low relevance for the practical activity of a prosecutor, while for criminal studies, only a small number of hours was assigned.

<sup>71</sup> There is no procedure for verifying the knowledge accumulated at the end of course.

Although the professional training of magistrates does not represent the responsibility of the General Prosecutor's Office, measures were adopted in order to supplement the activity of INM in certain areas, where specialized knowledge is required<sup>72</sup>.

*The Public Ministry, together with its external partners, **has identified solutions in order to enhance the proficiency of prosecutors and their specialization** in accordance with the current real necessities:*

*- **drawing up good practice handbooks** regarding fields such as forensic, financial and economic offences, asset recovery, corruption and intellectual property rights;*

*- **drawing up a virtual library** including guides to good practice, legal practice solutions, developed good practice handbooks on various topics and access to databases;*

*- **organizing training seminars** on topics such as intellectual property rights, forgery crimes and computer crimes, financial and economic crimes, or information technology, human trafficking, drug trafficking, terrorism, asset recovery or public communication;*

*- **organizing national or regional seminars** with the participation of prosecutors, police officers, judges and specialists in various fields.*

At the same time, in order to support the expertise transfers within the Public Ministry:

- the Order of the General Prosecutor's Office<sup>73</sup> no.20A/2006 was issued, providing that prosecutors taking part in science seminars must draw up reports comprising a summary of the issues discussed and send them to the Analysis Department within the Prosecutor's Office attached to the High Court of Justice and Cassation, in order to be published in the internal brochures and on the Public Ministry's web page;

- Professional meetings were encouraged between prosecutors from all territorial units, as well as the drawing up of study notes with the purpose of unifying the practices of the prosecutors' offices;

---

<sup>72</sup> For example, after modifying the competency of the Directorate for the Investigation of Organized Crime and Terrorism, as per the Government Emergency ordinance no. 131/2006, the prosecutors' offices attached to the courts became responsible for solving cases of forgery and part of the computer crimes, even though the prosecutors from these offices were not familiar with the methods for investigating such crimes and the technical means being used.

<sup>73</sup> Order no.20A/2006.

- Professional debates between prosecutors and judges, judicial police officers and specialists were organized.

### **III.3. Information Technology Process of the Public Ministry**

In order to accomplish one of the most important objectives, completing the process of upgrading the computing facility of the Public Ministry, the Information Technology Department (DETI) was established in 2007, with 22 employees, 20 being IT specialists with the status of public servants.

On 01.10.2007, 116 positions of IT specialists were created by the courts of appeal and courts of law as auxiliary personnel. To fill these positions, DETI employees organized 57 exams.

#### **1. IT equipment endowment**

At present, the Public Ministry has 4300 computers, 488 servers, 468 UPS-s, 55 racks, 352 switches, 180 routers, 305 A3 network printers, 2900 A4 network printers, 110 A4 colour laser network printers, 495 notebooks, 22 A3 scanners, 394 A4 scanners.

In 2007, the Public Ministry was the beneficiary of the **PHARE Project RO2004/016-772.01.04.13**, developed together with the Ministry of Justice as implementing authority. By means of the acquisitions component of the project, the following equipment was delivered to PICCJ, subordinated units and DIICOT structures: 57 SANs, 130 switches, 14 routers, 122 notebooks and 49 multifunctional printers.

In 2009 the Public Ministry benefited of **PHARE Project 2206/18-147-01.04.10.01**' acquisition component: 60 servers, 135 computers, 31 SANs, 69 UPS, 202 notebooks, 250 A4 network printers, 30 A4 colour printers, 23 A4 scanners.

#### **2. Ensuring the communication infrastructure**

According to Government Decision no. 1213/2005, a WAN communication infrastructure was set up for most institutions under the Public Ministry, the process extending to 2007<sup>74</sup>.

At the end of 2011, all prosecutor's units, DIICOT structures and DNA structures were included into the WAN extended communication system of the Public Ministry.

---

<sup>74</sup> The WAN communications network of the Public Ministry is a VPN type and consists of two independent networks, a secure one for access to confidential information, secure electronic mail and applications (INTRANET), and a public one, for INTERNET access and unsecured electronic mail (INTERNET).

This infrastructure facilitated access to IT systems, applications and services, LIVE communication systems, information transfer etc.

### **3. Implementing LAN infrastructure in every location and setting up the server rooms**

PICCCJ units received instructions for cabling operations in every location, in order to set up the two networks of the LAN infrastructure (INTERNET and INTRANET).

According to DETI requests and taking into account financial resources, rooms for servers were set up. Air conditioning systems and other utilities depended on the type and number of equipments, as well as on financial resources.

At the moment there are local communication networks (LAN) in all the prosecutor's offices, DNA and DIICOT territorial structures.

### **4. Implementing IT systems and programs.**

#### **4.1. Developing the ECRIS system through PHARE Project 2004**

In 2002, the ECRIS CMDS system for the management of files and projects was accomplished through the 1997 PHARE program; the system is installed and functional in all prosecutors' offices according to the General Prosecutor's Order no. 5/10.01.2007. The PHARE Project RO 2004/016-772.01.04.-16.02 aimed at developing the ECRIS CMDS application for all the institutions in the judicial system and interconnecting modules, with a view to transferring information in the electronic format. The contract was carried out from November 2007 to May 2008.

The development of the module for the prosecutors' offices aimed at implementing some new functionalities of: procedural modifications from 2002 to 2007, European procedures, users' requests regarding the ergonomics and the security of the application, setting up a data base with information about the persons investigated by the Public Ministry, and implementing a centralized data base with statistics specific to the Public Ministry.

At the end of 2011 all the objectives of **PHARE Project Ro2004/016-772.01.04.-16.02** – “ECRIS files electronic management system development and modernization” module were accomplished.

#### **4.2. Developing PHARE 2005 Electronic Archive System (SAE)**

SAE was developed through **PHARE Project RO 2005/017-553.01.04.08** with the purpose of creating an electronic historical archive.

The main objectives of this system were the preservation of the integrity of the historical archive and the quick search of the archived documents using multiple search criteria.

The SAE system has two main modules, one for the administration of the system and one for users.

*The administrative module mainly allows:*

- The reproduction of the organizational structure of the institution in the SAE system;*
- defining the type of files and documents that are to be managed by SAE in a tree-like structure;*
- defining the metadata associated to every type of file/document, that are going to be used to search and find documents in the archive;*
- granting access to users according to the category of file/documents, as well as denying access according to category, file or document;*
- the actual archiving on external storage of archived files and documents.*

*The users' module allows:*

- introducing scanned documents into the system either from a high speed scanner station or any computer equipped with an office scanner;*
- searching and accessing the files/documents;*
- marking the files/documents for storage;- requesting the archiving of a file/document.*

In January 2010, the application for Electronic Storage of files and documents implemented by **PHARE Project RO 2005/017-553.01.04.08** became active. To this purpose the configuration procedures for prosecution offices were initiated and the terminology of the application was completely re-established and updated, according to the necessities of the Public Ministry.

The application was updated three times, according to the requests of the prosecution offices, and tested at PICCJ and applied along the country.

#### **4.3. Participating in the Eurojust project – EPOC III, EPOC IV and implementing the Eurojust Council decision no. 2009/426/JHA**

The EPOC III application was developed, at the initiative of EUROJUST from December 2006 to May 2008, by the company Sistemi, Italy having as partners: France, Italy, Romania, Poland, and Slovenia. The purpose of the application was to set up a management system for criminal cases, especially for Eurojust international organized crime.

The application was installed, tested and configured at PICCJ, who sent feedback to the main initiator and beneficiary, Eurojust.

In 2009 Eurojust developed version IV of the system, stage completed in 2011.

During 2010 and 2011, IT specialists from DETI developed activities connected to articles 12 and 13 of Eurojust Council decision no. 2009/426/JHA, aiming at creating the Eurojust National Coordination System (ENCS) and connecting its members to Eurojust Cases management System (art.12), as well as exchanging information in a structured format between Member States and Eurojust (art.13). In 2011, Romania was one of the first four states that finalized stage I of the implementation of this project – the **EJ27 Project**.

#### **4.4. Developing the IT system for intellectual property (DPI) PHARE 2005**

The application and the data base regarding intellectual and industrial property rights were developed through **PHARE Project Ro2005/IB/OT/02**, “Enhancement of the institutional capacity to protect intellectual and industrial property rights”, from April 2007 to November 2008, by the Danish Registered Trademark Office together with the Public Ministry as the implementing authority, Romanian Police, Border Police, ANV, OSIM and ORDA.

The purpose was to create a common database with information about trademarks, licenses, drawings, industrial patterns, phonograms, private multipliers etc., collected by operational informational systems of the above mentioned institutions, but also an up-to-date application for criminal cases regarding intellectual property rights.

