USAID | ROMANIA
FROM THE AMERICAN PEOPLE

PROMOTING THE RULE OF LAW

June 1, 2003-September 30, 2007

FINAL REPORT

In the 16 years since it launched its program in Romania, CEELI helped with many areas of rule of law reforms, including drafting and commenting on legislation; training magistrates and court staff; developing justice system associations and institutions; helping reform the legal profession and legal education; promoting alternative dispute resolution and court reform; and combating corruption

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INTRODUCTION

In 1991, the American Bar Association/Central and Eastern European Law Initiative (CEELI[1]) launched its justice reforms activities in Romania. Staffed at first by US volunteers, who were generally posted for a one-two year period, the office recruited local staff who – over time – assumed increasing responsibilities in helping develop and manage projects, in collaboration with a field-based country director.

This report describes programs and results under the last grant awarded by the USAID to ABA/CEELI-Romania (June 1, 2003 – September 30, 2007). Initially scheduled to end on May 31, 2005, the grant was extended twice through awards that added new program components or expanded previous ones in view of justice reforms developments[2]. In 2003-2004, the CEELI projects focused on judicial independence and transparency, with activities conducted in coordination with the Ministry of Justice and with the Superior Council of Magistracy to revise the magistrates' code of ethics; create a code for court clerks – one of the first in the region; assess implementation of the 2001 Freedom of Information Act; close out a three year pilot court project; and assess reforms of laws governing the court system. Some of these activities continued under the first extension, which added a new component to address domestic violence as handled by the Romanian court system and framed by its legislation. Under the last extension, CEELI initiated a final project component, to evaluate potential dysfunctions in the handling of family and civil litigation cases.

The ABA/CEELI projects methodology purposefully drew heavily on the talents and know-how of Romanian legal practitioners (judges and prosecutors in particular) to foster critical analysis of the legislative infrastructure and of its practical application, and to develop know-how towards future sustainability. For example, several projects addressed the implementation of various laws at the court level. These reviews were handled by multi-disciplinary groups of Romanian practionners, and their conclusions were tested through inter-active seminars facilitated by experienced Romanian trainers. These seminars, which received uniformly high ratings,[3] were credited by the National Institute of Magistrates (NIM) – the initial and continued education training center in Romania, or by the National School of Clerks (SNG), and the curriculum materials were incorporated by the NIM and SNG in their standard courses. Each project led to a comprehensive report (in Romanian and English - cf. list at page 44) which was posted on Romanian justice institutions websites and broadly distributed to Romanian courts. Where appropriate, foreign advisors joined the Romanian teams to introduce new judicial reform concepts or methods of research (for instance, to conduct closed files review). Also, throughout the period, CEELI provided comparative technical information to Romanian justice institutions, to foreign delegations or to the European Commission (in Brussels, and to its representatives in Bucharest).

[1] Following the close out of its offices in Eastern Europe, the organization was renamed "Central European and Eurasian Law Initiative" and, in 2006 when it expanded projects worldwide, it became the ABA Rule of Law Initiative (ABA-ROLI).

[2] Cost extension through November 30, 2006 to launch a project on domestic violence; cost extension through September 30, 2007 to initiate family and civil litigation cases assessment.

[3] Evaluation results are documented in all final training seminars reports.

Finally, through systematic networking with other projects (EU PHARE and Twinning, World Bank and bilateral programs including a particularly productive partnership with the US Resident Legal Advisor (RLA) /US Department of Justice), CEELI strove to identify complementary initiatives toward leveraging of results.

During the 2003-2007 period, Romania underwent major changes, culminating in its accession to the European Union on January 1, 2007. Prior to accession, many government initiatives in the justice sector were launched in order to respond to criticisms raised by the European Commission ("red flags" in the Justice and Home Affairs (JHA) chapter), most of which aimed at the-then executive branch stranglehold over judicial affairs through the ministry of justice. Allegations of rampant corruption, dominated the policy discourse. Further, numerous studies[4] had documented the antiquidated conditions in which Romanian courts operated, their lack of access to information, or the legislative hyperflation which complicated court operations.

A turning point occurred when a "legislative package" of laws[5] was adopted in June/July 2004, following the 2003 amendments to the Romanian Constitution, to transfer to an expanded Superior Council of Magistrates most of the prerogatives held, previously, by the Ministry of Justice – in particular, control over the entire career of magistrates (judges and prosecutors). Court offices and those of prosecutors began to acquire new information technologies and thus access to legislative information, and to operate in better facilities – largely through the support of donors. At the start of the ABA-CEELI grant (2003), a massive infusion of technical assistance was also being offered through EU PHARE, Twinning and bi-lateral projects, ranging from the fight against corruption, to technical advice to the Superior Council of Magistrates or to the National Institute for Magistrates, to the creation of some form of juvenile justice system, or to reforms in law enforcement, prosecution, probation, customs, etc.

Following national elections in late 2004, a new governmental team (president, cabinet) took over. A number of initiatives – including further changes to the "package of laws" – were perceived by the European Commission as demonstrating a commitment to fighting corruption and preserving the independence of the judiciary. The EU concluded that Romania was moving in the right direction – notwithstanding occasional tensions between some of the justice institutions – and approved accession.

The CEELI projects conclude in late 2007 at a time when new and difficult challenges face the justice reform movement in Romania. The rule of law state is still in transition – a necessarily slow and ponderous undertaking – and needs to move from the establishment of a legislative framework to one of well-coordinated implementation. Just as important, its new institutions need to mature and absorb in-depth the multiple changes introduced over the past decade.

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[4] These included several field reports, some sponsored by CEELI: Markus B. Zimmer & Robert D. St. Vrain, *Administrative and Management Reform in the Romanian Courts*, ABA-CEELI, 1999; Kramer 1993, Martin 1997 – ABA-CEELI; Memorandum to the Public Diplomacy Office of the US Embassy – J. Rich Leonard, February 2002.

[5] Law no. 303/2004 – Statute of Magistrates; Law no. 304/2004 – Organization of the Judiciary; and Law no.317/2004 – Superior Council of Magistracy – as amended by Law no.247/2005.

ACKNOWLEGMENTS

On behalf of the American Bar Association/ Central European and Eurasian Law Initiative (ABA/CEELI), I wish to thank with gratitude all those who – as CEELI staff, seminar facilitators and participants, working group members, representatives of governmental institutions, consultants and donors – contributed to the results achieved over the past four and a half years. The contributions of Romanian colleagues and their dedication to helping achieve the rule of law in Romania has been a constant source of inspiration.

Madeleine Crohn
Country Director
Romania

Staff

- **FIELD OFFICE - ROMANIA**

Senior Staff Attorney – Luminita Nicolae. **Staff Attorneys** – Ana Maria Andronic; Ramona Cherciu; Ruxandra Costache; Iulia Raileanu; Raluca Stancescu. **Program Coordinator** – Genoveva Bolea. **Financial Manager** – Adina Edu-Hristea. **IT Specialist** – Cristian Corbu.

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Consultants

Adrian Baboi-Stroe; Donald Cullen; Georgiana Fusu; Nial Raaen; Milena Tomescu; Markus Zimmer.

ABA-CEELI Fellows:

Violeta Balan; Meagan Condrey; Ioana Miron; Berta Treitl.

Seminar Trainers and Facilitators[6]

Florica Bejinaru (judge, Mehedinți Tribunal), Simona Cioabă (clerk, Timişoara Court of Appeal), Gabriela Ciochină (clerk, Oneşti First Instance Court), Laura Marilena Creangă (judge, Piteşti Court of Appeal), Lavinia Curelea (judge, High Court of Cassation and Justice), Mirela Dinu (clerk, Tribunalul Vaslui), Dragoş Dumitru (prosecutor, National Institute of Magistracy Institutul), Simona Franguloiu (judge, Braşov Court of Appeal), Dana Cristiana Gârbovan (judge, Oradea First Instance Court), Nicoleta Georgescu (judge, Braşov Tribunal), Angela Hărăstăşanu (judge, Braşov Court of Appeal), Sofia Luca (judge, Iaşi First Instance Court), Radu Moisescu (prosecutor, Iaşi DIICOT office), Raluca Moroşanu (judge, Bucharest Court of Appeal), Eleonora Nițar (prosecutor, High Court of Cassation and Justice Prosecutor's Office), Roxana Trif (judge, Braşov Court of Appeal), Roxana Tudose (judge, Prahova Tribunal), Alexandru Vasiliu (judge, Braşov Court of Appeal).

[6] Titles and affiliations are contemporary to those held by individuals when serving as trainers/facilitators/ working group members.

Working Group Members

- **Access to Public Interest Information under Law 544/2001**

Laura Andrei (president of the 8th Section of the Bucharest Tribunal), Dan Dionisie (UNDP), Ion Georgescu (Romanian Training Institute), Cristian Ghinea (Romanian Academic Society), Constantin Mârza (Pro Democrația), Costel Popa represented by Constantin Mârza (Pro Democrația), Cătălina Rădulescu (Legal Resources Center), Eugenia Rotaru (GRASP), Laura Ştefan (GRASP), Codru Vrabie (Transparency International).

- **Code of Ethics for Court Clerks**

Şerban Bengescu (prosecutor, High Court of Cassation and Justice Prosecutor's Office and trainer at the National School of Clerks), Paula Ghițescu Cocea (legal counselor, National Agency for Public Servants), Cristiana Mihaela Crăciunescu (director of National School of Clerks); Lavinia Curelea **(**judge inspector, Ministry of Justice and trainer at the National School of Clerks), Lucica Dițu (court clerk, Bucharest Court of Appeal), Claudia Dumitru (court clerk, Bucharest Tribunal); Cristina Irimia (legal counselor, Ministry of Justice legislation department), Alexandra Mocanu (judge, Bucharest Third Sector First Instance Court and trainer at the National School of Clerks), Dorinel Oancea (prosecutor, High Court of Cassation and Justice Prosecutor's Office), Ileana Petre (legal counselor, Ministry of Justice legislation department), Nela Petrişor (president, Fifth Section of the Bucharest Court of Appeal and trainer at the National School of Clerks), Corina Puşchin (vice president, Bucharest Fourth Sector First Instance Court and trainer at the National School of Clerks), Maria Rusu (legal counselor, Ministry of Justice department of European Integration), Mircea Petre Stănculescu (vice dean of the Bucharest Bar Association), Anca Tămaş (chief of department, Ministry of Justice department of European Integration), Marius Vişinescu ("Justiția" Union of Court Clerks).

- **Domestic Violence in Romania: the Law, the Court System**

Mihai Balan (judge, Timişoara First Instance Court), Iuliana Cărbunaru (inspector of victims protection and social inclusion of offenders, Ministry of Justice)Andreea Cioată (judge, Bucharest Tribunal), Magdalena Ciupe (probation counselor, Braşov Victim Protection and Social Inclusion of Offenders Service), Aura Manuela Colang (inspector, Evaluation and Monitoring Department of the National Agency for Family Protection), Ştefan Crişu (prosecutor, Bucharest Tribunal Prosecutor's Office), Aurel Dublea (judge, Iaşi), Ionuț Durnescu (inspector, Probation Department of the Ministry of Justice), Georgiana Fusu (Lawyer, Bucharest Bar Association), Cătălin Luca (representative, Social Alternative Iaşi), Sofia Luca (judge, Iaşi First Instance Court), Dr. Cornelia Maior (Bucharest – Cluj),Traian Marinescu (lawyer), Raluca Moroşanu (juge, Bucharest Tribunal), Rodica Niță (vice-president, GRADO), Iulia Paisa (judge, Piatra Neamț First Instance Court), Aurelia Panait (inspector, Probation Department of the Ministry of Justice), Tom Rawlings (judge, Atlanta Georgia), Mihaela Stoian (judge, Bucharest Third Sector First Instance Court), Nicoleta Ştefăroi (judge, Iaşi Tribunal), Roxana Teşiu (director, Partnership foe equality Center), Viorica Țorțolea (judge, Timiş Tribunal), Monica Varga (prosecutor, Bucharest Court of Appeal Prosecutor's Office).

