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Performance Indicators – a step ahead for a (more) effective justice

(draft)

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This study has been issued within the project *Performance indicators - a fundamental instrument for the improvement of the quality in Romanian judicial act-*, developed by the Institute for Public Policy (IPP) in partnership with the National Institute of Magistracy (NIM), financed by the European Commission through Phare 2005 - Consolidating Democracy in Romania.

The main objective of the study is to debate with specialists from the judiciary the issue of measuring the performance of the courts and prosecutor's offices in Romania, as an element that successfully completes the efforts already undertaken for improving the efficiency of the judicial act. Being ascertained that the evaluation process of the Romanian magistrates has to be transposed from the individual level to the aggregate, systemic level, as confirmed by the most recent sociological research developed for the judiciary at the national level – *Romanian Judiciary Barometer* - the present material proposes, among others, a set of indicators that can be used in the future in order to determine the modality in which the courts and the prosecutor's offices carry on the duties assigned under their competences. The purpose of this study is a constructive one, as it comes to support both the institutions involved in the coordination of this process: Superior Council of Magistracy, Public Ministry, Ministry of Justice - and the presidents of different courts and prosecutor's offices in order to achieve objective analysis towards these institutions, the budgetary assignments, rationalization / efficient measures for the legal proceedings etc.

Far from being a success recipe, this study deals with a problem that has lately become a priority for all the legal systems in the EU member states, trying at the same time to propose a starting point for future debates on this topic.

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1.

Evaluation of the Romanian judicial system – actual context

Evaluation of the judicial system and of the professional activity of judges and prosecutors

One specificity of the judicial system is that the quality of the result in a given case depends to a large extent on the quality of the prior procedural steps (as initiated by the police, prosecutor's office, or parties), so that an evaluation of the judicial performance is impossible without an evaluation of every distinct procedural context.

Dispensing justice therefore involves more than just the work of judges and other legal professionals; it involves to a similar extent a number of activities performed within the judicial institutions by agents of the government and citizens; its functionality relies to a considerable extent on judicial infrastructures (buildings, equipment, ancillary staff, etc.).

An evaluation of the Romanian judicial system is – at a difference from an evaluation of the individual performance of judges and prosecutors – a relatively recent endeavor, primarily undertaken as part of the mechanism for accession to EU membership. However, the evaluations of individual judges do not produce consequences regarding the judicial system due not only the fact that the results of such individual evaluations are generally not made available for public scrutiny but also because the indicators of individual evaluations are very specific focusing on the assessment of each magistrates career.

Also, the criteria of evaluation the system makes the judiciary more accountable as public service and provides valuable data to other systems such as economy

Evaluation of the Romanian judicial system as part of the mechanism for accession to EU membership

Over the past years the Romanian judicial system has been evaluated from the perspective of the targets set for meeting the EU accession criteria. Subsequent to accession, neither the Law on the Organization of the Judiciary nor the Strategy for the Reform of the Judicial System made it a priority to set evaluation criteria for the system. On the contrary, the professional evaluation of judges and prosecutors enjoyed constant attention¹.

The Consultative Council of European Judges² noted that an evaluation of the “quality” of

¹ Regulation for the Evaluation of judges' and prosecutors' professional activity – adopted through HCM Decision #676/4.10.2007, published in the Official Journal Part I, #814/29.11.2007 to repeal the HCM Decision #324/24.08.2005, published in the Official Journal Part I, #823/12.09.2005. *The Appendixes are published in the Official Journal Part I bis, #814/29.11.2007 - as amended and supplemented through HCM Decision #79/24.01.2008, published in the Official Journal Part I, nr.115/139.02.2008

² Opinion #2 (2001) of the Consultative Council of European Judges (CCEJ) in the attention of the Council of Europe Ministerial Committee, concerning the financing and administration of courts with reference to the

the judicial system, through the performance of the system of courts taken as a whole or those of every court or group of courts, should not be mistaken for the evaluation of the professional capacities of each individual judge. The professional evaluation of judges, especially as regards decisions that influence their status or career, is a task that meets other goals and should be undertaken on the basis of objective criteria, with all the appropriate guarantees for judicial independence [see also Opinion #1 (2001) of the CCEJ, especially paragraph 45)³.

Concerning the judicial system, as part of Romania's mechanism of evaluation and, afterwards, of accession to EU membership, and also as part of the accompanying measures, it was emphasized that it was important that the targets of accession be perceived as more than just a checklist of specific measures that can be crossed off one by one. All of those targets are linked to each other. The progress made under one of them will have an impact upon the others. Every specific target is a brick laid at the foundation of a judicial and administrative system characterized by independence and impartiality⁴. On that basis the reports concluded that the way cases were handled in courts and the quality of sentencing needed improvement and that the effectiveness of the judicial system should be increased by adopting legal amendments to reform the judicial procedures⁵.