To this purpose hardware and communication resources were provided within the same program. The application is active from February 2009 and it was developed during 2010 through “Strengthening law enforcement in the field of industrial and intellectual property by improving the database” Inter-institutional project FT2007/19343.07.01.02.10, financed from non-refundable funds, the Public Ministry being the implementing authority, and IGPR, IGPF, OSIM and ORDA the beneficiary institutions. The project was completed, the objectives being completely achieved and the financial memorandum complied with. The application is administrated by PICCJ’s Department for IT Management.

**Protocol no.1524/C/2010 with The National Office of the Commerce Register** was drawn up within this project to facilitate prosecutors’ access to this institution’s databases. Inter-connection was carried out from a technical point of view.



In 2011, on-line RECOM access became widely applicable for all prosecutor's units and DIICOT structures.

#### **4.5. The implementation of the video-conference system**

The need for an efficient support for sending messages, instructions or for debates with the decision-makers in prosecutors' offices led to the implementation of a video-conference system in 2007. The system was initially meant for the PICCJ office and for the prosecutors' offices by the courts of appeal by procuring last-generation video-conference equipments.

The Special Communications Service supplied the communication infrastructure and the necessary configuration for a good video-conference.

This system proved to be very efficient, allowing a unitary approach to specific problems for prosecutors' units, so that, in 2010, it was extended to prosecutors' offices by the courts and the band width for data communications and INTERNET was increased accordingly for these units.

#### **4.6. The project for an integrated management system for resources – RMS**

The Public Ministry participated in the project put into practice through the "Reform of the Judicial System" program, financed by loan no.4811-RO from RBID, with a team of IT specialists, human resources experts and economy specialists, together with the other institutions in the judicial system.

During 2006-2009, the documents "Final report for Situation Analysis", "The Architecture of the System" and "Final Report for System Analysis" were approved. On the basis of these documents, the selected consultant wrote out the documentation for the offers and launched the acquisition procedure.

In 2011, the implementation stage of the integrated management system for material, financial and human resources in the judicial system – **RMS** -was initiated. This project, where the Public Ministry is the beneficiary, will also continue throughout 2012.

#### **4.7. SCHENGEN (NSIS, SIRENE) information system**

According to law no. 141/2010 for the establishment, organization and functioning of SINS and Romania's participation in the **Schengen Information System**, according to access rights set up by **Government Decision no. 966/2010**, the access to the SINS application and to SIRENE forms was ensured for 474

prosecutors through the main interface of CN SIS. STS provided tokens inscribed with digital certificates, usernames and passwords.

From February 2011, designated prosecutors from the prosecutions' offices by the appeal courts were granted access to a web mail service offered by CCPI and STS for an efficient carrying out of European judicial procedures.

#### **4.8. Integrated Information System (SII)**

In 2010, the inter-connection technical requirements for an efficient access of the prosecutors to the Integrated Information System, managed by the Romanian Intelligence Service, were accomplished according to **Government Decision no.952/2003 and CSAT Decision from 28.06.2010**, and were completely functional in 2011.

#### **4.9. Prosecutors' access to the databases administered by the Ministry of the Interior, Custom Authority and the National Administration of Penitentiaries**

By concluding the **Framework Collaboration Protocol no.861/C/15.06.2010 (PICCJ) and no.138/22.06.2010 (MAI)** with the Ministry of Administration and Interior, the legal framework for the prosecutors in the Public Ministry to access the applications and the databases of this institution was created. To this purpose, subsequent protocols were signed with the MAI structures that administrate databases and also the implementation standards were established, the IT systems of the two ministries were inter-connected and prosecutors were ensured access to 15 applications/databases of IGPR, IGPF, Driving Licenses and Registration Department, Romanian Office for Immigrations, and the Department for the Registration of Persons and Databases Administration.

In 2011, according to law no.202/2010, the prosecutors' access to the applications and databases of the National Administration of the Penitentiaries was extended. At the end of 2011, over 1000 users were created and administrated for every one of the 16 applications and databases needed by the Public Ministry.

#### **4.10. Other projects**

► The PHARE project 2006/018-147.03.17 "Development Institutional preventing and combating money laundering and terrorist activities" - component "case management system and training", held in 2010, the Ministry public was a beneficiary institution. The project aimed to provide access to specially appointed

prosecutors to information managed by the National Office for Preventing and Combating Money Laundering – the Implementing Authority;

► in 2010 a software application was drawn up for recording documents for the Department of Classified Documents (analysis, design, programming, testing);

► in 2010-2011 an integrated information management system and financial and economic management of the Public Ministry “SIMEC” was created. This is a system of centralized database applications, installed PICCJ and used by all offices of the Public Ministry;

► The FT 2007/19343.01.05 project “Improving statistical Romanian judicial system”, conducted during 2010-2011, which was attended by IT specialists in the Department of General Prosecutor’s Office specialized;

► in 2011 an INTRANET forum was created, and an intranet portal of the Public Ministry was designed, which currently contains the applications “Global Person Search”, “Microstatistics” and “Orders of the Attorney General”.

#### **III.4. Better Prosecution Standing in the Judicial Proceedings**

Following the IT development inside the Public Ministry, the expansion of the electronic archive system was imposed. The electronic file is a real benefit in court, especially in complex cases, as the prosecutor who attended the court session used to work with session index cards and he wasn’t able to have real time access to the evidence administered during the investigation. The electronic file is also useful in motivating the means of attack.

A pilot-project was set up according to which all the criminal prosecution files with indictment were integrally scanned and the prosecutor participating in court session could directly access the probative in criminal prosecution phase, as well as the upgraded electronic legal program. Two Prosecutor’s offices<sup>75</sup> were designed as pilot-units where the electronic format was accomplished for the files with indictment starting with January 2010.

As the activity of this pilot-project is huge<sup>76</sup> we can conclude that the following actions are necessary in all Prosecutors’ offices if the system allows:

- keep the integrity of the information stored in the classic archive for a very long period of time;
- prompt identification;

---

<sup>75</sup> Prosecutor’s Office affiliated to Cluj Law Court and Prosecutor’s Office affiliated to Făgăraș Law Court.

<sup>76</sup> For example, 2397 files were registered in electronic archive system at Prosecutor’s Office attached to Cluj Law Court, all the solved files during 2010, 2011, partially 2009 and 2012, up to present, irrespective of the verdict, as well as 640 papers and, at all the prosecutors’ offices attached to Law Courts 13 132 files and 911 papers were archived according to the Order.

- secure access to documents and operations based on user accounts and permits;

- its implementation and interrogation through ECRIS system (in the future).

Among other advantages of this system, we mention:

- a better preparedness for the session attorney and a better organization of the court session, as the study of the file is not restricted to the time allowed by the judge or the instance clerk of the court;

- during the court session the prosecutor has access to the criminal prosecution file and the appeals can be motivated faster;

- files registered in the electronic archive system were also used by the Prime Prosecutor in order to endorse the complaints against solutions issued by the prosecutor, especially in the case of files from the Police where the criminal investigations were discontinued in order to continue the criminal investigation, as well as for ample files or files requested by several institutions at the same time;

- the archived files were also used by the other prosecutors in order to check certain aspects of the criminal inquiry and criminal prosecution based on the finalized files; this method is more efficient and faster and the files shouldn't be taken out from the archive. We should mention that each prosecutor is allowed to access this electronic archive from the intranet connected computer in his office by accessing his account through a password;

- the possibility to study the files registered through this system was also implemented for other Prosecutor's Offices. For example, using this system, from Prosecutor's Office affiliated to Cluj Law Court someone may study a file registered in SAE at the Prosecutor's Office affiliated to Turda, Dej, Gherla, Huedin, Cluj-Napoca Law Courts, without physical transport of the file. This possibility is real, with obvious advantages, economy in time, expenses and in number of the involved persons, etc;

- the possibility to survey the files for third persons that do not have an interest in the cause but they do have the right, according to the law to study them (experts, specialists, lawyers, judicial inspectors, etc.) is done based on username and password and the system administrator may verify who accessed each file, the period when it was accessed and what kind of operations were accomplished.

### **III.5. Management of financial and logistic resources**

As the financial resources budgeted for<sup>77</sup> – as a main means to put the management policies into practice – were not only insufficient, but also further diminished by enforcing the provisions of numerous final court decisions on the

---

<sup>77</sup> The 2009 budget was 50,17% of the requested amount, while the 2008 budget was 75,55% from the requested amount.

payment of some outstanding compensation<sup>78</sup>, the logistic development strategy of the Public Ministry couldn't have been completely put into practice.

- purchase of equipments indirectly related to criminal prosecution activities (acquisition of technology necessary for on spot investigations or recording equipments);

- purchase and construction of new buildings, as well as in building works<sup>79</sup>. Between 2007-2011, **28 capital repairs** (especially with an execution period of **1 and 2 years**) and **12 investment works** (especially with an execution period of **2 and 3 years**) were accomplished.