- **Family and Civil Litigation**

George Alexe (judge, Ploiesti First Instance Court), Laura Andrei (judge, Bucharest Tribunal), Alina Buculei (judge, Second Sector First Instance Court), Mariana Constantinescu (judge, Bucharest Tribunal), Elena Cristea (judge, Ploiesti Court of Appeal), Daniel Draghici (judge, Ploiesti First Instance Court), Emanuela Dulgheru (judge, Second Sector First Instance Court), Dumitru Marcel Gavriş (judge, Bucharest Tribunal), Mihai Andrei Gândac (judge, Bucharest Tribunal), Valentina Gheorghe (judge, Ploiesti Court of Appeal), Elisabeta Gherasim (judge, Ploiesti Court of Appeal), Mari Ilie (judge, Bucharest Tribunal), Mirela Irimia (judge, Ploiesti First Instance Court), Steliana Mancea (judge, Bucharest Tribunal), Eliza Marin (judge, Ploiesti Court of Appeal), Mircea Cătălin Pavel (judge, Second Sector First Instance Court), Cristina Roman (judge, Prahova Tribunal), Liliana Roşu (judge, Bucharest Tribunal), Adriana Secreţeanu (judge, Ploiesti Court of Appeal), Zenovia Stanca (judge, Ploiesti First Instance Court), Mihaela Stăncescu (judge, Second Sector First Instance Court), Delia Sterescu (judge, Second Sector First Instance Court), Andreea Tomescu (judge, Bucharest Tribunal), Mihaela Tudose (judge, Ploiesti First Instance Court).

PROJECT ONE: PROMOTING JUDICIAL INDEPENDENCE AND INTEGRITY

2003-2005

With a particular attention to questions related to the transparency and integrity of the judicial system, activities undertaken in the 2003-2005 period resulted in the revision of the judicial code of ethics; development of a code of ethics for court clerks – one of, if not the first in the region; and documentation of and comments on the ambiguities and obscurities of the 2001 Freedom of Information Act.

Activity One: Reform of Judicial Evaluation and Implementation of Codes of Ethics

Targets:
1) Judicial evaluation standards and transparent procedures for applying them will be drafted.
2) Proposals to revise the Magistrates' Code of Ethics and its enforcement process will exist (structure and mechanisms).
3) A course module and reference materials on judicial ethics will be further tested in a second round of seminars, and finalized/ transmitted to the National Institute for Magistrates.
4) The new Code of Ethics for court staff will serve as the basis for a series of new courses at the School for Clerks (including training of trainers (TOT), initial training of clerks, and continuing education courses).

M&E: **- Superior Council of Magistrates Strengthened – JRI 15 & 17**[7]
- % of judges who are familiar with the magistrates' code of ethics – JRI 20 & 21
- Whether a code of ethics for court staff has been developed; % of court staff who are familiar with the code of ethics for staff; – JRI 20 & 21

Progress achieved:

1) Judicial Performance and Evaluation Standards

Over the two year period, CEELI provided to the Superior Council several documents, including in April 2004 recommendations that – prior to the development of such standards, these questions should be addressed: purpose of standards (toward rating of individual magistrates, or professional development, or both); periodicity, factoring the financial costs and human resources allocation to such task; designation of those responsible for conducting evaluations, in order to ensure impartiality and consistency; determination of whether groups outside of the courts or prosecutors' offices should participate in evaluations (such as the bar, questionnaires to the public about customers' satisfaction, etc.). CEELI also forwarded analyses conducted on the topic in several EU countries, templates, and commentaries, as the SCM held under an EU Twinning Project a number of working groups' discussions, with CEELI attending most of these workshops.

[7] The JRI references are to the Judicial Reform Index, a report produced by CEELI in 2002. The JRI provides a snapshot of the Romanian system in the area of judicial independence and rates performance (positive, negative, neutral) in relation to each of the thirty factors. **The JRI insert on the next page (p. 9) provides a historical reference toward assessing post 2002 achievements.**

Romania JRI 2002 Analysis

This study, conducted by CEELI-Romania in 2001-2002 provides a frame of reference for project activities and achievements in the 2003-2007 period.

Table of Factor Correlations

I. Quality, Education, and Diversity		
Factor 1	Judicial Qualification and Preparation	**Neutral**
Factor 2	Selection/Appointment Process	**Neutral**
Factor 3	Continuing Legal Education	**Neutral**
Factor 4	Minority and Gender Representation	**Neutral**
II. Judicial Powers		
Factor 5	Judicial Review of Legislation	**Neutral**
Factor 6	**Judicial Oversight of Administrative Practice**	**Positive**
Factor 7	Judicial Jurisdiction over Civil Liberties	**Neutral**
Factor 8	System of Appellate Review	**Negative**
Factor 9	Contempt/Subpoena/Enforcement	**Neutral**
III. Financial Resources		
Factor 10	Budgetary Input	**Negative**
Factor 11	Adequacy of Judicial Salaries	**Neutral**
Factor 12	Judicial Buildings	**Negative**
Factor 13	Judicial Security	**Negative**
IV. Structural Safeguards		
Factor 14	Guaranteed Tenure	**Negative**
Factor 15	Objective Judicial Advancement Criteria	**Neutral**
Factor 16	Judicial Immunity for Official Actions	**Neutral**
Factor 17	Removal and Discipline of Judges	**Negative**
Factor 18	Case Assignment	**Negative**
Factor 19	Judicial Associations	**Neutral**
V. Accountability and Transparency		
Factor 20	Judicial Decisions and Improper Influence	**Negative**
Factor 21	Code of Ethics	**Neutral**
Factor 22	Judicial Conduct Complaint Process	**Neutral**
Factor 23	Public and Media Access to Proceedings	**Neutral**
Factor 24	Publication of Judicial Decision	**Neutral**
Factor 25	Maintenance of Trial Records	**Negative**
VI. Efficiency		
Factor 26	Court Support Staff	**Negative**
Factor 27	Judicial Positions	**Neutral**
Factor 28	Case Filing and Tracking Systems	**Negative**
Factor 29	Computers and Office Equipment	**Negative**
Factor 30	Distribution and Indexing of Current Law	**Negative**

In relation to evaluations, threshold questions raised in 2003-2004 by Romanian magistrates included: to what extent are evaluations compatible with the notion of magistrates' independence? What should replace the-then existing system of evaluations conducted by court presidents or heads of prosecutors' office, perceived at the time as permitting favoritism? Why should ethics be addressed in evaluations, since they concern the morality of behavior, separate from job performance?

By end of 2005, various iterations had been drafted but without conclusion. In early 2005, the Government of Romania (GOR) had approved a National Judicial Reform Strategy and Action Plan (2005-2007), and asked that all institutions involved in this plan create working groups and timelines for their respective set of actions and responsibilities. The SCM did so, and created 7 working groups, including one (WG3) tasked with issues related to magistrates' careers and evaluation standards. The action plan timelines however showed that, at the time, the topic of magistrates' evaluation was not among the SCM priorities in early 2005.

2) Proposals to revise the judicial Code of Ethics and its enforcement process

In 2001, CEELI had participated in the creation of the Romanian code of ethics for magistrates (judges and prosecutors). Questions were raised later, however, about the interpretation of the code and how sanctions were applied (consistency, impartiality). At the inception of this grant, the Superior Council was a lean institution (a general secretary, a deputy, small staff) who were appointed by and reported to the ministry of justice – a structure viewed as interfering with the independence of justice, both by Romanian magistrates and by foreign observers such as the European Commission.

In order to formulate proposals to revise the Code, CEELI consulted with the field (judges only[8]) through a series of seminars conducted nation-wide (see below, 3) at page 11). CEELI compiled and analyzed judges' comments and, on that basis, transmitted recommendations to the SCM, both throughout the period (reports following each seminar), and at the conclusion of the seminar series through formal recommendations to the SCM (see final report). By then, the SCM had been profoundly restructured as a result of the 2004 new "package of laws" which transfers to the SCM most of the attributions formerly held by the ministry of justice. As such, enforcement of the code became the prerogative of the SCM, through its judges or prosecutors sections.

On April 27th, 2005, the SCM adopted officially a new Code of Conduct for Magistrates and publicly announced that a campaign to inform magistrates, nationwide, about its provisions would take place through October 2005[9].

The final text was more concise and simple than the previous version, and incorporated most of CEELI's suggestions with two exceptions:

a) Even though many repetitive provisions were eliminated, the Code retained language which duplicates that of Law no. 303/2004 (Statute of Magistrates) and of Internal Regulations of courts and prosecutors offices. Since those provisions overlap, magistrates registered confusion as to which text was applicable.

b) A recommendation of the Consultative Council of European Judges[10] cautions about the sensitivities of evaluating magistrates' ethical behavior. CEELI suggested, following comments from judges during seminars, that the application of Article 2 (2) of the new Code, which calls for disciplinary sanctions of ethics code violations, be examined by the SCM in light of the CCEJ recommendation.

[8] Prosecutorial programs are handled by the US Department of Justice – OPDAT/US Resident Legal Advisor.
[9] The campaign was conducted by the SCM and the Resident Twinning Advisor (RTA).
[10] Consultative Opinion no.3 of the CCJE – as adopted by the Council of Europe.

Note: in August 2005, the SCM decided to abolish disciplinary sanctions for ethical violations. A fair amount of confusion ensued, and CEELI addressed this question under the first grant extension (see below, 2005 – 2007)

3) Training in Judicial Ethics

Six two-days seminars on judicial ethics were held under this project (see list at page 12).[11] The purpose of the seminars, held in collaboration with the National Institute of Magistrates, was to sensitize judges to real life ethical dilemmas, to encourage debate among each other on how they would handle such dilemmas, and to identify how the 2001 code of ethics could be improved and clarified.

A total of 164 judges participated, and all seminars were moderated by experienced Romanian judges familiar with interactive training methodology. In advance of each seminar, CEELI sent reference materials to attendees including the code, relevant legislation and comparative materials to familiarize them with the type of questions they would be asked to address. Seminars involved also pre-post tests to assess attendees' increased knowledge about code of ethics provisions, as well as an evaluation of the seminar itself (both with positive results). Finally, a "training of trainers (TOT)" manual developed specifically for the project was distributed to attendees, with an encouragement that they consider joining the NIM ranks of trainers. (**Note**: the methodology section of the manual was incorporated in the TOT manual sponsored by an EU Twinning project with the NIM; also, CEELI compiled at the end of the grant a new version of the TOT guide, to include all hypothetical cases developed under 2003-2007 projects – the guide is on the NIM and SNG websites, and hard copies were distributed to their trainers).

Typically, the seminar agenda covered three hypothetical scenarios, one involving a role play of a disciplinary session. The last half day encouraged a free flow exchange of ideas on how judges viewed the current "state of justice" in Romania, what changes were necessary in their view, or any other issue they believed required priority action.

The seminars surfaced questions or conclusions which were addressed in the final report, such as: a need for information on how the SCM made decisions, of what type, and about which specific ethical violations[12]; inconsistencies between laws (such as the civil and criminal procedures codes which stipulate areas of incompatibilities) and the code of ethics; concerns that the code should be a ***moral*** guide of shared values, rather than a legal norm; suggestion that an honor council of peers be created to deal with ethics, rather than handled through disciplinary commissions; debates over the desirability of public versus confidential deliberations over ethical violations, etc.

[11] Prior to the USAID sponsored seminar series, CEELI held five such seminars with Stability Pact funds (SPAI). An interim report compiled conclusions and recommendations, and helped fine tune the hypothetical cases for the USAID seminars.

[12] CEELI addressed, in 2006, the jurisprudential question, but its recommendations such as creating a special commission to provide consultative advisories have not been adopted to-date.