From the perspective of the territorial distribution of the capital repair and investment works, the coverage rate was 80,95% in only 8 out of 42 situations (41 counties and Bucharest) this kind of works not being accomplished.

*In order to compensate for the lack of room, the Public Ministry has intervened at some central public institutions in order to obtain, free of charge, the transfer of buildings under their jurisdiction<sup>80</sup>. Also resorted to renting of buildings for offices of territorial offices of the DIICOT.*

- Partially replacing the car pool; 224 autos have been purchased (200 Dacia Logan, 5 Skoda Octavia, 4 Volkswagen Passat and 15 Opel Astra) and distributed to local units, with priority to the prosecutors' offices by the courts of law which hadn't received any new cars in the last decades.

The accurate budgetary execution performed by the Public Ministry during the General Prosecutor's three year mandate has been acknowledged by the Romanian Court of Counts.

### **III.6. Protection of classified information**

*As part of its lawful responsibilities, the Public Ministry issues classified information, and also benefits of classified information that belong to other institutions. As a consequence, the prosecutors' offices have to take all protection measures stipulated by Law No. 182/2002, such as: legal protection, protection by procedural measures, physical protection, personnel protection and protection of the information generating sources.*

<sup>78</sup> For the execution of those court decisions, an amount of 371.400.000 RON (aprox. 91.5 millions euros) was paid between October 2006 and July 2012. 769.141.692 RON (aprox. 170 millions euros) remained to be paid at the 15<sup>th</sup> of July 2012.

<sup>79</sup> For the headquarters of the Bucharest Court of Appeal.

<sup>80</sup> For example, the Ministry obtained some buildings for the headquarters of the Prosecutor's Office by the Court of Appeal in Craiova and for the Prosecutor's Office by the Court in Sibiu, and a plot of land in the centre of Braşov for the headquarters of the Prosecutor's Office the Court of Braşov.

Given the significant deficits related to the implementation of the legal provisions on the protection of classified information noticed in the period before 2007, PICCJ and the prosecutors' offices subordinated to PICCJ have taken the following steps:

- They prepared a Program regarding the Prevention against Possible Leaks of Information and a Plan of Defense and Protection of Classified Information that have been approved by the Romanian Intelligence Service. The measures stipulated in the two documents have been already implemented.

*Since the Department for Classified Documents in PICCJ didn't have a distinct area before 2007, the Department has now a special room where to store classified documents.*

- They decided that all local prosecutors' offices must have special rooms where to store and manipulate classified documents and that they must designate security personnel (those aspects have already been settled).

At the same time, technical measures necessary for the secure storage of electronic classified information have been adopted;

- Personnel protection measures have been taken.

*Therefore:*

- PICCJ has drawn up a list of the persons who, by virtue of their position, are entitled to have access to classified information and a list of the persons authorized to work with classified information;

- All civil and military prosecutors' offices in the country have been given order to adopt unitary procedures on giving personnel clearance to classified information;

- PICC controls the two lists of personnel as it performs personnel verifications according to Law 192/2002, as well as verifications on the material competencies of the prosecutors' offices so that they wouldn't give higher security clearances than necessary.

- they have drawn up a list containing the categories of classified information and the conditions and levels of classification specific to the activity of the Public Ministry and submitted it to be approved by Government Ordinance.

They have set up a similar list of classified information that has been approved by Order of the General Prosecutor.

*Subsequently, they have taken measures to inform prosecutors with reference to those provisions.*

- They have re-evaluated all internal work norms and rules on the protection of classified information, provisioned by Art. 94 in the standards approved by GO No. 585/2002;
- They have elaborated annual control and professional training schedules, stipulating the activity of PICCJ and of the local prosecutors' offices; the development of the planned actions have been monitored.

*This measure resulted in an active involvement of the Public Ministry personnel in implementing and observing the protection provisions on classified information.*

- archiving all the classified documents registered by PICCJ before 2007 (the procedure is being implemented);
- the half-year term analysis, performed by the General Prosecutor, concerning the way in which the security department within PICCJ fulfilled its tasks on the protection of the classified information, including the way in which the territorial departments of the Public Ministry were supported in this field.

## **CHAPTER IV**

### **PERFORMANCE, COORDINATION AND TRANSPARENCY**

#### **IV.1. Steps towards Complying with the EU Accession Conditions set for the Public Ministry**

*By decision of the European Commission 2006/928/EC a cooperation mechanism was implemented for the evaluation of the developments in Romania in the areas of reforming the judicial system and fighting against corruption (MCV), comprising 4 requirements, such as:*

- ensuring a more transparent and efficient judicial procedure;*
- carrying on professional and impartial investigations in the cases of high levels of corruption;*
- adopting additional measures in order to pre-empt and fight against corruption, especially within local administrations.*

Given the importance of this mechanism for the Romanian state, both prior and post EU accession (in order to avoid the safeguard clause), the development

strategy of the Public Ministry and all management decisions which were adopted related to these requirements and aimed at this very objective.

*All measures already presented with regard to the reorganization of the Public Ministry, the optimization of human resources, the efficiency of the activity and the implementation of the criminal policy priorities aimed at Romania fulfilling its obligations undertook as part of the accession process.*

Since 2007, the state reports<sup>81</sup> and the conclusions<sup>82</sup> of the European Union Council appreciated the progress achieved and the efficiency of the measures adopted by the Public Ministry with regard to:

- reorganizing units and redistributing vacant positions;
- the activity of the General Prosecutor's Office in order to unify the judicial practice;
- the results achieved in the investigation of high level and local level corruption crimes in the area of public administration;
- the program for consolidating the institutional capacity for combating corruption crimes, setting up the national network of specialized prosecutors, drawing up the good practice handbook and implementing local strategies;
- the management measures which have ensured the stability of the National Anticorruption Department;
- the relevance of the legislative proposals formulated by the Prosecutor's Office attached to the High Court of Justice and Cassation in order to reform the judicial system;
- the recommendations disposed by the General Prosecutor in countering corruption<sup>83</sup> or in the domain of recovering prejudices resulted from a criminal act<sup>84</sup>.

---

<sup>81</sup> State reports 13912/0, 11491/07, 6161/08, 12182/08, and COM(2009)401.

<sup>82</sup> The conclusions of the EU Council 12678/08, 7017/08, 11904/07, 14109/06.

<sup>83</sup> "The General Prosecutor's efforts in order to strengthen countering corruption at county Prosecutor's Offices level begin to produce results as the number of the prosecutions of public functionaries increased, as well as the complexity of the investigations in the Annual Report of the Committee to the European Parliament and the Counsel regarding Romania's progresses within the cooperation and control process, Bruxelles, July 20<sup>th</sup>, 2010.

<sup>84</sup> The General Prosecutors assumed great efforts to solve this ultimate point (seizure of goods) but he is confronted with the problem of human resources and, especially, with that of legal framework" (Annual Report of the Committee to the European Parliament and the Counsel regarding Romania's progresses within the cooperation and control process, Bruxelles, July 20<sup>th</sup>, 2011; The measures assumed by the General Prosecutor embodied into a considerable growth of the blocked assets in 2011) (Intermediary Annual Report of the Committee to the European Parliament and the Counsel regarding Romania's progresses within the cooperation and control process, Bruxelles, February 8<sup>th</sup>, 2012).



## IV.2. Contribution to the improvement of the legal framework

*Since the legal framework is the external factor with the most significant influence on the activity of the Public Ministry, the active involvement of the prosecutor's offices in the public debate of the laws affecting public prosecutors' activity directly was encouraged.*

*At the same time, the Public Ministry submitted to the authorities having the right to propose legislation numerous additional legislative proposals that regulate other social relations as well in case the studies and statistics of the institution revealed such necessities.*

Even if the public debates approached laws within the scope of the substantial criminal law, the criminal procedure, the judicial organization or the magistrates' statute, firm and constant actions were taken in order to remove the provisions that limited the public prosecutor's investigative tools, as well as the provisions that hindered the criminal procedure.