THE SIX SEMINARS AT A GLANCE

PURPOSE

1) gain a thorough knowledge of the provisions of the Code of Ethics for Magistrates and the Law on Judicial Organization
2) correctly apply ethical norms to certain concrete scenarios
3) encourage a debate about improving the current legislation on judicial ethics
4) stimulate the participants' interest in becoming trainers for the National Institute for Magistrates

SCHEDULE

- **Craiova (June 3-4, 2004)**

32 Judges from Craiova Court of Appeal; Tribunals in Dolj, Gorj and Mehedinti; First instance Courts (*Judecatoria*) in Slatina and Craiova

- **Constanta (September 7-8, 2004)**

25 Judges from Constanta Court of Appeal; Tribunals in Constanta and Tulcea; First Instance Courts in Constanta, Tulcea, Babadag and Mangalia

- **Iasi (October 21-22, 2004)**

31 Judges from Iasi Court of Appeal; Tribunals in Iasi, Vaslui; First Instance Courts in Barlad, Husi, Pascani, Harlau

- **Bucharest (November 25-26, 2004)**

30 Judges from Bucharest Court of Appeal; Tribunals of Bucharest, Teleorman, Giurgiu and Calarasi; First Instance Courts in Bolintin-Vale, Giurgiu and Urziceni

- **Brasov (February 17-18, 2005)**

18 Judges from Brasov Court of Appeal; Tribunals in Covasna; and First Instance Courts in Brasov, Sf. Gheorghe, and Rupea)

- **Suceava (April 14-15, 2005)**

28 Judges from Suceava Court of Appeal; Tribunals in Suceava and Botosani; First Instance Courts in Radauti, Darabani, Cimpulung Modovenesc, Gura Humorului, Suceava, Vatra Dornei, Dorohoi, Botosani and Saveni

FACULTY

Judge Angela Harastasanu, Judge Roxana Trif, and Judge Alexandru Vasiliu, from the Brasov Court of Appeals. All are members of the faculty of the National Institute of Magistrates (NIM), and participated in 2001 in the program "The Role of the Judge in a Democratic Society" offered by the Netherlands Helsinki Committee in the Hague.

PARTICIPANTS

None of the participant-judges had attended previous seminars on judicial ethics and, for most of them, the seminar was their first experience with interactive teaching methodology.

Seminar evaluations showed that many judges were not aware, then, of the existence of the code of ethics; and that most acknowledged that they had tended to overlook the practical consequences of borderline behavior, and the importance of such on public perceptions about the judiciary. They also uniformly and enthusiastically endorsed the interactive methodology used in the seminars.

All curriculum materials were transferred to the NIM for inclusion in their judicial ethics courses.

4) Code of Ethics for Court Staff and Training

Administrative personnel in courts are guided by the code of ethics for civil servants (a code which CEELI had contributed to under previous grants). Court clerks (*greffiers*), however, have a separate status and, prior to the project, were not covered by code of ethics provisions.

This project occurred in several stages:

a) Creation of a multi-disciplinary working group (judges, prosecutors, clerks, and representatives of the National School of Clerks - SNG) which – along with CEELI staff – crafted a draft code of ethics over a six months period (September 2003 – February 2004). It is noteworthy that WG members decided that the code should be organized around major principles, be clear, and avoid over-regulating conduct in too many details, this in contrast to the magistrates' code format which at the time was lengthy and perhaps overly detailed.
b) Training of trainers (judges and clerks teams) in preparation for the below seminars. (Note: The training took place in collaboration with the EU Twinning project which provided technical assistance to the NIM and the SNG.)[13]
c) Test of the draft language in five seminars held, nationwide, with sitting clerks for a total of 125 participants; and ten seminars in Bucharest with clerk trainees at the school of clerks (SNG), for a total of 87 students.
d) Adjustment of the draft to incorporate seminar comments.
e) Submission of the text to the SCM which adopted the code in May 2005. The code went into effect on May 6, 2005.
f) Production of a final report which has been posted on the SCM and the SNG websites.

The seminars drew on the standard CEELI methodology to use hypothetical scenarios in order to invite reflection and discussions. Ratings were favorable. The project also helped expand the cadre of SNG trainers versed in interactive teachings. Curriculum materials are now used by the SNG for its initial and continuing courses in clerks' ethics.

[13] Through discussions, the NIM RTA and CEELI staff discovered that their respective scopes of work covered the same grounds (e.g. creation of a code, training). The RTA learned that the drafting of a code of ethics for clerks was already underway through the CEELI project and decided that – rather than create a duplicative text – his project would incorporate the CEELI draft as the text of reference.

Excerpt of final report – Code of Ethics for Court Clerks

Seminars Overview	Initial training	Continuous training
PURPOSE	▪ Present the attendees with practical situations reflecting ethical issues; ▪ Correctly apply ethical norms to concrete situations; ▪ Encourage reflection, group discussions and debates to improve content of the draft Code.	▪ Stimulate awareness of existence and consequences of ethical issues in professional activity; ▪ Improve the interpretation and application of ethical norms to concrete scenarios (drawn from practice); ▪ Encourage reflection, group discussions and debates to improve content of the draft Code.
SCHEDULE	March 10-17, 2005	November 2004 – April 2005
LOCATION	Bucharest, the National School for Clerks	Timisoara, Sibiu, Brasov, Bucharest and Suceava[14]
TRAINERS	Two-member teams were created (one judge, one court clerk).[15] Judges: **Lavinia Curelea** – High Court of Cassation and Justice, **Dana Cristian Garbovan** – First Instance Court of Oradea, **Nicoleta Georgescu** – Tribunal of Brasov Court Clerks: **Gabriela Ciochina** - First Instance Court of Onesti, **Mirela Dinu** – Tribunal of Vaslui, **Simona Cioaba** – Court of Appeals of Timisoara, **Laura Marilena Creanga** – Court of Appeals of Pitesti Prosecutor[16]: **Eleonora Nitar** – Prosecutor's Office of the High Court of Cassation and Justice	
WORKING METHOD	➢ The **case study** method was chosen to ensure interactive seminars and high level participation of all attendees. The method is characterized by presenting participants with *scenarios* of daily professional life of the participants and encouraging them to an ongoing dialog, offering the opportunity for all to express their opinions individually, to support them with arguments and to reflect together on the conclusion. ➢ **Small working groups** debates. The participants were divided in three working groups, in order to foster lively debates as well as an exchange of opinions among them. Each group appointed a spokesperson to present in plenary session the conclusions of the group discussions. Distinct individual and minority group opinions accompanied by their supporting arguments were also presented. ➢ All **reference materials** were sent in advance to the participants. ➢ All seminars were evaluated through **evaluation forms** filled out by the participants at the end of each seminar.	

[14] The regional approach brought together clerks from courts under the jurisdictions of the following courts of appeals: Timisoara, Oradea, Craiova, Alba Iulia, Cluj, Brasov, Tirgu Mures, Suceava, Iasi and Bucharest.

[15] The teaming up of magistrates/clerks offered two-fold advantages: 1) it provided special support to court clerk trainers who became more familiar with interactive methodology and 2) it encouraged candid debates and free exchanges of ideas among peers.

[16] Organizers used for the seminar on continuous training in Bucharest a team consisting of a prosecutor and a court clerk

Activity Two: ***Implementation in the Judicial System of the Access to Information Act (FOIA)***

Targets:

1) The course module and reference materials on the FOIA law will be tested during a set of seminars to include representatives from the six pilot sites. Attendees will be judges who hear FOIA cases and public servants who staff the FOIA offices.
2) Guidelines/definitions of public versus restricted court-related information will be fine-tuned, through responses from seminar attendees.
3) The course module for judges on how to interpret the law will be finalized/ transmitted to the National Institute for Magistrates.
4) Submit amendments to by-laws governing FOIA offices – if necessary – TBD.
5) Provide technical assistance to FOIA offices in the six pilot sites.
6) Pamphlet to guide citizens on how to handle FOIA-related requests to the courts will be published.

M&E: **% of judges familiar with the Law on Free Access to Information of Public Interest- JRI 6 & 23**[17]

Progress achieved:

A ground breaking law was adopted in 2001 to regulate public access to information in Romania (Law no. 544/2001). Its provisions however were being interpreted differently by various courts, and there existed no consistent understanding – including at the institutional level – of what is, or is not, "public information" (as opposed to classified, restricted, etc.).

a) Working Group:

In summer 2003, CEELI assembled a multi-disciplinary working group including judges and civil society representatives (the Center for Independent Journalism, Transparency International, the Romanian Academic Society, the Center for Legal Resources, the USAID-funded Governance Reform and Sustainable Partnerships (GRASP), the U.N. Development Programme, and Pro-Democratia – a Romanian NGO involved at the time in monitoring application of the FOIA).

Over a six months period, the WG identified and commented on provisions of the law that were controversial, ambiguous, or in contradiction with other legal norms. In order to further inform WG deliberations, CEELI asked presidents of all Courts of Appeal in Romania to send copies of distinctive FOIA court decisions. On the basis of responses, CEELI identified the six pilot courts (Brasov, Bucharest, Craiova, Constanta, Iasi and Oradea) for technical assistance to the court-based FOIA offices[18].

Drawing on summaries written by individual members of the WG, CEELI staff compiled a preliminary report, and used it to develop hypothetical cases in preparation for a series of three seminars involving the six pilot court jurisdictions.

[17] See note 7, *supra.*

[18] Note: legal norms call for two separate offices within courts, e.g. the office of the court spokesperson tasked with responding to general inquiries; and a FOIA office, to respond to specific information requests submitted under the law. While the two offices are supposed to be separate entities, in many courts they are combined, due to shortage of personnel.

b) Seminars:

Conclusions of the draft report were tested in 2004 through three seminars (Craiova – June 2nd; Constanta – June 9-10; Iasi – October 21-22[19]) which were moderated by Romanian magistrates, and involved hypothetical scenarios illustrating obscure or ambiguous provisions. A total of 76 judges[20] attended, drawn from the six pilot courts jurisdictions – all assigned to the administrative section which handles FOIA litigation.

The seminars showed a broad variety of interpretations, particularly on the topics of time limits under which FOIA requests must be submitted to courts and as such be admissible; over sanctions for abusive use of the procedure; and on sanctions/liability for refusal to provide the requested information and level of compensatory awards. The process is further complicated by vagueness in regulations concerning challenges introduced through an administrative versus court process. Discussions were highly technical, and CEELI staff compiled comprehensively attendees' observations, toward developing a "FOIA guide" for judges (in Romanian only)[21]. The guide was posted on institutional websites and distributed widely to Romanian court divisions in charge of FOIA cases.

Attendees were asked at the closure of each seminar to list what court information should, in their view, be available to the public on a routine basis. The discussions were somewhat complicated by differences over how to interpret the law on "classified" or secret information, with some judges taking a conservative stance, and others arguing that too much secrecy could reinforce negative public opinion about the court system. The seminars were unable to elicit consensus.

Course materials were sent to the NIM for inclusion in its standard curriculum, supplemented by the FOIA guide (above). CEELI project materials were also provided to APADOR/CH[22] which has formulated recommendations toward amending law no. 544/2001.

Note: In November 2007, shortly after the ABA/CEELI programs ended, some controversies emerged over possible changes to the Romanian legislative framework governing transparency.

Excerpt of the final report - FOIA

> **Participants.** For each seminar, participants were generally selected from among those judges who review cases under Law No. 544/2001, in the administrative law divisions of the aforementioned courts. Also, the attendees included clerks in charge of information and public relations offices of these courts.

[19] Each seminar combined two jurisdictions to cover in addition judges from the other three pilot sites. The initial one-day seminar showed that the richness of discussions and complexity of issues to be covered required that future sessions be held over a two-day period.

[20] In addition, seminars included a few staff tasked with FOIA offices responsibilities, and some local attorneys.

[21] Short of amendments to the governing legislation, the guide is intended to foster unitary law.

[22] The Romanian Association for the Defense of Human Rights -Helsinki Committee

Moderators. The three seminars were moderated by Roxana Trif and Alexandru Vasiliu, judges of the Braşov Court of Appeals, experts of the National Institute of Magistrates.

Teaching Methods. The moderators selected as their teaching method the use of case studies. It allowed participants to discuss provisions of Law No. 544/2001, interpret and apply them to practical situations in an interactive manner. Working groups were formed and participants engaged in lively debates discussing controversial or unclear aspects of Law No. 544/2001 and Government Decision no. 123/2002. The attendees also conferred about the type of public interest information produced and/or managed by the courts. In that last session ABA/CEELI sought the opinion of judges specialized in FOIA cases to assist courts in complying with provisions of Law No. 544/2001 and posting, nationwide, a list of public interest information (an obligation of any public institution imposed by Article 5, points (g) and (h) of the respective legislation).

c) Technical assistance to FOIA offices/pilot courts/citizens' pamphlets:

In preparation for field visits, CEELI conducted telephone interviews in August 2003 to assess problems facing these offices. It found that many confront serious difficulties in areas of material, financial and human resources. Often, a judge rather than administrative personnel, is assigned to responding to FOIA related requests (from the public, the media), and has no administrative support and no private office space. Several respondents also told CEELI that they had no dedicated phone line, no computers[23], and no fax.

These observations were confirmed during site visits. Since it was not in a position to provide the FOIA offices with financial assistance (to remedy lack of basic equipment, space, etc.), CEELI staff discussed with judges and FOIA office staff desirable practices (structure, procedures) toward responding to information requests. These discussions helped inform the development of pamphlets/citizens guides. Thousands of these pamphlets were distributed by CEELI throughout the court system; they were formatted for cost-effective reproduction.

Conclusion:

CEELI drafted a final report which it submitted to the SCM. In addition to highlighting problems with existing legislation, and those affecting the operations of court-based FOIA offices, CEELI recommended that the Council determine what court based documents should be available to the public. As noted above, judges had not agreed on what should, or not, be included in such list. Over the ensuing years, CEELI brought up the issue on a number of occasions, arguing that – at minimum – a basic list (of what should be made public) would facilitate the work of administrative personnel and ensure some consistency among courts' handling of requests. Counter arguments were that a decision (whether to release/not) needed to be made on a case by case basis. By end of the project, no such list had been developed or posted in court houses as required by law (Art. 5 (1) (g) and (h) – law no. 544/2001).

[23] At the time (2003), some courts had received hardware and software, but could not use them due to infrastructure deficiencies (building, power); because there was insufficient space; or because the ownership of the building housing the court was being contested and the MOJ could not invest in the building until the lawsuit was settled.

2005-2007

When activities under the first grant extension began, the legislative framework to guarantee judicial independence existed and, beginning January 2005, the Superior Council of Magistracy launched the institutional development required to assume its vastly expanded responsibilities. A new governmental team was in place, following the December 2004 national elections, and a National Judicial Reform Strategy and Action Plan (2005-2007) had been adopted, to prioritize and guide justice reforms. As was the case since inception of this grant, many such priorities were designed to satisfy the European Union's requirements toward Romania's accession on January 1st, 2007.

These conditions explain the new targets this project component, to monitor actual implementation of new legal norms.

Result: Independence and Integrity of the Romanian Judiciary is strengthened.

Workplan Period Targets:

(1) Judicial evaluation standards exist and a document with options for a transparent application procedure has been drafted.
(2) Judicial Code of Ethics Implementation by the SCM is monitored.
. (3) Transparent and efficient procedures for implementation of new SCM responsibilities are developed and tested.
(4) Implementation of the Strategy on the Reform of the Judiciary (2005-2007) and of the new laws is monitored and documented.

Monitoring and Evaluation Indicators:

- ***Superior Council of Magistrates operates in accordance with transparent and objective procedures***
- ***Disciplinary jurisprudence is developed and widely known by magistrates***
- ***Mechanisms are established for implementation of judicial reform legislation***

Progress achieved:

1) **Judicial Evaluation Standards**
2) **Judicial Code of Ethics**
3) **Transparent and efficient SCM procedures**

The three issues are interrelated: after adopting on April 27, 2005, a revised Code of Ethics (with CEELI input, see above), the Superior Council of Magistrates (SCM) decided in August 2005 to eliminate the use of disciplinary sanctions for violations of ethical norms, presumably in keeping with consultative opinion no. 3 of the Consultative Council of European Judges (CCJE), as adopted by the Council of Europe.[24] Further, the SCM decided that ethical violations would be noted in evaluations – to be conducted every three years, but offered no guidelines on how this provision should be interpreted or handled.

[24] It calls for a distinction between rules of conduct and professional responsibilities, and notes that breaches of moral conduct should not necessarily be penalized disciplinarily.

In the meantime, one of the SCM working groups (WG3) was in the process of developing a guidebook for evaluators, even though evaluation standards and criteria had yet to be finalized, and announced that it might revise the code of ethics with the input of psychologists (and later, philosophers). Separately, the Resident Twinning Advisor (RTA) detailed to the SCM since fall 2003 continued to hold comparative seminars to address the evaluation question. (As noted earlier, throughout the project, CEELI had coordinated its activities with the RTA, and the evaluation topic was **not** a SCM priority in the 2005-2007 National Justice Reform Strategy and Action Plan). Questions had been raised as to the practicality of evaluation commissions stipulated by law (Status of Magistrates[25]). Further, there were concerns about the level of human resources that would be required for the evaluation of all magistrates every three years. Some magistrates opined that evaluations were incompatible with the independence of the judiciary.

As to jurisprudence, although the SCM produced in 2005 a compendium of past disciplinary sanctions, the document proved to be unhelpful in understanding how the SCM reached decisions, whether these decisions were consistent with one another, or what guidelines if any were followed – in large part because the compendium covered a period (1993-2005) during which regulations governing sanctions were often changed. CEELI staff and advisors reviewed the document and were unable to find discernable patterns in the jurisprudence.

- ***The Zimmer Advisory Memoranda***

In several meetings with representatives of the SCM, including the head of the code of ethics working group (WG5) and the SCM director of international programs, CEELI was encouraged to help the SCM determine how ethical violations should be handled under the new regulations[26]. CEELI offered to review also what procedures the SCM might consider in order to meet its obligation to protect judges and prosecutors "against acts that threaten their independence, impartiality and professional reputation"[27] – e.g. the flip side of its disciplinary role. CEELI's proposal was approved by the 2005 President of the SCM, and this approval was confirmed by the 2006 SCM President[28].

For this task, CEELI recruited Dr. Markus Zimmer, a US based court administrator and international consultant who had conducted several field trips to Romania in the 1990s. CEELI agreed with Zimmer that that the analyses should focus on a systematic review of Romanian statutory provisions and regulations, followed by a quasi-Socratic processing of issues that should be addressed for each topic and by a set of practical options that the SCM might entertain. The CEELI/Zimmer goal was to provide the SCM with distinctly different documents that contrasted with more standard country-based case studies[29].

[25] Renamed "Law on the Status of Judges and Prosecutors" following amendments introduced by the Ministry of Justice (Law no. 247/2005).
[26] Another problem stemmed from the fact that, while disciplinary sanctions had been removed from the code of ethics, the provision remained in the law (no. 303/2004 as revised).
[27] Law no. 317/2004 on the organization and operations of the SCM.
[28] SCM members were elected in December 2004 from among their peers for a non renewable six-year term; presidents are elected from among SCM members for a non-renewable one year term.
[29] This approach was also followed to avoid duplication of the SCM Twinning project scope of work.

By the end of April, Dr. Zimmer had produced two memoranda that addressed[30]:

1) "How should the Superior Council of Magistracy (SCM) handle ethical violations on the part of Romanian judges and prosecutors in light of its recent decision to follow Opinion No. 3 (Opinion) of the Consultative Council of European Judges (CCJE)?"

2) "How and to what extent should the Superior Council of the Magistracy (SCM), as the official guarantor of judicial independence, respond to its obligation to protect judges and prosecutors against acts that threaten their independence, impartiality, and professional reputation?"

On the first question, a review and discussion of the law on the status of judges and prosecutors (No. 303/2004, as revised) suggested that almost all ethical breaches listed in the Code of Ethics were also covered by law 303/2004. Further, the memorandum concluded that the CCJE opinion did not call for automatic elimination of disciplinary sanctions for ethical violations, and outlined procedural considerations for handling complaints. On the second question, the memorandum discussed a typology of potential internal as well as external threats to judicial independence, analyzed the Council's obligations in this area, and outlined a variety of proactive and reactive measures which the SCM might consider. The memorandum concluded with an analysis of the European convention on Human Rights and the Art. 10 jurisprudence of the European Court of Human Rights (ECHR).

The memoranda (in Romanian and English) were submitted in spring 2006 to the SCM president with copies to the SCM Inspectorate, the SCM spokesperson, the head of the SCM international programs, and the Resident Twinning Advisor (RTA). The documents were subsequently posted on the SCM website, and distributed for review to SCM working groups (WG no. 1 – "Legislation"; no. 3 – "The profile and the professional training of the magistrate"; and no.5 – "The Code of Ethics").

To CEELI's knowledge, a single item was considered formally by the SCM – e.g. to create within the SCM inspectorate division a data base of ethical violations committed by magistrates, as confirmed by a preliminary inspection. Since the announcement did not clarify the purpose of such log, or how it would be managed, this decision raised concerns among some judges. [31]

Conclusion:

The topics of impartial evaluations, ethical behavior, and transparency of SCM

[30] A third question, e.g. "How should the Superior Council of the Magistracy (SCM) fulfill its obligation to impose sanctions on judges and prosecutors for acts that entail disciplinary liability under Romanian law in a manner that is consistent, predictable, and fair?**"** is being addressed separately – under the TORs of the crim law/OPDAT project ("transparency and accountability of the SCM"); the document was submitted at the same time as the other two.

[31] The memorandum had concluded that few ethical violations existed that were not already covered by the list of disciplinary breaches found in the law. As a result, it recommended that the SCM identify what in fact were those breaches of ethics not covered by disciplinary infractions, analyze them, and publish periodically advisory opinions to guide magistrates. The complementary set of recommendations however does not appear to have been adopted at this juncture.

operations remain current – as stressed among other items in the June 2007 country report of the European Commission. Over a four year period, CEELI had provided the SCM as well as individual magistrates with comparative documents on, and analyses of each issue, and systematically coordinated its activities with the SCM-based RTA who had the lead on these tasks. Energetic interventions on the part of CEELI would have been inappropriate. On the other hand, CEELI used every opportunity, including discussions during its last project (family and civil litigation – cf. page 37), to pursue the various options outlined in the Zimmer memoranda such as: methods to affirmatively protect magistrates against unwarranted complaints; options for consistent and transparent applications of disciplinary sanctions; or the use of SCM advisory opinions to sensitize to and inform magistrates about ethical issues.

The relatively slow SCM progress in dealing with these questions must be placed within its institutional context. In less than three years, the SCM grew from a small institution with limited responsibilities under the supervision of the MOJ, to a large one elected by its peers and tasked with vastly expanded responsibilities. Almost overnight, the SCM had to recruit over 100 staff members, drawn largely from the magistracy; organize its internal operations; and deal – as demonstrated by the weekly SCM plenum agenda (often over 40 items) – simultaneously with questions ranging from magistrates' career to organization of courts, to comments on laws governing the judiciary, to organizing communications, to reviewing the courts' budget, etc.