*For example, the amendments to the Criminal Procedure Code provided by the two laws approving GEO nr. 60/2006 successively adopted by the Romanian Parliament made purposeless procedural institutions such as house searches, wiretapping or preventive detention, excluded the right of judicial bodies to assess the evidence taken and instituted a deadline for criminal proceedings that would have attracted the dismissal of a significant number of complex investigations.*

*In each of these cases P.I.C.C.J. had a prompt response, convening the General Assembly of Prosecutors and formulating criticisms of these laws, sent to all institutions in the legislative process and media, which led the law to be returned to Parliament and ultimately to be declared unconstitutional.*

Other *activities meant to contribute to the improvement of the legal framework were:*

*- identifying the legal provisions that hinder the activity of the judicial bodies, performing analyses and submitting proposals to the authorities with legislative initiative attributions;*

*Some of the submitted proposals aimed at amending the DIICOT Organization Law, as well as the laws regarding the organization and activity of the Public Ministry (that has already been presented – the conditions for being appointed public prosecutor, the rules of the judicial inspection etc.).*

*Also, in all cases, PICCJ accepted the invitations of the Ministry of Justice or CSM and was present – through representatives – at the working groups for the amendment of the legislation affecting the activity directly (e.g. the statute of the magistrate or the law regarding the judicial organization).*

- ***participating in the elaboration of the new codes.***

*PICCJ had representatives in the commissions elaborating the codes, organized by the Ministry of Justice, and appointed experts so as to provide expertise assistance to the Parliamentary commissions.*

Within the legislating process, PICCJ participated directly in the elaboration/ supplementation of the legal framework with regard to the counteracting of tax avoidance, data retention or the regime of public road circulation, as well as in configuring the criminal provisions within the customs code;

- ***organizing public debates, with the participation of public prosecutors, judges, academic environment and civil society***<sup>85</sup>;

- ***submitting proposals for amending the legislation***, after identifying, within the PICCJ activity, the criminality trends;

***The following proposals should be mentioned:***

- ***introduction of the opportunity principle and enactment of a simplification procedure in criminal prosecution phase***<sup>86</sup> (the main proposals targeted the implementation of the opportunity principle, non-justification by the prosecutor of the solutions of with no ground for prosecution, the acceptance of guilt); ***Public Ministry organized public debates, with the participation of public prosecutors, judges, policemen, professional associations representatives of civil society***<sup>87</sup>;
- ***legal amendment in order to take over the judicial police of the Public Ministry delivered to the Ministry of Justice***<sup>88</sup>;

<sup>85</sup> Such a debate was organized in June 2009 with regard to the necessity of regulating the opportunity principle in the criminal lawsuit.

<sup>86</sup> Work no.2120/C/12.10.2009, Work no.751/C/25 May 2010, Work no.441/C/18 June 2010.

<sup>87</sup> On June 8<sup>th</sup>, 2011 a professional debate was organized “The Principle of Opportunity in Penal Law-International Practices” at PICCJ Headquarters and it was transmitted through video-conference system within the country; the conference debates sustained the points of view of Public Ministry at this institution implementation within the new Code of Criminal Procedure and the Law of the “small reform”.

<sup>88</sup> Work no.435/C/2011.

- *regarding the employment of financial specialists within Prosecutor's offices affiliated to Law Courts<sup>89</sup>*;
- *regarding the new Criminal Code, new Code of Criminal Procedure and the law to apply the Code of Criminal Procedure<sup>90</sup>*;
- *regarding legal adjustments in order to diminish the fiscal evasion and smuggle phenomenon that conducted to the enactment of OUG no.54/2010 on certain measures to counter fiscal evasion<sup>91</sup>*;
- *regarding the amendment of OUG no. 195/2002 on the traffic public roads in order to introduce certain disposals to remove the possibility of applying administrative sanctions from this law, especially for the criminal facts of driving on national roads without a driving license and driving on national roads under the influence of alcohol<sup>92</sup>*;
- *amendment of Constitution regarding the extension of the preventive detention from 24 to 48 or 72 hours<sup>93</sup>*;
- *regarding the extended seizure implementation<sup>94</sup>*;
- *in order to adopt a legislation regarding the setting up of a Department to prevent criminality and cooperate with the recovery offices for promissory notes within EU members in the Ministry of Justice<sup>95</sup>*;
- *to amend the law regarding the disciplinary liability of the magistrates<sup>96</sup>*.

<sup>89</sup> Work no.41/C/14.10.2010.

<sup>90</sup> Work no.1052/C/20.06.2011, work no.393/C/02.03.2012, work no.441/C/09.03.2010, work no.1158/C/2010 as well the designation of prosecutors to participate both in working panels from the Ministry of Justice and in all the sessions of the judicial committee of Romania's Parliament.

<sup>91</sup> Certain perspectives were formulated regarding legal adjustments within countering fiscal evasion and smuggle domain and a member was designated in the working panel according to decision of CSAT no.69/2010; Work no. 1233/C/2010 and Work no. 1361/C/2010.

<sup>92</sup> Work no.12956/2234/C/21.01.2010.

<sup>93</sup> This proposal was launched in public debate during the presentation of the activity report of Public Ministry for 2010 and a material was delivered to Romania's President, Prime Minister, Justice Minister, Minister of Administration and Interns and it was also included within the written presentations in order to modify the codes or the Constitution; at the same time, a representative of the Prosecutor's Office affiliated to the High Court of Cassation and Justice participated within the work panel regarding the law project for extended seizure and written proposals were formulated for this work panel, work no. 265/C/2010.

<sup>94</sup> This proposal was launched in public debate during the presentation of the activity report of Public Ministry for 2010 and a material was delivered to Romania's President, Prime Minister, Justice Minister, Minister of Administration and Interns and it was also included within the written presentations in order to modify the codes or the Constitution; at the same time, a representative of the Prosecutor's Office affiliated to the High Court of Cassation and Justice participated within the work panel regarding the law project for extended seizure and written proposals were formulated for this work panel, work no. 265/C/2010.

<sup>95</sup> Work no.1996/C/2012; 265/C/2010.

<sup>96</sup> Work no.2135/C/12210/09.12.2010; Work no.925/C/2010.

### IV.3. Strengthening and protecting the prosecutors' status

*The independence of the prosecutors is a principle acknowledged in all the international documents intended to establish general standards in this field, such as the UN Guidelines regarding the role of the prosecutors, the Professional Responsibility Standards issued by the International Association of the Prosecutors or the Recommendation no. 19/2000 of the Committee of Ministers of the Council of Europe.*

*The observance of this principle is a mandatory requirement meant to ensure the impartial activity of the Public Ministry, and to protect the prosecutors against attempts to influence the course of the investigations, especially when those investigations are related to acts stipulated in the criminal law and committed by representatives of other constitutional branches.*

The priorities set while holding the position of General Prosecutor in order to ensure the observance of this principle included the rejection of any intention or act meant to harm the constitutional status of the prosecutors, or aimed at discrediting or intimidating this professional category.

The requests made by parliamentary committees for hearing of prosecutors with regard to their investigations were denied, and CSM was asked to intervene in order to protect the professional reputation of the prosecutors who were defamed by several representatives of the legislative or executive branches.

The General Prosecutor adopted a firm position within CSM regarding the request of Minister of Justice to remove a prosecutor from a management position without an assessment of the prosecutor's activity.

On the other hand, since the magistrate status does not imply immunity from the law, I openly criticized the attitude of the CSM members when they did not endorse the proposal for the arrest of a prosecutor.

We have to mention within this context the fact that on March 7<sup>th</sup> 2012, the General Prosecutor of the Prosecutor's Office affiliated to the High Court of Cassation and Justice handed over the High Court of Cassation and Justice a request<sup>97</sup> regarding the attacks in Constitutional Court of the new lustration law, taking into account the competences of the supreme instance<sup>98</sup> within the apriori control of constitutionality. As a result of the pleading, the High Court of Cassation and Justice informed the Constitutional Court that admitted the unconstitutional exception of the Law<sup>99</sup>.

<sup>97</sup> Work no. 308 from 28 March 2012.

<sup>98</sup> Regulated by disposals art. 46 let. a from Romania's Constitution and art. 15 alin. 1 from Law no. 47/1992.

<sup>99</sup> Decision no 308 from 28 March 2012.

Numerous defense requests were formulated for the independence and the prestige of justice, as following the emergence in mass media of certain insulting statements regarding the prosecutors or that represented serious infringement to the right of image for the prosecutor magistrates<sup>100</sup>.

#### **IV.4. Strengthening the national institutions relations**

In order to improve the activity, a series of documents were signed to ensure a better cooperation with national institutions and authorities and a better functional cooperation.

The following are relevant in this aspect:

► The Protocol<sup>101</sup> with National Agency of Integrity, designed to ensure a unitary practice in causes where criminal prosecution authorities are informed by the National Agency of Integrity and reduce solution terms of these causes, bi-annual analyses of the causes instrumented following NAI notices and common professional training;

► The Protocol<sup>102</sup> signed with the Ministry of Administration and Interior on consolidating the institutional capacity in the field of combating corruption. The document stipulates the nomination of judicial police officers, at the level of police structures under the MAI, who give priority to acts of corruption and consolidated crimes, in order to identify the perpetrators and detain them for criminal responsibility. This protocol establishes common criteria for activity evaluations, namely the number of indictments, the value of recovered or blocked prejudices and the number of preventive measures applied;

► The Cooperation Protocol<sup>103</sup> between the National Department of Anticorruption within the Ministry of Administration and Interior and the Prosecutor's Office attached to the High Court of Cassation and Justice (PICCJ), in the field of combating corruption, provides the information that should be exchanged between the two institutions, the setting up of joint operational teams, strategy elaboration, good practices handbooks, joint programs and actions, as well as establishing common indicators and joint professional training;

► The Joint Plan of the Public Ministry<sup>104</sup>, the Ministry of Administration and Interior, the Ministry of Public Finance, the Ministry of Justice and the Romanian Intelligence Service, regarding measures to be taken in order to increase the effectiveness of preventing and combating tax evasion;

---

<sup>100</sup> For example, work no. 2121/C/2011.

<sup>101</sup> Protocol registered with no. 2031/C/01.11.2011.

<sup>102</sup> Protocol registration no. 385/C/28.02.2012.

<sup>103</sup> Protocol registration no. 459/C/08.03.2011.

<sup>104</sup> Paper no. 115/C/31.01.2012.

► The National Strategic Plan 2012-2104<sup>105</sup> signed by the Ministry of Administration and Interior, and the Ministry of Public Finance for combating illicit cigarettes trafficking;

► The Protocol<sup>106</sup> signed with the National Department of Penitentiaries ensured The Public Ministry free access to data concerning the convicted persons in the Romanian penitentiary system;

► The Protocol<sup>107</sup> signed with the National Defense Ministry regarding the mutual support which is necessary in order to carry out the legal powers and competencies;

► The Protocol<sup>108</sup> signed with the Society for Legal Sciences regarding the cooperation in the field of legal counsel;

► The Protocol<sup>109</sup> signed with the Competition Council regarding the cooperation and the information exchanged in the field of competition and in accordance with the legal powers and competencies;

► The Protocol<sup>110</sup> signed with the High Council of Magistracy, the Ministry of Justice and the High Court of Cassation and Justice on intensifying the actions of attracting European and international funds;

► The Protocol<sup>111</sup> for the implementation of the Codes, signed by the Ministry of Justice, the High Council of Magistracy, the Ministry of Justice, the High Court of Cassation and Justice, the Romanian National Bar Association, the Romanian National Public Notaries Association, the Romanian National Association of the Officers of the Court;

► The Protocol<sup>112</sup> signed with the Mediation Council on ensuring institutional cooperation between prosecutors and mediators;

► The Protocol<sup>113</sup> signed with the Ministry of Justice in order to ensure the tracking and identifying of goods obtained during crimes or other goods related to crimes;

► The Protocol<sup>114</sup> signed with the Ministry of Administration and Interior regarding the Public Ministry's access to data bases managed by the Ministry of Administration and Interior;

---

<sup>105</sup> Paper registration no. 1/C/03.01.2012.

<sup>106</sup> Paper registration no. 666/C/06.04.2011.

<sup>107</sup> Paper registration no. 630/C/11.04.2011.

<sup>108</sup> Paper registration no. 1545/C/22.08.2011.

<sup>109</sup> Paper registration no. 1879/C/02.11.2011.

<sup>110</sup> Paper registration no. 2079/C/18.01.2012.

<sup>111</sup> Paper registration no. 1345/C/14.07.2011.

<sup>112</sup> Paper registration no. 1959/C/25.10.2011.

<sup>113</sup> Paper registration no. 130/C/14.04.2011.

<sup>114</sup> Paper registration no. 861/C/15.06.2011.

► The Protocol<sup>115</sup> signed with the Ministry of Administration and Interior regarding the launching and functioning of the national program “ALERT! CHILD KIDNAPPING”.

#### **IV.5. Measures for Sustaining Professional Training**

Although the professional training falls under the responsibility of the National Institute of Magistracy, **the General Prosecutor took additional measures to ensure the training**, by organizing **professional meetings**. Professional issues related to the priorities established by the General Prosecutor yearly on the occasion of presenting the activity reports, were discussed.

Thus, the Public Ministry organized regional meetings on the topic of enforcing the provisions of the new Codes in the following areas: small scale corruption; tax evasion; smuggling; money laundering; criminalistics; military jurisdiction; public relations; unitary judicial practice; protection of classified information.

Over 25 such meetings were organized yearly.

Another important element was the *Joint Project run by the Prosecutor’s Office attached to the High Court of Cassation and Justice and the National Institute of Magistracy, at the initiative of the General Prosecutor*.

The program, the first of its kind, concerned justice auditors and is designed as an addition to their specialized studies, as they have the opportunity to directly consult the prosecutors.

By providing a practical support in the training of prosecutors, the program was implemented by joint activities of both auditors and prosecutors within the Public Ministry, in specific fields of competencies.

The purpose of the workshops was to create the opportunity for prosecutors, magistrates, auditors, as well as experts from institutions with judicial competencies to carry out a dialogue within the Public Ministry, with the aim of strengthening public confidence in the penal justice system.

The project consisted of work meetings that took place on Tuesdays and lasted 4 to 5 hours, during a timeframe of 10 months, starting with November, 2011<sup>116</sup>.

---

<sup>115</sup> Paper registration no. 1224/C/08.06.2012.

<sup>116</sup> The meetings took place at the Prosecutor’s Office attached to the High Court of Cassation and Justice headquarters. Specialists in the above mentioned fields were invited and visits to the Forensic Institute, Forensic Medicine Institute and Advanced technologies Institute were organized.

*The auditors were trained in fields such as:*

- the communication system of the Public Ministry; the activity of the audience/receiving office, the activity of the statistics office and debates on communicating with the media;*
- the technical appraisements and technical and scientific findings in the field of computing; photography and video recordings; voice and speech; physical and chemical analysis of explosives; DNA determinations and analysis; graphological and graphoscopical analysis, psychological and behaviour portraits and profiling; linguistics or content analysis;*
- the management of severe violence cases, organized crime and corruption;*
- the use of special investigation techniques.*

The classes took place at the Public Ministry's headquarters and experts in the above mentioned areas were invited to give presentations. Also, visits to the National Institute of Criminalistics and Forensic Medicine were organized.

Another important activity was a **professional training program in the field of forensics (The Little Criminologists)**<sup>117</sup>, which aimed to provide training to prosecutors who would work in this field. Under this program, prosecutors with extensive forensic experience, both from the Department of Criminology and Criminal Investigation and from other offices, presented cases involving serious violence and how to manage and investigate them.

There were also lectures on investigative techniques in cases of crime against life, how to make expertise or technical – scientific reports, visits to forensic laboratories.

From 2007 to 2012, the Prosecutor's Office attached to the High Court of Cassation and Justice actively participated in exchange programs initiated by the EJTN<sup>118</sup> judicial authorities together with foreign prosecutors.

Thus, from 2007 to 2012<sup>119</sup> 10 training classes with foreign magistrates were organized.

---

<sup>117</sup> This program was meant for prosecutors that had been promoted to the Prosecutor's Offices attached to Tribunals, who were going to investigate crimes committed against a person's life. This program consisted of series of 25 prosecutors, for a week at a time.

<sup>118</sup> The European Judicial Training Network – EJTN – is the main platform and promoter for the development, formation and knowledge and competency exchange of the judicial UE.

<sup>119</sup> Data for 2012 are up to 18.06.2012.



#### IV.6. Projects Implemented from 2006 to 2012

During the two terms of office, the Public Ministry implemented 18 projects with non-refundable external financing, such as:

Name of the Project	Year	Activities	Results
PHARE RO 2005/017-553.03.05.01 Strengthening Romania's Institutional Capacities in the Field of Protecting Intellectual and Industrial Property Rights	2007-2008	<ul style="list-style-type: none"> <li>- acquisition of goods;</li> <li>- professional training;</li> <li>- written and audio-visual publicity;</li> <li>- institutional and legislative analysis in Romania;</li> <li>- research.</li> </ul>	<ul style="list-style-type: none"> <li>- IT equipments and programs in amount of 394358.41 Euros;</li> <li>- Inter-institutional DPI data base;</li> <li>- jurisprudence bulletin in the field of DPI;</li> <li>- anti-piracy and anti-counterfeiting awareness campaign;</li> <li>- work-flow handbook;</li> <li>- handbook for data base administrators and users;</li> <li>- institutional cooperation handbook in the field of DPI.</li> </ul>
PHARE RO 2006/018-147.01.04 – Continuing the Consolidation of the Institutional Capacity of the Public Ministry in the Field of Combating Organized Crime and Terrorism	2008-2009	<ul style="list-style-type: none"> <li>- acquisition of goods;</li> <li>- professional training;</li> <li>- trainers formation;</li> <li>- exchange programs in other EU member states;</li> <li>- institutional analysis;</li> </ul>	<ul style="list-style-type: none"> <li>- 7 lots consisting of software applications, printers, photocopying machines, furniture, video cameras, DVD players, translation installations, forensic kits in amount of 334436.32 Euros;</li> <li>- evaluation report on the activity of the Department for the Investigation of Organized Crime and Terrorism.</li> </ul>