Shortly after the grant expired (September 2007), the SCM finally adopted evaluation standards and criteria that cover fairly classical grounds (efficiency, quality of decisions, integrity, professional growth), but is still struggling with the question of who should conduct evaluations (by commissions despite impracticalities; or by heads of courts and prosecutors' office – this raising fears of returning to the previous system of potential favoritism; or yet through other options). Interestingly, the SCM has recommended – in its September 2007 proposals to amend the package of laws – that evaluations be eliminated except for those of magistrates who apply for a promotion and, every three years, for heads of courts and prosecutors' offices (management positions). In these proposals, the SCM also suggests that violations of the code of ethics be again sanctioned disciplinarily. As to transparent procedures in general, it is difficult to assess whether the SCM in view of its fast track institution building has done enough, or as well as it could. Critics point to the fact that SCM decisions – while posted on the SCM website – are not accompanied by the text of the decision or the documents which it was based upon. Others indicate that SCM sessions are public, and that an overreach on the transparency question can be counterproductive or, at minimum, unrealistic.

4) Implementation of judicial reform strategy and of new laws

- **Monitoring activities:**

A National Justice Reform Strategy and Action Plan was drafted in early 2005 and adopted by the GOR in March 2005 (cf. above p. 10). CEELI had participated in coordinating the final draft and was invited to attend inter-institutional meetings held monthly (staff "technical working group" - TWG) and quarterly (heads of institutions – "monitoring committee") charged with monitoring progress.

During the 2005-2006 period, CEELI attended all meetings and provided technical assistance and information to MOJ staff in charge of the TWG sessions. The process

improved over time, including coordination of agenda and of reports, and improved presentations to the heads of institutions. The plan and its subsequent adjustments or modifications were somewhat reactive, because they tended to prioritize actions in relation to EU accession mandates, at first (2005) to address the Justice and Home Affairs (JHA) "red flags" (among others, fight against corruption, judicial independence and integrity); later (2006) to respond to further criticisms such as those raised in the May 2006 country report – need to unify jurisprudence, to "ensure the integrity of the judiciary" etc.[32]

The TWG also had to deal with some obstacles, for instance the lack of reliable data regarding the number of cases[33], number of judges, and related information necessary to address human resources deployment schemes; delays in transferring administrative tasks from judges to court personnel, due to lack of internal regulations; debates over the need for judicial specialization vs. capacity of the National Institute of Magistrates to provide in short order such courses; insufficient human resources to produce reports, etc. Occasional frictions between the ministry of justice – which had been stripped of most of its previous prerogatives – and the "new" Superior Council of Magistrates, also complicated some of the reporting and coordination. However, by the end of 2006, CEELI observed that inter-institutional communications had somewhat improved and that discussions focused on measures and actions that experienced difficulties and delays, rather than on a reiteration of achievements already covered in the reports.

Epilogue:

CEELI continued (through September 2007) to participate in monitoring activities. In Spring 2007, with the turn over in ministry of justice leadership (due to government reshuffling), MOJ staffing of the TWG changed as well. CEELI attended two more meetings when the transfer of staff portfolios occurred. The monitoring committee was soon faced, following summer vacations, with the need to develop within a few weeks a new strategy and action plan (2007-2009) as required in the EU June country report. While former TWG staff had recommended a systematic analysis of the 2005-2007 plan, to assess reasons for delays and to prioritize actions, the new staff opted to address only the benchmarks listed in the country report[34]. The new plan was drafted within a few days, and adopted by the monitoring committee in a closed session on September 21, 2007.

[32] Although the September 2006 EU Commission report approved accession, it continued to point to deficiencies in the justice area, and called for continued monitoring post accession.

[33] CEELI had recommended that Romania adopt a single numbering of case files system, a recommendation that was also included in the EU Commission peer review documents, and eventually adopted by the Romanian courts.

[34] Specifically: **BM1**: Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes. **BM2**: Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken. **BM3**: Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption. **BM4**: Take further measures to prevent and fight against corruption, in particular within the local government.

- **Judicial Reform Laws:**

In early 2005, the Ministry of Justice attempted, but without success, to modify some provisions of the package of laws, specifically: to require that SCM members opt between sitting full time on the Council or maintaining their judicial or prosecutorial activities; and to put up for competitive interviews/selection all court presidents positions. The Constitutional Court found against these provisions, on the basis of the principle of non-retroactivity. These initiatives however increased tensions between the SCM and the ministry.

Later on in 2005, the Ministry of Justice introduced additional amendments, such as new definitions of incompatibilities and interdictions (aimed in particular at former *Securitate* [Secret police] collaborators); admission to the magistracy (calling for mandatory six months training for new magistrates who did not attend the NIM); court governing boards composition (to include NGO and the media as observers of their sessions); creation of specialized judicial panels for organized crime and corruption cases; transferring from the SCM to the Ministry of Justice the selection of the prosecutors' top management (General Prosecutor, head prosecutors of the DNA and DIICOT); or providing additional details on the SCM responsibilities in protecting the impartiality, independence or reputation of magistrates. The SCM at first rejected then approved these amendments (January 2006) following some revisions. CEELI offered comments and compiled/disseminated a "cheat sheet" of these amendments, once final.

This last set of amendments had relatively little impact on the principles which guided the judicial reform laws, e.g. transferring responsibilities from the ministry to the SCM, guaranteeing judicial independence, etc. although the change in top prosecutors' appointment process remains controversial, and a source of contention between the Ministry and the SCM. Among other issues, a fundamental question – yet to be addressed in any depth – exists about the role which prosecutors should play in the Romanian justice system: should they remain magistrates, e.g. in essence judges of the investigation process, with the same guarantees as sitting judges? Should their status take into account prosecutors' responsibilities viz the governmental policy on crime (if any)? Does a prosecutors' hierarchical structure differentiate them from sitting judges? Answers to these questions would clarify their reporting obligations and accountability (to the SCM, to the Ministry, other?). At the close of the project (September 2007), a thorough examination of these questions had not yet occurred.

PROJECT TWO: PILOT COURT PHASE-OUT

2003

Given a priority on transparency and judicial integrity issues that shaped the early stages of the 2003-2007 grant, CEELI agreed to close out a pilot court project by end of the 2003 calendar year.

Target and M&E: Pilot court administration reforms successfully completed, documented and closed out – JRI 18, 23, 28 &29[35].

Progress achieved:

A number of reports – some dating back to 1993 – had documented serious deficiencies in the organization and administration of Romanian courts, and recommended that a "Model Court Project" be tested and, if successful, replicated nationwide. Principle, complementary goals driving the necessities of such reforms were: a) the efficiency, effectiveness, transparency and accountability of the courts; and b) the image/public perception of the courts.[36]

The project involved at first seven (7) working groups that addressed the feasibility of recommendations made by Zimmer/St.Vrain (1999). This structure turned out to be somewhat cumbersome, and a Steering Committee was appointed, composed of Romanian judges that met monthly and provided oversight of the project (2001 – 2003). In order to facilitate experimentation, the then-Ministry of Justice issued transitory regulations (2001 and 2002), and approved the selection of a first instance court (Third Sector, Bucharest) to carry out the experiment. Delays, however, affected the project timelines, when a new minister of justice took over in 2001 (as a result of change in government following national elections).

In succession, the project furnished IT equipment to the 3rd sector court, due to delays in EU procurement, and IT training for its judges and clerks, and then introduced court administration initiatives. These included an improved intake system (automated registry, public posting of a fee schedule, payment window at the courthouse[37]), signage[38], new methods of case assignment (initially through a random system based on the alphabet, later through software developed with project funds), designation of one judge-one clerk teams to address cases from filing to disposition[39], new forms, revised

[35] Cf. note 7, *supra.*
[36] Zimmer and St. Vrain – cf. note 4, *supra.*
[37] The availability of a payment center on court premises helps considerably streamline the intake procedure which includes the payment of court fees. While the system has yet to be adopted broadly, the 2007-2009 national strategy and action plan initially called for implementation of such system nationwide; a later version, posted on the MOJ website, no longer included this action item.
[38] To orient the public and make the court more accessible to newcomers.
[39] A similar initiative (teaming of judges/clerks) was to be used in a 2006 SCM sponsored pilot project. To date, results of the pilot have not been communicated.

subpoena procedures, introduction of mediation[40]. As documented in the final report ("The Third Sector Pilot Court", April 2004 – ABA-CEELI), these reforms met with varying degrees of success but were not widely replicated nationwide, with the exception of the random case assignment system of assigning cases to judges.

- The random case assignment process addressed a major criticism leveled at the time against the Romanian court system, e.g. the lack of transparency and possible corruption in the assignment of cases to judges. The last phase of the project, conducted under this grant (2003-2007), saw the development of specialized and robust software to permit random assignment – including an algorithm to factor case complexity, and features to track changes to assignments. The software was successfully tested at the 3rd sector and two other courts. EU representatives who were then monitoring Romanian progress cited the adoption of such system as a milestone achievement. Eventually, random assignment was adopted at all levels of courts in Romania, and the new National Justice Reform Action Plan (2007-2009) anticipates the design of a similar system for prosecutors' offices.

Another major feature of the project addressed the (generally negative) public perception of the courts. Activities during the 2002-2003 period included sessions with the media, court presidents and court spokespersons; the development of a public information office; and community outreach (informational brochures, public events such as inviting students to the courts or opening courts to the general public on "magistrates' day").

- The public brochures – designed for easy duplication, and "Students' Day in Court" – which provided high school students with exposure to the court system were two of the last initiatives launched under the project (2003). They were particularly promising: CEELI had developed in collaboration with judges eight sets of brochures describing in lay language various aspects of the court procedures[41], and formatted for easy reproduction (such as photocopying). Thousands of such brochures were provided to five courts beyond the pilot site and were "flying off the shelves" according to court representatives. While the initiative was later taken over by the Superior Council of Magistracy, the next set of brochures was expanded to a more complex and expensive series of documents, and it is not clear whether they are still available in courts. The "Students' Day in Court" was similarly successful: on several occasions, high school children and their teachers were invited in three separate Bucharest courts including the 3rd sector pilot, to take a tour of the court facility, observe court sessions, and meet with the court president and a number of judges. They were asked to fill out questionnaires at the end of the day and uniformly expressed enthusiasm about the initiative. Most indicated that their perception about the court system had been changed positively. The initiative appears to have been dropped however, with courts citing the lack of time available for judges to participate in similar events.

[40] The mediation experiment was tolled once the US Embassy/Public Diplomacy decided to take over the mediation initiative lead.

[41] 1. Legal Terminology; 2. Appeals in civil procedure; 3.Appeals in criminal procedure; 4. How to behave in courts; 5. Filing complaints; 6. Payment of summons; 7. Competence of the courts; 8. Legal representation in courts.

Conclusion:

While the pilot court project demonstrated amply that significant reforms of court operations and administration are possible in Romania, and that community outreach would go a long way towards altering public perception about the court system, this "promising start" did not lead to "ongoing reform" (see p.26 of the final report – "Conclusion"). Given the press of urgent, and sometimes conflicting priorities in order to accede to the European Union, the strategic and coherent framework to conduct replication did not materialize. The Superior Council of Magistracy has since launched various initiatives designed to improve the operations of court spokespersons offices. And a bi-lateral initiative with the UK government has tentatively floated the notion of a court administrator (who, presumably, would be in charge of the many aspects of the initiatives introduced by the pilot court project), but action is not yet visible. Revisions to the codes of procedures (criminal, civil) announce a desirable intent to streamline procedures in order to increase efficiencies of court operations, although the operational aspect appears to be minimized (see family and civil litigation project at page 37).

Results will remain elusive until "some mechanism exists that drives, monitors, and documents initiatives and replication"[42], with the support of Romanian champions of such reforms.

[42] Leonard – cf. note 4, *supra.*

PROJECT THREE: LEGISLATIVE REFORM

2003-2005

Over the two years, the government of Romania placed a premium on revising laws that governed the judiciary and the court system, and in overcoming the European Union questions about magistrates' independence and integrity (cf. also JRI table at page 8).

On numerous occasions, CEELI provided comments on the several iterations of the "package" of laws introduced by the Ministry of Justice (MOJ). Many of its recommendations were included in the version eventually adopted by the parliament (June/July 2004). CEELI also commented on different versions of the MOJ "anti-corruption strategy".

Target: At least two major laws in this area have been developed with comparative input.