PHARE RO 2005/017-553.01.04.06 – Strengthening the Institutional Capacity of the Ministry of Justice and the Public Ministry, in Their Capacity as Central Institutions	2008-2009	<ul style="list-style-type: none"> <li>- analysis of the needs of formation for 9 departments and structures of the Prosecutor's Office attached to the High Court of Cassation and Justice;</li> <li>- professional training, team-building, internship.</li> </ul>	<ul style="list-style-type: none"> <li>- strategic management recommendations on human resources within the Prosecutor's Office attached to the High Court of Cassation and Justice.</li> </ul>
FT 2007/19343.01.03 – Strengthening the Capacity of Romanian Institutions to Fight against Informatics Criminality	2009	<ul style="list-style-type: none"> <li>- acquisition of goods;</li> <li>- professional training.</li> </ul>	<ul style="list-style-type: none"> <li>- software applications for the investigation of the cyberspace;</li> <li>- handbook on methodologies and work procedures in the investigation of informatics criminality cases.</li> </ul>
FT 2007/19343.01.02 – Strengthening the Institutional Capacity of the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice	2008 – 2009	<ul style="list-style-type: none"> <li>- the analysis of the training needs of the prosecutor's offices within the courts of law;</li> <li>- professional training (family violence, juvenile delinquency, the European Arrest Warrant);</li> <li>- trainers formation.</li> </ul>	
FT 2007/19343.01.04 – Strengthening the Operational Capacities of Romanian Law Enforcement Agencies in Combating Economical and Financial Crimes	2009	<ul style="list-style-type: none"> <li>- evaluation of the formation needs;</li> <li>- professional training;</li> <li>- research.</li> </ul>	<ul style="list-style-type: none"> <li>- handbook on methodologies and work procedures in the investigation of economical and financial criminality cases.</li> </ul>

JLS/2007/JPEN/227 Strengthening the Romanian and Belgian Cooperation in the Field of Investigating Organized Crime	2008	<ul style="list-style-type: none"> <li>- professional training and sharing of experience in using European instruments of judicial cooperation;</li> <li>- legislative analysis.</li> </ul>	<ul style="list-style-type: none"> <li>- bilateral cooperation protocol between the Belgian Federal Prosecutor's Office and the Department for the Investigation of Organized Crime and Terrorism regarding an easier cooperation at a central and local level;</li> <li>- report on the current judicial cooperation instruments in the field of organized crime.</li> </ul>
FT 2007/1943.07.01.02.10 - Continuing the Consolidation of Law Enforcement in the Field of Protecting Intellectual and Industrial Property Rights by Improving the Data Base	2010	<ul style="list-style-type: none"> <li>- IT programming, data base building and testing;</li> <li>- professional training for Data base administrators and users.</li> </ul>	<ul style="list-style-type: none"> <li>- new functions of the data base built during the PHARE RO 2005/017-553.03.05.01 project.</li> </ul>
FT 2007/19343.07.01/IB/JH 23 TL Consolidation of the Romanian Practical and Legal Framework in the Field of Recovery of Goods	2009-2010	<ul style="list-style-type: none"> <li>- institutional developing;</li> <li>- legislative analysis regarding the necessary instruments for the seizure or freezing of goods.</li> </ul>	<ul style="list-style-type: none"> <li>- guideline for the elaboration of a National Strategy for the Recovery of Goods;</li> <li>- national and international good practices handbook.</li> </ul>
JLS/2008/JPEN/028 Providing Prosecutors with the Necessary Means to Combat Criminal Activities (Partnership with the General Prosecutor's Offices in Spain and Italy)	2009	<ul style="list-style-type: none"> <li>- professional training;</li> <li>- foreign languages classes;</li> <li>- joint workshops.</li> </ul>	<ul style="list-style-type: none"> <li>- procedures handbook on modern investigation techniques.</li> </ul>

JLS/2008/JPEN/029 Improving the Romanian and Bulgarian Prosecutors' Knowledge and Abilities in Applying International Judicial Cooperation Instruments	2009-2010	<ul style="list-style-type: none"> <li>- professional training;</li> <li>- foreign languages classes;</li> <li>- joint workshops.</li> </ul>	- handbook on applying international judicial cooperation instruments.
HOME/ISEC/2010/AG/F INEC-022 – Training Professional Financial investigators in Romania	2011-2012	<ul style="list-style-type: none"> <li>- professional training;</li> <li>- research;</li> <li>- elaboration of the professional training curriculum.</li> </ul>	<ul style="list-style-type: none"> <li>- good practices guideline containing the main steps in the investigation of financial crimes;</li> <li>- national training program for financial investigators – teaching modules on financial investigations included in the initial training programs of National Magistrates Institute and Police Academy.</li> </ul>
HOME/2010/ISEC/AG/F INEC-019 – Developing New Corruption Investigation Techniques;	2011-2012	<ul style="list-style-type: none"> <li>- legal provisions and jurisprudence evaluation on using integrity testing tactics in the investigation of corruption in the EU;</li> <li>-training.</li> </ul>	<ul style="list-style-type: none"> <li>- handbook on the use of integrity testing and undercover investigators elaborated and approved by the law enforcement agencies, the judicial system and the academic circle in the EU;</li> <li>- finalized “lex feranda” law draft on unifying the practice in the field of integrity testing;</li> <li>- “lex feranda” law draft on standardizing the use of undercover investigators in corruption cases.</li> </ul>

HOME/2010/ISEC/AG/INT/006 – Strengthening the Cooperation between Law Enforcement Institutions and the Private Sector in Combating Fraud and Illicit Online Trade	2011-2012	<ul style="list-style-type: none"> <li>- joint workshops in Bulgaria, Hungary, Romania</li> <li>- research.</li> </ul>	<ul style="list-style-type: none"> <li>- cooperation guideline between the public institutions and the private sector;</li> <li>- standard forms for requesting information from the private sector by law enforcement agencies and vice-versa.</li> </ul>
HOME/2010/ISEC/AG/057 – REFRACT Strengthening the Capacity of French and Romanian Authorities in Combating Human Being Trafficking	2011-2013	<ul style="list-style-type: none"> <li>- professional formation;</li> <li>- comparative analysis of the French and Romanian judicial systems in the field of human being trafficking.</li> </ul>	<ul style="list-style-type: none"> <li>- good practices handbook for the use of the GIRs, by the Department for the Investigation of Organized Crime and Terrorism and by French and Romanian police officers, finalized and disseminated to all interested parties;</li> <li>- functional work group at the end of the project.</li> </ul>
JLS/2010/JPEN/1528 Developing Linguistic Abilities in order to Consolidate the European Judicial Cooperation (MULTILINGUA 2010)	2011-2013	<ul style="list-style-type: none"> <li>- specialized professional training (judicial cooperation);</li> <li>- intensive foreign languages classes on a national and local level.</li> </ul>	<ul style="list-style-type: none"> <li>- multi-linguistic compendium consisting of specialized legal terms, issued in all the 5 languages of the project.</li> </ul>
FAKES – Combating Merchandise Counterfeiting in Three Key EU Member States. Towards a Complete Approach	2009-2011	<ul style="list-style-type: none"> <li>- training;</li> <li>- research;</li> <li>- identifying good practices;</li> </ul>	<ul style="list-style-type: none"> <li>- operational tool-kit – a methodological formula of estimating the degree of piracy and counterfeiting</li> </ul>

JLS/2008/RAMC/AG/1 549-30-CE0311084/00- 52 – CALLERT Creating a Inter- Institutional Mechanism to Respond to Cases of Child Abduction or Missing Children when their Lives Could Be in Jeopardy	2010- 2011	- training; - sharing experience; - partnership with the private sector and the civil society.	- quick national alert system in cases of abduction or missing children; - awareness campaign.
--	---------------	--	--

#### IV.7. Improvement Public Communication and Mass Media Relations

*Facilitating media access to information of public interest regarding the prosecutors' activity is a mandatory condition for increasing the citizens' trust in the institution of the Public Ministry and building a correct image of the statute and role of this category of magistrates in the Romanian judicial system<sup>120</sup>.*

Thus, developing a public relations department which can ensure the transparency of the activity while protecting the confidential aspects ensued by some penal procedures, represented a priority during the term of office as General Prosecutor and an important dimension of the management activity.

The main relevant decisions that were taken concerned:

- **establishing the rules and principles of media relations** (General Prosecutor's Order no. 116/2007).

*Its aim was the elimination of leaks or the practice of the so called "communication according to sources", as well as equal access to information for all the media institutions.*

- **establishing a press centre within the Prosecutor's Office attached to the High Court of Cassation and Justice** which would ensure a correct, operative and adequate communication with the journalists<sup>121</sup>;

<sup>120</sup> Results of a study ordered by the Public Ministry have shown the overwhelming influence of the media on the way the judicial system is perceived. Only 6 % of the respondents find out information on the activity of the prosecutors from their own experience and only 2% have been involved in a penal case, while 93% obtain such information from TV and 41% from the written media.