M&E: **Number of laws developed with international input**

Progress achieved:

In preparation for eventual accession to the European Union, the government of Romania (GOR) needed to revise its legislative framework to conform to the European acquis. As part of this effort, one of the principal legislative initiatives was to address the laws governing the justice system, in particular those related to judicial organization and the status of magistrates (2003). At the time, the Superior Council of Magistrates still functioned under the supervision of the MOJ.

Later (2004), a new minister of justice[43] introduced **three** laws. In addition to those which covered judicial organization and the status of magistrates, a separate (and pivotal) law drastically reformed the composition and competences of the Superior Council of Magistrates. Commonly referred to as the "package of laws", the three norms were adopted by the Romanian parliament in June/July 2004, later amended in 2005.

CEELI provided comparative materials and comments on those laws, an ongoing process. It also participated in some of the "public" debates (2003) which the Ministry held to involve representatives of the Romanian civil society, or in working group discussions (2004) sponsored by the Ministry. Throughout the period, progress (or lack thereof) was documented in CEELI quarterly reports to the USAID along with copies of its formal comments to the Ministry of Justice. In spring 2004, CEELI learned that 16 of its 23 recommendations on the bill on the organization and operations of the Superior Council of Magistrates had been retained in the law once approved by the Parliament.

CEELI also developed, at the request of the MOJ, a comparative analysis of the mediation bill in its several versions (2003, again in 2005), and extensive comments on

[43] The new minister (April – December 2004) was tasked with ensuring that the "package of laws" reforming the court system would meet European Commission standards, in particular those related to the independence of the judiciary.

the Freedom of Information Law (see FOIA project above); tracked the impact of the revised Constitution (2003) on the independence and efficiency of the judiciary, and on the transfer of responsibilities from the executive to the judicial branch; and communicated its observations on various pieces of legislation to other justice technical advisors, delegations, and to the European Commission. Finally, it briefed USAID, embassies, and donors on various legislative developments through "cheat sheets".

In early 2005, CEELI was invited by the newly appointed minister of justice[44] to participate in two working groups to 1) amend the Criminal Code and Criminal Procedures Code[45]; and 2) provide consistency among the three laws on judicial reform ("package of laws")[46]. CEELI was also tasked by the MOJ with convening a working group to coordinate a final version of the new 2005-2007 National Justice Reform Strategy and Action Plan (adopted by the GOR in March 2005).

2005-2006

In 2005-2006, some stalemate developed on the legislative front, due largely to political tensions, also to some differences between the Superior Council of Magistrates and the Ministry of Justice on amendments introduced to the "package of laws[47]" by the MOJ. This was complicated further by an ambitious calendar of urgent measures to conform to European accession requirements.

Result: Support is provided to the Ministry of Justice and other national-level institutions to develop legislation and regulations to further reform the judiciary and combat corruption.

Workplan Period Targets:

(1) At least two major laws in this area have been developed or amended with comparative input.

Monitoring & Evaluation Indicator:

- ***Number of laws developed with international input.***

Progress achieved:

Through the period, CEELI tracked legislative movement through daily review of the Official Journal and monitoring of relevant institutional websites. It:

- Drafted a summary of, and comments on 'package of laws' amendments following: a) The Constitutional Court decision (July 2005) that reversed changes offered by the Ministry of Justice – for example, to require sitting

[44] In January 2005, the government changed as a result of the December 2004 national elections.
[45] The working group was eventually dissolved and replaced by two MOJ based commissions tasked each with the substantive and procedural codes. The work of these two commissions was still ongoing by the end of the project (September 2007).
[46] Their "rushed" adoption in mid 2004 had led to criticisms from technical advisors and civil society representatives, who registered concern about the level of quality and rigor of these new laws.
[47] Cf. note 5, *supra.*

court presidents to take an exam in order to maintain their position; and b) Further amendments introduced later in 2005 (incompatibilities and interdictions to serve as magistrates; procedures on promotion and entrance exams to the magistracy; composition of courts governing boards; compensation of SCM members; new processes for appointment of head prosecutors, etc).

- Participated in discussions convened by APADOR-CH to amend the law on access to public information – most of the amendments contemplated by APADOR-CH echoed recommendations formulated by Romanian judges during seminars held by CEELI during the 2003-2004 period (cf. FOIA project at page 15).

- Provided a comparative analysis on the issue of judicial liability when the GOR contemplated the possibility of drafting a new law on the question (the initiative was dropped later because it was determined that a legislative norm was not necessary).

- Contributed to discussions of the working group tasked with revisions of the criminal codes (substantive and procedures) – as noted earlier, the working group was dissolved after the MOJ determined that it should first develop a vision of what types of changes were required. The initiative was picked up later with support from a World Bank loan, and CEELI provided the new commission and its technical advisors (Germany) with comparative documents and recommendations.

- Commented on the last draft of the mediation bill (spring 2006), in particular to raise questions about access to justice, need for organized referrals from the justice system, intake criteria, quality standards, and monitoring of outcomes. The Mediation Law was eventually approved in 2006 (no. 192/2006), and some of the issues (though not all) raised by CEELI are to be addressed through the National Council stipulated in the law.

PROJECT FOUR: INCREASING ATTENTION OF THE ROMANIAN JUDICIARY TO DOMESTIC VIOLENCE (DV) ISSUES

2005-2007

At USAID request, CEELI designed in 2005 a new project to examine how domestic violence (DV) cases were handled by the Romanian court system, whether the governing legislation should be improved, how "best practices" could be transferred among courts; and to train judges handling DV cases (criminal divisions).

The problem of domestic violence in Romania is serious and significant (incidents of such violence are among the highest in the region), yet insufficiently acknowledged. Over the prior years, the USAID mission in Romania had provided important support to develop the sector of assistance to victims, most notably through the creation of a National Coalition on Domestic Violence which was to partner with CEELI on this project. The CEELI program was to complement the work of service providers, and to assess results at the end of the process (trial), specifically how the courts handled victims' complaints, when filed.[48]

Result: Increased Attention by the Romanian Judiciary to Domestic Violence Issues.

Workplan Period Targets:

(1) Best practices under existing laws are documented
(2) Recommendations on how to improve legislation are provided to the GOR
(3) A pilot training module for judges is developed and tested in collaboration with the National Institute of Magistrates

Monitoring and Evaluation Indicators:

- ***Improved legislation addressing domestic violence and victim assistance.***
- ***Percent of magistrates who are aware of domestic violence issues in Romania.***
- ***Percent of magistrates who understand better their responsibilities in implementing domestic violence and victim assistance legislation.***

Progress achieved:

When the CEELI project on domestic violence (DV) began in fall 2005, public awareness of the dimensions and severity of domestic violence in Romania was fairly recent. Following public education campaigns, a law was adopted (Law no. 217/2003 – Law on the Prevention of Family Violence) designed to provide a framework for the prosecution and adjudication of DV cases, and to define areas of respective governmental,

[48] As is the case in most countries, the level of actual but unreported violence far exceeds that of registered complaints, and few cases reach the trial stage because victims often decide to drop charges as a result of various pressures, or due to fear of retaliation.

institutional or civil society competences in supplying social, financial, advocacy and other services to victims. At the time, the Ministry of Labor, Family and Equal Opportunities (MOL) had competence over the application and revision of the law and the coordination/financing of services through its National Agency for Family Protection (NAFP). A number of service providers (principally NGOs) had begun to organize their activities through a USAID-sponsored National Coalition on Domestic Violence (NCDV), in collaboration with the John Snow International (JSI), the technical advisor to the Coalition.

A national strategy and action plan to deal with domestic violence in Romania called for collaboration between the government institutions and civil society representatives, with the drafting of amendments to Law no 217/2003 as the top priority.

Within this framework, the CEELI project aimed at understanding how the law was applied by the courts; identifying what "best practices" could be transferred from one jurisdiction to another; providing recommendations to improve legislation; holding seminars with judges responsible for DV cases in Romania; and transferring the training module to the National Institute of Magistrates.

1) **Best practices are documented**
2) **Recommendations for legislation improvements are provided to GOR**

In order to review existing legislation and practices, CEELI created a Bucharest – based Working Group (WG), later supplemented by a "virtual WG" to elicit observations from courts in other regions. The Bucharest WG included judges, prosecutors, defense counsels, and representatives of governmental institutions (MOL, NAFP, probation department at the MOJ), and of civil society through its coalition secretariat (GRADO[49]).

The WG met weekly over a five months period, discussed comparative materials provided by CEELI, analyzed provisions of law no. 217/2003 and other relevant legal norms (such as laws protecting victims of crimes, dealing with the welfare of children, and the draft mediation law), and reviewed Romanian jurisprudence on DV forwarded by four courts of appeal (Bacau, Constanta, Iasi and Timisoara). WG discussions were compiled alternately by WG members, and the reports critiqued in a subsequent WG session.

During the period, CEELI also sent questionnaires to 9 courts of first instance, randomly selected, and found an apparent lack of interest in or familiarity with the issue among judges who handle DV cases[50].

The WG reached early on an important conclusion, e.g. that the DV law was not, and could not, be applied. This was confirmed later by the "virtual WG" (judges, prosecutors, stakeholders from around the country) and in the magistrates' seminars held nationwide (see below). The reasons were several: many provisions of the DV law are inconsistent

[49] Grupul Roman pentru Apararea Drepturilor Omului/Romanian Group for Human Rights Defense

[50] As a result, CEELI staff and advisors decided to introduce in the DV seminars held subsequently, components to sensitize judges to DV impact on victims and society, and a section dealing with "domestic and family violence 1.01" information.

Excerpt from Final Report - Project Description

COMPONENT	DESCRIPTION	LOCATION	TIMELINE	DISCUSSION
1. Working group including: 2 judges, 2 defense counsels, 1 prosecutor, representatives (1 each) of NAFP, NCDV, MOJ. **Followed by review of Virtual Working Group (10)**	The WG agreed to a discussion schedule, and methodology – WG members summarized discussions[51], and critiqued summaries in subsequent session.	ABA/CEELI offices in Bucharest	11 meetings over November 2005 – March 2006 period	WG members were instrumental in documenting why Law 217/2003 is generally not applied; and in identifying issues that formed the basis for seminar discussions.
2. Judicial Seminars *"Domestic Violence – theoretical and practical aspects"* **Faculty:** Judge Raluca Moroşanu – Bucharest Court of Appeal Judge Sofia Luca – First Instance Court, Iaşi Judge Simona Franguloiu - Braşov Court of Appeal Prosecutor Radu Moisescu - Iaşi DIICOT Office	As part of the NIM continuous education – agenda included: - presentation (myths); - discussion of 2 hypothetical cases covering controversial aspects of the law[52]; - 1 role play dealing with human aspects and hearing techniques (abuse of a minor). Attendees and trainers received NIM credits towards continuing education requirements, and professional performance.	Iasi Alba Iulia Timişoara Braşov Craiova Ploieşti Bucharest	In 2006 June (3); November (2); December (1) April 2007 (2)	Attendees confirmed WG conclusions concerning the inadequacies of the legal framework; registered concerns about the timely and sufficient provision of social services; differed somewhat on a strict vs. more discretionary interpretation of legal provisions. Some favored amendments of the penal codes; others preferred maintaining a separate DV law by rewriting or amending Law 217/2003 – with caveat that such law should be a special criminal law, consistent with the penal codes.
3. Draft of new legislative language **CEELI team:** Pr. Milena Tomescu – Law school, University of Bucharest Georgiana Fusu, att. Ana-Maria Andronic, CEELI staff att. & former judge	CEELI consulted (April 26th, 2006) with the MOL, NAFP and NCDV, and offered to draft new legislative language (focused on the juridical aspects of the law) to replace law no.217/2003, or to amend provisions of the criminal codes.	N/A	The CEELI team circulated to the MOL, NAFP and NCDV a preliminary outline, a first draft and a final draft for comments (May-July), and submitted the document to the MOL on July 6th.	No action, in view of the pending changes to the lead institutions.

with the penal and penal procedures codes, on questions such as definition of family, security and prevention measures, etc. Since the DV law is not a special criminal law, it has no standing to supersede the organic law (codes), even when its application might have been more favorable to victims. Further, it does not include provisions to protect

[51] These summaries provided the base documentation for this report, as further informed by seminars.
[52] The hypothetical cases were amended during summer 2006, in view of interim amendments to the Code of Criminal Procedures. The code is due for a thorough revision or rewrite in 2007, and this report will be provided to the Commission in charge.

victims from harassment and abuse, as would restraining orders (both criminal and civil).[53] Finally, the current law tends to prioritize the re-unification of the family unit over victims' needs, and includes a variety of procedures (such as "mediation" by "family councils") that may be detrimental to the victim's welfare.