<sup>121</sup> Later, the project was extended to the prosecutor's offices in the country – Iași, Constanța, Bihor, the Prosecutor's Office attached to the High Court of Cassation and Justice allotting the necessary funds

• **facilitating the connections between the representatives of the press and the spokespersons of the prosecutor's office**, by publishing their contact information on the web page<sup>122</sup> of the institution as well as by endowing the persons authorized to speak to the media within the Public Ministry with work telephone numbers;

• **organizing specialized training for the prosecutors** who are also spokespersons, at national or regional level, with the participation of journalists or specialist in public communication;

• **adopting a standard procedure for settling the petitions and requests of citizens/other institutions, by means of a General Prosecutor' Order**<sup>123</sup> regulating the approval of the Guide regarding the settlement of petitions by the prosecutors' offices within the Public Ministry. This order stipulates the methodology for settling petitions, the traditional /electronic type of filing system, the disposition of the documents and the note regarding the documents' movement, AND more than 50 models to settle petitions. The adoption of this order generated a unitary practice with regard to the settlement of petitions (intimations, complaints, memoranda, requests) and the careful verification of such petitions so as the number of claims brought to justice against the Public Ministry would decrease;

• **sustaining**<sup>124</sup> **the elaboration process of the communication strategy in the judicial system**, as well as the *Guideline of Good Practices for the Cooperation between Courts of Justice, the Prosecutor's Offices and the Media*, elaborated by the Superior Council of Magistracy. This document was adopted by the Decision of the Superior Council of Magistrates no. 482 from 01.06.2012. Since the guide was as recommendations for magistrates, the document was adopted by means of a General Prosecutor' Order no. 117 of July 11, 2012, thus becoming mandatory for prosecutors. The issuance of this order led to the unification of public communication to all the Public Ministry.

**Such measures led to an increased transparency in the public communication activity. More than 800 press releases were issued in 2011, while in 2006 their number was in double figures.**

**More than 3100 requests for public interest information were received in 2011 and the number of persons who accessed the institution's web site reached 1494647 beginning with September 9, 2007.**

---

<sup>122</sup> The Web Page [www.mpublic.ro](http://www.mpublic.ro) is permanently updated with information of public interest.

<sup>123</sup> Order no. 33 of 21 February 2012.

<sup>124</sup> Opinions were transmitted and several meetings were held with spokespersons from prosecution offices to discuss the draft guidance. One meeting was held in April at the General Prosecutor's Office and all journalists accredited to the Ministry of Public were invited. On this occasion, Public Ministry's spokespersons discussed the draft guidelines, but have also discussed with journalists other collaboration issues.

Since 2008 modern instruments of sociological research have been used in order to identify the key actions needed in this area, given the necessity to establish the efficiency of the judicial system not only based on the statistical indicators centralized by PICCJ, but also by measuring such indicators against the expectations of the citizens, who are the beneficiaries of the justice system.

*For example, the question “What do you think the management of the Prosecutor’s Office should do in order to increase the people’s confidence in the prosecutors’ actions?” was answered as follows: 63% of those interviewed said that the prosecutors who make mistakes should be punished, while 22% said that measures leading to a rapid resolution of the cases should be taken. The results mirror the general perception of the public regarding the magistrates’ lack of responsibility, which is a result of the inefficient disciplinary mechanisms managed by the Superior Council of Magistracy. This perception justifies once more the need to strengthen the control mechanisms within the system and to render them efficient.*

The media were considered an important instrument in the specific activity of the Public Ministry, as open sources of information are particularly useful for obtaining data regarding the potential perpetration of crimes or for identifying the dysfunctions of the judicial system.

In order to make full use of this resource, the PICCJ Press Office daily monitors the national and local press and draws up syntheses of the relevant articles, which are subsequently disseminated within the Public Ministry.

## **CHAPTER V**

### **CONCLUSIONS. FUTURE CHALLENGES. SUGGESTIONS FOR POSSIBLE APPROACHES**

#### **V.1. Conclusions**

**The positive modification of the qualitative and quantitative indicators was almost exclusively due to a number of managerial measures and internal orders:**

► **the investigative resources were mainly targeted at the cases that were likely to be completed and at the priority areas, which have a major influence on the evolution of criminal activity;**



► **the prosecutors' offices were reorganized and the vacancies were redistributed** to the offices with more intense activity; a new regulation for the organization and functioning of such offices was drafted;

► **the approach to criminality changed** as a result of the **identification of relevant fields of action and of the establishment of certain priorities** in terms of penal policy;

► **by order of the general prosecutor, networks of specialized prosecutors were created nationwide** and were charged with the investigation of certain categories of crime;

► **regionally-tailored strategies were adopted** in the key fields of action;

► **the investigation methods became standardized** due to the adoption of best practice guidelines;

► **the Public Ministry's IT network became fully operational** and the prosecutors were granted access to the database containing information which can be used during the investigations;

► **the activity was evaluated by taking into consideration the completion and complexity of cases;**

► **strict criteria were introduced for the authorization** of judicial police officers;

► **protocols were signed with the key partners** in order to establish a set of common priorities and a common evaluation procedure.

The results of the six years in office are best demonstrated by the **comparative analysis** of the Public Ministry's activity **in 2006**, at the moment of taking office, and **2011 respectively** (the last year for which a full set of data is available).

PENDING CASES		
2006	2011	RATIO (%) 2011/2006
913,871	1,656,130	+ 81.22

SOLVED CASES		
2006	2011	RATIO (%) 2011/2006
373,906	579,322	+ 54.94

CASES SOLVED BY MEANS OF INDICTMENT		
2006	2011	RATIO (%) 2011/2006
39,995	43,826	+ 9.57

PERSONS SENT TO TRIAL		
2006	2011	RATIO (%) 2011/2006
52,943	60,980	+ 15.18

FILES SENT BACK FROM COURTS		
2006	2011	RATIO (%) 2011/2006
184	78	- 57.60

CORRUPTION FILES					
SOLVED		INDICTMENTS		PERSONS SENT TO TRIAL	
2006	2011	2006	2011	2006	2011
3,653	4,037	351	407	629	1,119

TAX EVASION FILES					
SOLVED		INDICTMENTS		PERSONS SENT TO TRIAL	
2006	2011	2006	2011	2006	2011
4,618	14,848	328	1,078	389	1,387

MONEY LAUNDERING FILES					
SOLVED		INDICTMENTS		PERSONS SENT TO TRIAL	
2006	2011	2006	2011	2006	2011
131	279	18	14	73	52

SMUGGLING FILES					
SOLVED		INDICTMENTS		PERSONS SENT TO TRIAL	
2006	2011	2006	2011	2006	2011
63	1,657	17	376	48	727

AMOUNT OF PRECAUTIONARY MEASURES		
2006*	2007	2011
-	158,530,113	1,024,979,707

*\*Statistical indicator introduced in 2007*

PROMPTNESS		
CASES SOLVED IN LESS THAN 6 MONTHS FROM INCEPTION		
2006*	2007	2011
-	371,970	401,056

*\*Statistical indicator introduced in 2007*

PROMPTNESS		
CASES SOLVED BETWEEN 6 MONTHS AND 1 YEAR FROM INCEPTION		
2006*	2007	2011
-	58,494	86,162

*\*Statistical indicator introduced in 2007*

PROMPTNESS		
CASES SOLVED IN 1-2 YEARS FROM INCEPTION		
2006*	2007	2011
-	24,431	65,388

*\*Statistical indicator introduced in 2007*

PROMPTNESS		
CASES SOLVED BETWEEN 2 YEARS AND THE COMPLETION OF THE LIMITATION PERIOD		
2006*	2007	2011
-	6,815	25,945

*\*Statistical indicator introduced in 2007*

**These statistical data reveal a radical shift in the ministry's activity towards an increased efficiency and rigorousness:**

- **the largest number of persons** in the history of the Public Ministry sent to trial for corruption, tax evasion, organized crime, smuggling.

At the same time:

- in 2011 the number of persons sent to trial for corruption doubled compared to 2006;

- in 2011 the number of persons sent to trial for organized crime doubled compared to 2006;

- in 2011 the number of persons sent to trial for tax evasion tripled compared to 2006;

- in 2011 the number of persons sent to trial for smuggling increased 15 times.

- **the number of solved cases doubled** compared to 2006;

- in more than **70% of the 600,000 solved cases the decision was made in less than 6 months** from their inception;

- **over 60,000 persons were sent to trial**; 2011 is the fourth consecutive year with such an increase, after a 10 year period when this indicator had constantly dropped;

- **the number of indictments increased significantly**, which represents one of the most important accomplishments of the last years.

It is important to note that **these results were achieved with the same staff as in 2006**, while the number of vacancies ranged between 400 and 450.

## **V.2. Future Challenges. Suggestions of Possible Approaches**

**The main challenges** for the Public Ministry **are triggered by the evolution of the workforce**. In 2011 there were 1,700,000 criminal files, three times more than 10 years ago and 50% more compared to 2007, while the number of prosecutors remained almost the same.