- **Legislative draft**

With approval from USAID, CEELI amended in March 2006 its workplan to draft a **new** DV law, to increase the focus on victims' rights, provide magistrates with instruments to effectively prosecute and sanction offenders, protect victims through restraining order language, and improve access to legal aid and to other court proceedings related services. The WG had concluded that, rather than amend piecemeal the existing law, it would be more efficient to draft a new one that addressed technical deficiencies of the current one. The NAFPA, MOL, GRADO (secretariat of the NCDV) and the legislative committee of the Coalition endorsed this initiative and pledged to comment on the outline and drafts produced by a CEELI team of one attorney, one former judge and one law professor. The NAFPA and NCDV were to offer recommendations to create a new structure for coordination and provision of services to victims, but were unable to do so within the agreed upon timelines.

On July 6th, 2006, the draft language was submitted to the MOL Secretary of State in charge of domestic violence and to all stakeholders. Unfortunately, the submission occurred at a time when government reshuffling was under consideration and when heads of divisions within various ministries were reluctant to embark on new initiatives.

The draft was also submitted to the MOJ in late 2006 and, subsequently, the penal code commission drafted language to expand the definition of family members (to protect victims in *de facto* family circumstances) and to increase sanctions for DV offenders.

Epilogue:

Through end of this project component (April 30, 2007) and subsequently, CEELI alerted Romanian authorities to the problems with the existing legislation and submitted the draft CEELI language as an option to kick start revisions, in particular 1) to the Minister of Justice who announced in July 2007 that the MOJ would take the lead in improving the DV legislative framework[54]; and 2) to the commissions in charge of civil and criminal procedures revisions, to encourage the adoption of restraining orders in the two codes. (No decisions or actions to-date).

- **Best practices**

As to best practices, the WG concluded that – short of amending the law – it was not possible to identify such. The WG representatives involved with the provision of services reached the same conclusion, pointing in particular to the maze confronting

[53] Some criminal restraining order language had been drafted by the legislative committee of the NCDV but magistrates concluded unanimously that the language suffered from serious flaws; further, that civil restraining orders were necessary to protect victims fully.

[54] A Protocol of Cooperation for Preventing and Combating Domestic Violence was announced in a July 27, 2007 MOJ press release. The MOJ, Public Ministry and Ministry of Labor (through its National Agency for Family Protection) signed the Protocol.

services under current provisions of the law, this due to an over-abundance of and overlapping competences of the many institutions covering the field.

Excerpt from Final Report - Calendar of working group meetings

Month	No.	Week	Subject	Leader
November 2005	**1.**	**21-25 November**	Preparatory Meetings	
December 2005	**2.**	**28 November -2 December**	**1. General Considerations** ▪ The general legal framework concerning family violence in Romania. Area of application. ▪ How other states deal with family violence in their legislation.	**Rodica NIȚĂ**
	3.	**5-9 December**	**2. Controversial aspects and unclear legislation concerning family violence.** ▪ The family violence concept. ▪ Provisions in the Penal Code and the Criminal Procedure Code regarding family violence.	**Aura Manuela COLANG**
	4.	**12-16 December**	▪ Provisions in the Penal Code and the Criminal Procedure Code regarding family violence.	**Mihaela Stoian**
		19-23 December	**Postponed**	
January 2006	**5.**	**9-13 January**	▪ Content and procedures in mediations. Aspects of practice. ▪ Clarification of Art. 20, line 2 of Law No. 217/2003. ▪ Is mediation possible during the penal process?	**Ionut DURNESCU**
	6.	**16-20 January**	▪ Who are the people responsible for dealing with cases of family violence? ▪ Legal assistance to victims in shelters (Art. 24, lines 1 and 2 of Law No.217/2003). Practical aspects.	**Aura Manuela COLANG** **Traian MARINESCU**
	7.	**23-30 January**	Protective measures for victims of family violence (Art. 113-114 Penal Code) and restriction orders.	**Raluca MOROȘANU**
	8.	**30 January – 3 February**	Civil aspects of the law in dealing with family violence (ex. custody on minor children, evicting the aggressor from the common dwelling).	**Georgiana FUSU**
February 2006	**9.**	**6-10 February**	Courts perspective on the application of controversial aspects and vague legislation dealing with family violence (theoretical aspects and applications of the laws).	**Ștefan CRIȘU**
	10.	**13-17 February**	**3. Romanian courts' jurisprudence on matters of family violence. Jurisprudence of the European Court for Human Rights.**	**Raluca MOROȘANU**
	11.	**20-27 February**	**4. Romanian courts' jurisprudence on matters of family violence. Jurisprudence of the European Court for Human Rights - continued.**	**Raluca MOROȘANU**
	12.	**27 February – 3 March**	**5. Institutional Aspects** ▪ Specific responsibilities of institutions involved in combating family violence, with a focus on the judiciary. Practical aspects. ▪ Inter-institutional coordination in the area of combating family violence. Practical aspects. ▪ Practical aspects in the application of the laws and the prosecution of cases. The role of the National Agency for the Family Protection.	**Aura Manuela COLANG**

3) Pilot Training Modules

The project actually exceeded its target, by sponsoring in addition to six judicial seminars, a pilot course for first year clerk trainees[55].

- **Judges and prosecutors**

The six judicial seminars (cf. chart on page 32) took place in June 2006 (Iasi, Alba Iulia and Timisoara) and November/December 2006 (Brasov, Craiova and Ploiesti). The prosecutors' seminar was held in April 2007, one of the last activities under the project. All seminars were facilitated by Romanian magistrate-trainers. They involved a total of 126 judges.

The agenda covered

1. A presentation on basic concepts, to highlight for instance the legal differences between *family* and *domestic* violence, and implications of such, and discuss commonly held prejudices.
2. A discussion of case studies (several hypotheticals with variants).
3. A role play, to sensitize judges to the impact of a hearing on particularly vulnerable victims.
4. A general discussion of the law(s), to determine how the law should be changed.

All seminars received high ratings, even if a small minority of judges expressed an open disinterest in the topic. All magistrates (including prosecutors, see footnote below) concurred on changes required to the law; and most expressed a better understanding of the human dimensions of the domestic violence syndrome.

The course modules were adopted by the NIM to be a part of its standard courses, and the scenarios are included in the final TOT manual.

- **Clerk trainees**

The project developed a special two-hour presentation for clerk trainees, to sensitize first year students (appr. 150 per class[56]) to their eventual responsibilities in assisting judges or prosecutors in the handling of vulnerable parties. The presentation is now part of the School of Clerks initial training curriculum.

Conclusion:

This project component closed on April 30, 2007 (as stipulated in the second grant extension award), with the writing of a final report (EN and RO), which was posted on SCM and NIM websites. The report main purpose is to provide the information necessary for decision makers to produce a thoughtful rewrite of the laws, to overhaul and streamline services in order to produce results, and to serve victims properly.

[55] CEELI's work with judges and clerks under this project was complemented with a module for prosecutors, financed by the Resident Legal Advisor's programs. The seminar followed the same format as that for judges, but the hypotheticals addressed questions facing prosecutors uniquely, such as victims' dropping of charges, conducting an investigation, etc.

[56] A lower number attended (slightly over 100 trainees), due to impending holidays.

Finally, it documents and stresses the need for systematic, local intervention in coordination with law enforcement and prosecutors – an imperative pre-condition for the protection and safety of victims in Romania, adults and children alike.

PROJECT FIVE: INSTITUTIONAL FRAMEWORK OF FAMILY COURTS IN ROMANIA

2006-2007

The last project component under the grant involved the launching of an ambitious nine months project (authorized in January 2007 through a Commencement Letter) to "help improve the institutional framework of family courts in Romania", with specific attention to cases affecting children's welfare.

Result: Institutional framework of family courts in Romania and children's welfare are improved through a more efficient court system.

Workplan Period Targets:

(1) Report documents "family and juvenile" court system in Romania, outlines key problems (civil docket), and is supplemented by case files reviews in two pilot sites.
(2) Final report provides GOR with a set of legislative and policy recommendations to improve "family courts"
(3) Thirty (30) Romanian magistrates participate in the development of case management reforms/initiatives and receive training in same

Monitoring and Evaluation Indicators:

- **Two family courts piloted in strategic locations**
- **Recommendations made to the GOR for long-term reforms of legal and policy framework**
- **Number of magistrates who are familiar with management of family cases**

Progress achieved:

The initial premises of the project were that "family and juvenile courts" in Romania suffered from considerable delays in handling a variety of family disputes and cases, and that remedies (such as improved specialization training, or changes in administrative operations) might help process the cases more effectively. The project was to include: research and discussions with judges from two pilot courts to determine what reforms might be initiated under the project; judicial seminars to familiarize magistrates with project findings and basic principles of case management; and recommendations to the Government of Romania (GOR) for long-term reforms of the legal and policy framework.

Following an initial discussion with the president of the Superior Council of Magistrates (SCM) and with approval from USAID, two pilot courts were selected to participate in the project, e.g. Bucharest and Ploiesti[57].

CEELI selected the method of "closed files" research, to document events and timelines for selected case types, with files identified on a random basis. The 2007 research was

[57] Specifically, the first instance courts in Ploiesti and Bucharest (Second Sector), and the tribunal in both cities. They were selected for purpose of representativeness: one large and one medium court system.

conducted in two phases (January-April, and May-July). In view of the findings from the research on family cases, ABA/CEELI recommended that the workplan be modified to document in a second phase reasons for adjournments in civil litigation. The project concluded with recommendations to the Commission charged with amending the Code of Civil Procedures, toward helping reduce the number of adjournments for case types that disproportionately affect the timeliness of case processing; and to governmental justice institutions (such as the MOJ, the SCM, the NIM) to anticipate potential amendments through a reorganization of various operations, systems design, new regulations.

1) Initial report (map of system and case file review)

The project began with a set of separate but related activities: a) research and description of how the Romanian court system handles family cases (civil docket[58]); b) discussions with judges from the two pilot sites (Bucharest and Ploiesti); and c) review of closed files for select case types.

a. Mapping out the system:

CEELI drew on national data – statistics, human resources charts – provided by the MOJ and the SCM, to outline how civil family cases were processed in Romanian courts. The principal findings were that:

I. Romania does <u>not</u> have currently a "family and juvenile" court system; rather, some judges specialize in family disputes within civil, or juvenile justice within criminal court subdivisions[59] in larger courts; judges in most courts of first instance are asked to handle all case types.

II. Judicial "specialization" is rarely exclusive – as put by one judge, "I specialize in family disputes from 9-11 am, then specialize in other civil matters".

III. Most "family cases" are disposed of at the trial level in less than six months, and sometimes in a single hearing.

b. Discussions with judges:

Judges from Bucharest and Ploiesti (first instance, tribunal and court of appeal) met with CEELI in March 2007. They confirmed the above findings including the speed of most dispositions and lack of exclusive specialization. They indicated that most "difficulties" were unrelated to serious operational dysfunctions. Rather, they commented on difficulties faced when parties purposefully delay final disposition, in order to avoid

[58] CEELI concentrated on the civil docket because "juvenile justice" issues (criminal cases) had been the topic of a 3+ year EU Twinning Project with the French government; project results and next steps were still being debated when the CEELI project began.