If we compare this number to the current male population of Romania, the existence of 1.7 million criminal files might seem an anomaly. According to the statistics, **the increased workload is not generated by an increased rate of**

**crime, but rather by legislative problems or by intimations made by various persons, most of which are either useless or unfounded.**

Although the prosecutors solved an increased number of cases each year, the number of new files increased at a much higher rate. **The number of pending cases** is still high and **is one of the main vulnerabilities** of the Public Ministry.

► **An increase in the number of prosecutors is neither sufficient nor efficient, given the fact that, as the current increase of the workload remains constant, the number of files will eventually exceed again any additional resources.** This paradox is compounded by the fact that in Romania the number of prosecutors surpasses the European average.

► **The judicial system should prioritize the optimal use of the streamlined procedures of the small-scale reform law,** which proved to be efficient. Various **similar solutions** should be **identified** – alternative ways to solve cases, elements of negotiated justice or changing the judicial specification of certain acts from offences to administrative misdemeanours.

The new codes might contribute to this orientation, but constant efforts must be made in order to analyze the reasons for the increased number of files, so that the solution should address the cause rather than the effects of the problem.

► The workload is **unevenly distributed** because of the **competence-related regulations** in the Criminal Procedure Code. There are prosecutors' offices in which a prosecutor must solve more than 1,500 cases yearly, while in other offices in the same county a prosecutor should solve 300 or 400 similar cases. **Further efforts should be made in order to close down small courts and to amend the government's decision regarding the establishment of territorial districts,** so that part of the activities of overloaded prosecutors' offices should be transferred to those with a lower workload.

Among the solutions that could substantially modify the situation is the **updating of the judicial organization laws and of the magistrate's statute** with regard to the following aspects:

- modification of the magistracy **accession procedures** so that access to magistracy should be granted to all law school graduates only based on a rigorous selection process, the modification of the training period and the increase in the administrative capacity of the National Institute of Magistracy;
- re-conceptualization of the **distribution of human resources** within the Public Ministry, by simplifying the procedure and creating flexible instruments so that the general prosecutor could distribute the internal

- establishing the **optimal workload** in order to avoid the overloading of certain prosecutors' offices /prosecutors;
- upgrading the procedures for **evaluating and sanctioning** prosecutors;
- modification of the **current system for promoting prosecutors** to subordinate and management positions.

A possible solution could be the **unification of competences**, so that the prosecutors' offices in a county, regardless of whether they are attached to courts of first instance or of second instance, could solve any case without the current competence-related limitations based on the position of the person or the location where the act was perpetrated. Thus all the prosecutors in a county could solve the criminal cases that are initiated within that county and there would be no more disparities between the local prosecutors' offices in terms of their workload.

Other **specific solutions** might be:

- the **abolition of certain extrajudicial responsibilities of prosecutors**, such as the modification of the GEO 195/2002 on public road traffic, so that the paragraph 6 of this law should stipulate that the decision regarding the extension of the driving right should be made, upon the request of the holder of such right, by the police rather than by the prosecutor or by the court, as it is currently regulated;
- the decision that certain acts that are no longer actual should not be considered crimes, such as the acts perpetrated outside the Romanian territory by Romanian citizens or by Romanian residents without citizenship, stipulated in GEO 112/2001 with its subsequent modifications and additions;
- the decision that certain acts that can be regulated as misdemeanours should no longer be considered crimes, given the excessive number of crimes stipulated in the legislation, as there are 140 legal norms regulating almost 1,000 crimes. Such an example could be art. 140 letter c of Law 8/1996 on copyright and other related rights, with its subsequent modifications, in the sense that the public dissemination of works and products protected by related rights without the authorization or consent of the rights' holders should no longer be considered a crime (e.g. broadcasting ambient music without the holder's consent).

► **The human resource is a major vulnerability.** The Public Ministry still has **450 vacancies** – approximately 15% of the total number of jobs – whereas **approximately 20% of the prosecutors have less than 3 years of job experience.**

A relevant case in point is the situation of certain prosecutors' offices attached to courts of second instance – such as the ones in Harghita, Neamț or Satu Mare – which operate with only two or three prosecutors, who must solve all the cases of murder, tax evasion and corruption in the entire county, participate in the court sessions and fulfil their administrative tasks, which makes it very difficult for them to implement crime-countering strategies. Although various solutions were advanced to the Superior Council of Magistracy, this problem remains unsolved.

Meanwhile, it seems that the auxiliary personnel is also insufficient, thus being necessary to increase the number of court clerks, in a context in which the court clerks' tasks became numerous each year, but their number remained unchanged.

► One of the most **important challenges** is represented by the preparation for **implementing the new codes**. In this context, the implementation of some difficult decisions will be necessary, decisions regarding the allocation of resources, starting from the conclusions of the implementation study and the appropriate professional training of magistrates being necessary.

► The **increase of efficiency in fighting against criminality would be achieved by adopting some essential normative acts**, such as:

- **enhancing the regulation of special investigative techniques<sup>125</sup> in the Romanian law**. The activity of judicial institutions demonstrated that during the prosecution of some actions of organized crime, some rules of evidence might be necessary, for which there is no legal procedure that should stipulate for the authorizing conditions in a manner granting respect for fundamental human rights. For this to happen, **the domain of special surveillance techniques should be enlarged** by regulating the conditions regarding the use of **undercover legal person**;

- regulating the legislation of some institutions that should allow the judicial institutions **the access to a certain place, taking and returning an object or planting objects**. These investigative techniques are stipulated in Law no. 535/2004 regarding the prevention and fighting against terrorism and can only be used by the state institutions that have attributions in the domain of national security. The necessity of such a provision is generated by the measures of establishment, in the member states of the European Union, of some standardized principles of the execution procedures of undercover actions and of adapting the criminal law to these principles. Thus, the draft of the Directive of the European

---

<sup>125</sup> According to Recommendation (2005) no. 10 of the Committee of Ministers of the Council of Europe, special investigative techniques represent the techniques used by judicial authorities during criminal investigations, trying to discover some serious crimes so that the persons involved in the case not to know about this issue.

Union regarding the European Investigation Order<sup>126</sup>, that is in the process of being adopted and stipulates the enforcement of the rules of evidence issued by a judicial institution from another member state, including the undercover investigative techniques, so that it is essential that the Romanian law should stipulate tools similar to those of European states.

We should mention the fact that the standardization of the tools necessary to combat organized crime takes place at a level different from that of the European Union, being a priority for every law enforcement agency. During the 2009 World Summit of Prosecutors General, Attorneys General and Chief Prosecutors that was held in Bucharest, it was mentioned that the spreading of modern information and communication technologies, as well as the aspect of growing trans-nationality of corresponding criminal activities represent some new opportunities for committing new crimes and the constant progress of the social, cultural and economic environment changes dramatically the approach and impact of traditional and conventional crimes. That is the reason why the summit suggested that, in order to combat the new and complex forms of criminality and to grant an appropriate answer to the current needs of the states, criminal institutions should react more efficiently, they should reconsider and update the standards and provisions correspondingly and according to necessities<sup>127</sup>;

- issuing provisions regarding the suggestion of the Public Ministry to **employ some experts in the prosecution offices in order to contribute to the investigations of the economical, financial, customs and information crimes;**

- changing the laws in order to **regulate a procedure of managing the goodwill/commercial activity in case of implementing some measures that should grant for the assets of a company/ accounts of some commercial society** (appointing an administrator to manage the activity of the commercial society by the time the criminal investigation is finalized);

- mentioning in the law some methods that should allow the authorized institutions to sell/ use the assets confiscated by the judicial institutions by the time the cases are solved.

We should also mention the suggestions of the **modification of the provisions of the Constitution** regarding the judicial system and law enforcement aspects:

- elimination of the presumption of licitly acquired assets in order to increase the efficiency of the provisional measures enforcement and damage recovering;

- elimination of any act of indemnity for members of Parliament and former ministers who are investigated for committing certain crimes;

---

<sup>126</sup> <http://registre.consilium.europa.eu/pdf/en/10/st09/st09288-ad01.en10.pdf>

<sup>127</sup> [www.summitgp2009.ro/upload/Raport\\_final\\_Summit\\_PG\\_2009.doc](http://www.summitgp2009.ro/upload/Raport_final_Summit_PG_2009.doc)



- extension of the detention period from 24 hours to at least 72 hours;
- Regarding the **organization**, including the **allocation of resources**, an **increase of the activity efficiency** could be achieved by:
  - **establishing of specialized panels** in order to decrease the duration of criminal trials and a better quality of the judicial act and a uniform practice in different domains;
  - **enforcement of the draft project of prosecutors** in every prosecutor's office, its advantages being obvious;
  - **modification of the current payment method** of the criminal trials expertise;
  - **reorganizing the National Institute of Forensic Expertise** and **reorganizing the counties** according to the evolution of the criminal phenomenon.