[59] One single "family and juvenile" tribunal was created in Brasov under the French project; Brasov tribunal judges consulted by CEELI indicated, however, that almost all cases involving children as one of the parties were referred to their tribunal and – rather than limit their specialization – the pilot had expanded greatly the range of cases they were asked to handle. Another specialized court for juvenile cases was set up in Iasi, sponsored under a separate project in the late 1990s.

closure. They indicated also that the number of cases they must handle at each hearing prevent them from having the time necessary to explore in- depth sensitive one – particularly those involving the welfare of children.

c. Outcome of closed files review

PHASE I – CLOSED FILES REVIEW OF FAMILY CASES (DIVORCE WITH CHILDREN, SEPARATION OF ASSETS, ADOPTION – FOR A TOTAL OF 254 FILES).

These three case types were selected, following discussions with judges from the two pilot courts because they cited divorce with children and separation of assets (following divorce) as among the more problematic ones, the former due to the sensitivity of some divorces involving children, the latter due to length of trials and multiple adjournments. Adoption cases (tribunal) were researched when the ABA/CEELI team learned that – contrary to widespread belief – the final disposition of these cases in courts was exceedingly quick.

The closed files research – presumably a novel method in Romania – was directed by a US expert in court administration and conducted on both sites. It confirmed the judges' observations and national statistics: Romanian cases are disposed of swiftly, for the most part. For adoptions, the case is disposed of within one hearing for each adoption phase – and the closed files review found no appeals. Some cases, however – such as separation of assets, when contested by the parties – take an inordinate amount of time (the random sampling showed as many as 40 adjournments for a single case), are almost always appealed, sometimes twice, and displace judicial time that should be devoted, preferably, to dealing with sensitive or complex situations.

Methodology, findings, and analysis were documented in a first report which was reviewed during informal discussions and at a formal seminar with judges in each court, along with basics about caseflow management and court administration.

In summary, the documentation of reasons for adjournment appeared to be a more fruitful avenue for further research and for developing legal, procedural and operational recommendations.

PHASE II – CLOSED FILES REVIEW OF CIVIL CASES (INHERITANCE CASES – FOR A TOTAL OF 62 FILES)

The second set of closed files research, also under the supervision of a US expert in court administration, focused on inheritance cases – another case type that showed considerable delays per local and national statistics.[60] The data showed similar results for contested separation of assets cases, e.g. that the majority of adjournments were 1) due to lack of preparation by parties and attorneys, and inefficient discovery practices; 2) caused by experts' reports or lack of submission thereof; 3) no-shows (litigants, witnesses, others). Some delays were also due to time requested to hire legal representation, or for review of the claims/counterclaims or experts' reports, and lapses in obtaining proper summons – but these comprised a small proportion of the total number of adjournments.

[60] Another case type (claims between individuals or with legal entities) could not be researched due to limitations of the ECRIS system (automated register), and of available records.

Judges from the tribunals and first instance courts in Bucharest and Ploiesti validated these findings, based upon their personal experience in court. They also noted that desirable reforms exceeded their individual or institutional capacity at the court level. Specifically:

I. Amendments to the Code of Civil Procedures would be desirable, to abrogate some processes that the courts must now follow but which may be counter-productive to the efficient handling of cases and are not necessary to the act of justice.
II. "Tools" that should enable judges to have greater control over their cases – such as applying sanctions to delinquent parties, attorneys or experts – are seldom used for a variety of reasons.
III. Procedures that would permit more efficient and timely discovery of evidence are at the discretion of attorneys, not an option available to judges.
IV. An insufficient number of (qualified) experts, inadequate expertise reports, lack of guidelines enabling judges to set reasonable fees when experts ask for more money at the time of report submission, inability (or refusal) by parties to pay the expert, out of date listings, were but some of the reasons cited to explain the "problems with experts".

2) Final report with recommendations (see Epilogue, below)

As demonstrated by the "mapping out" and closed files research, the initial project assumptions were not validated. Rather, a separate set of problems surfaced, that affect civil litigation in general – e.g. disproportionate displacement of judges' productive time through endless adjournments for a minority of case types. The analysis pointed to the need for remedies through amendments to the code of procedures **if** accompanied by proper adjustments in operations, caseflow administration, human resources deployment, etc.

3) Seminars

Each phase of closed files research concluded with seminars with judges in the two pilot courts (April 16, April 17, and June 21). These seminars brought together 31 judges in Bucharest and Ploiesti, and the agenda covered basic principles of court administration and theory/practice of case management[61].

In addition, at the end of Phase 2, the US expert met with the Ministry of Justice IT director, to review various aspects of the future integrated IT system (per 2007-2009 National Strategy and Action Plan) including e-filing, audio-visual recording systems, caseload management, calendaring, etc.

[61] The project evidenced a high level of judges' interest in court administration, and in the desirability of creating court administrators' positions in courts (whether staffed by judges or other personnel). These finding were communicated along with the final project report to the British embassy and UK experts that were exploring with the GOR the desirability of a pilot court administration project. No decisions todate.

Epilogue:

In August 2007, toward project end, CEELI met with the President of the SCM, the Minister of Justice, and the CCP commission to explain the project and its findings. They encouraged CEELI to conclude the project with two sets of additional activities:

- An inter-institutional meeting (MOJ, SCM, NIM, representatives of the CCP commission), to discuss the desirability of developing a systematic operational and training strategy linked to changes to the code of procedures. In a discussion with CCP commission staff, prior to the meeting, CEELI learned that most amendments it had proposed to the code of civil procedures were being considered by the Commission.
- A meeting with SCM, NIM and MOJ IT staff and planners, to link specific, potential changes to the code with modifications to operations, IT systems, etc.

The US expert who led the two meetings brought up these recommendations for further discussions:

- The Commission on the Revision of Civil Procedures might set timelines for hearing dates that take into consideration the complexity of expertise, and give judges the option to set a calendar for cases (scheduling conference). The Commission might also permit judges to adjourn a case on their own motion without holding a public hearing, particularly when the court knows in advance that there will be (legitimate) no-shows at the scheduled hearing, and to give judges the option to waive expertise reports under specific circumstances (such as low threshold values) for contested cases.
- The Ministry of Justice can play an important role in reshaping the sector of experts, including re-assessing guidelines for courts to set up appropriate expert fees, looking into the problem of non-payment by parties particularly in the situation of indigent defendants, and possibly setting more rigorous standards for expertise reports and for the profession. The MOJ initiative to conduct an audit of this sector demonstrates that it, along with the SCM which has transmitted the document to courts, is concerned by its impact on court efficiency[62].
- The Superior Council of Magistracy might develop more visible processes to reassure judges that they will be protected against harassment complaints, should these materialize.[63] It might also conduct further fact based, systemic inquiries about the enforcement of sanctions to assess the potential responsibility of bar associations, local experts committees, or the financial authorities in the case of non-enforcement.
- The justice system stands to benefit from conducting fact based research on various policy questions that require a rigorous research capability and analytical

[62] Note: When it drafted this report/discussed these issues with Bucharest and Ploiesti judges, ABA/CEELI was not aware that an audit about expertise related problems had been commissioned by the Ministry of Justice. The report has been forwarded by the SCM to courts with request for comments by September 7, 2007.

[63] Discussions with justice sector officials indicate that few complaints have been filed by attorneys or experts against judges who imposed sanctions. However, judges appear to be somewhat concerned about unwarranted complaints, because they view these as possibly harmful to their reputation or career paths. Further, their current **perception** is that if they are attacked, the SCM will not be in a position to protect them.

capacity. Analysis of case flow, differentiated case management[64], and calendaring options are but a few areas that stand to benefit from this level of institutional inquiries. The research would also help point objectively to infrastructural gaps, such as the lack of courtroom space which require judges, in some courts, to juggle hearing schedules. Finally, an identification of information needs that are critical to the development of good management policy that would guide necessary revisions to the case management software (ECRIS) and record keeping capabilities.

- Judicial and justice system authorities may need to collaborate if they find that a large number of judicial sanctions are not enforced. The remedies may be found in changing existing regulations (for instance, stipulating that addresses, rather than personal identification numbers of attorneys or experts, will suffice for fiscal authorities purpose), or in holding negotiations with legal profession representatives to explain new rules of discovery and clarify under what circumstances sanctions would apply.
- An inter-institutional protocol could lead to the training of court administrative staff that would assist and provide information to *pro-se* litigants, thus relieving judges from the task of providing legal counseling to such litigants.

CEELI observes that the project yielded good and objective information, as confirmed by judges in the two pilot courts, the MOJ and the SCM. The project also provided the institutions with timely discussions[65] about court management principles and know-how on case processing, and documented research methodology and results – this for purpose of eventual replication. The CEELI reports were posted on the SCM and NIM websites and CEELI learned that – subsequently – the SCM had tasked one of its working groups (WG5) with reviewing the CEELI documentation. However, the follow up conclusions of the SCM (10/18/07 Plenum meeting) appeared to be limited to the desirability of legislative changes.[66]

[64] E.g. management of a case that factors the degree of complexity of the case and thus places some cases on a fast track for disposition.

[65] The National Strategy and Action Plan (2007-2009) stresses the importance of court administration reforms and includes them through yet-to-be-awarded EU PHARE project funds, effective May 2008, with target implementation into 2009.

[66] ***"WG5 appreciated the complexity of the report, which noted both subjective and objective dysfunctions of the family courts, and not only, dysfunctions that may be solved through legislative changes".***

POST SCRIPTUM

In 2007, the ABA-CEELI office in Romania registered as a separate non-government association under Romanian law – the Romanian Association for Legal Initiative (RALI)[67]. The aim of the NGO founders (CEELI staff, professional friends and supporters of the CEELI past efforts) is to create a legacy organization, able to pursue the fact-based the work methodology and the values that have driven the CEELI projects since 1991. RALI's initial programming is to focus on legal education reform in Romania.

[67] ASOCIAȚIEI ROMÂNE PENTRU INIȚIATIVĂ JURIDICĂ (ARIJ)

LIST OF REPORTS

The following reports can be accessed on the web sites of ABA-ROLI[68]. Several are also posted on the websites of the National Institute of Magistracy[69] and Superior Council of Magistrates[70]:

- **The Third Sector Pilot Court** (April 2004), also available in Romanian
- **Access to Public Interest Information under Law 544/2001** (July 2005, Final Report on the three seminars), also available in Romanian
- **Access to Public Interest Information under Law 544/2001 – guide for judges** (July 2005, Theoretical and Practical Aspects for Judges), available only in Romanian
- **Code of Ethics for Court Clerks – Innovation and challenge in the Romanian Judicial System** (July 2005, Final Report on the ten seminars), also available in Romanian
- **The Code of Ethics for Magistrates: Theoretical and Practical Aspects** (July 2005, Final Report on the six seminars), also available in Romanian;
- **Trainer's Manual. Ethical and Deontological Aspects** (July 2005, first edition), available only in Romanian
- **Advisory Memorandum to the Superior Council of the Magistracy on the Protection of Judges and Prosecutors from Unwarranted Attacks** (May 2006), also available in Romanian;
- **Advisory Memorandum to the Superior Council of the Magistracy on a Proposal for Establishing Disciplinary Guidelines** (May 2006), also available in Romanian
- **Advisory Memorandum to the Superior Council of the Magistracy Regarding how to Handle Ethical Violations** (May 2006), also available in Romanian
- **Domestic Violence in Romania: the Law, the Court System** (April 2007), also available in Romanian
- **Improving Institutional Framework of Family and Civil Litigation in Romania** (August 2007), also available in Romanian
- **Trainer's Manual – Case Study Methodology** (September 2007), second edition), available only in Romanian

[68] http://www.abanet.org/rol/publications/regional_publications.shtml#romania
[69] http://www.inm-lex.ro/index.php?MenuID=47
[70] http://www.csm1909.ro/csm/index.php?cmd=91&lb=en