The performance evaluation system for the Romanian judiciary monitored the meeting of targets like: *implementing any necessary measures, including those in the appropriate Action Plan of the Higher Council of Magistrates, as adopted in June 2006, which ensure a unified interpretation and implementation of the law at all levels of the judicial system and throughout the country*, after the appropriate consultations with working judges, prosecutors and counsels⁶; *monitoring the effects of recently adopted legal and*

efficiency of the judicial system and Article 6 of the ECHR.

³ The practice in several countries evinces an overlapping, which CCEJ feels is inappropriate, of the evaluation of the quality of justice and the evaluation of judges from the professional point of view. This overlap is reflected in the way statistical data is collected. In certain countries statistics are compiled for each judge, while in others the figures are calculated for each court. It is probable that they all store records of the number of the number of cases on the docket, but the old system associates those figures with individuals. The systems that evaluate judges statistically usually include a figure for the percentage of successful reviews.

⁴ Creating and maintaining such a system is a lengthy process. It involves fundamental processes of systemic proportions. Specific targets cannot, therefore, be considered separately. They must be taken together, as part of an ample reform of the judicial system that requires constant, long-term political commitment. More substantial evidence of implementation is needed to demonstrate that the changes are irreversible" pag #4 Report on the evolution of the accompanying system, 2007, at www.infoeuropa.ro

⁵ Monitoring Report May 2006, at www.infoeuropa.ro

⁶ Report on the evolution of accompanying measures, 2007, at www.infoeuropa.ro: Specific Target #1: Providing a more transparent and efficient judicial procedure, especially by strengthening the capacity and responsibilities of the Higher Council of Magistrates. Reporting on and monitoring of the effects of the new Civil and Criminal Procedure Codes: HCM established a monitoring mechanism for the effects of those measures upon the jurisprudence throughout the country. A mechanism was put in place for periodical consultations between courts concerning unification of the judicial practice. Starting January 2007, under the HCM 2006 action plan, periodical meetings took place between the Chief Justices of the Supreme Court Sections and the chief judges of sections from the Courts of Appeals with a view to harmonizing judicial practice and developing certain proposals concerning the writing of appeals in the interests of the

administrative steps, development and implementation in the judicial system of a rational and realistic staff structure, based on the current evaluation of the needs, monitoring the effects on the judicial system of the recent amendments brought to the Civil and Criminal Procedure Codes⁷, so that any corrective action may be incorporated into the new codes, professional integrity of judges and prosecutors⁸.

Evaluation of the judicial system. Perspective of the judges and prosecutors. Romanian judicial system barometer 2008

In this context the National Institute for Magistrates (NIM) and the Institute for Public Policies (IPP) developed the project titled “Performance Indicators – a Fundamental Instrument for the Measuring of the Quality of Justice in Romania,” financed by the European Union through that Phare 2005 Program for the Strengthening of Democracy in Romania.

The starting point in developing the performance indicators was a survey titled Romanian judicial system barometer 2008, the first sociological research of such ample scope ever performed at the level of the magistrates’ profession in Romania, on a representative sample for the nation (937 judges and prosecutors).

The survey measures the perception of judges and prosecutors at all levels concerning a series of aspects of the current organization of the judicial system, the system’s resources and work environment, the particular aspects of a magistrate’s career in Romania, independence in their activity of judges and prosecutors, as well as their expectations from the future reforms.

The quality of the judicial system depends both on the quality of infrastructures, which can be measured using criteria similar to those used in the case of other public services, and on the capacities of the legal professionals (judges, but also counsels, prosecutors

law. In February 2007, HCM instated the obligation for every court to hold monthly meetings of judges from every level of court, to ensure proper communication between practitioners at local level. The HCM also developed a central mechanism to have periodical meetings with the chief judges of sections with the Courts of Appeals, and also from the Supreme Court. The purpose of such meetings is to create a forum where all courts that have authority to return final rulings (Supreme Court and Courts of Appeals) and that thus establish a review practice should be able to discuss those legal aspects that are frequently identified as sources of non-unified practice, see at www.infoeuropa.ro.

⁷ Those Codes are still in the draft stage.

⁸ The judicial system needs to see both an improvement in case management and consistency of decisions, and an increase in the degree of independence of the judiciary. (page 1, Conclusions, European Commission 2003 Country Report on Romania, see at www.infoeuropa.ro; Case management in Tribunals and the quality of sentencing should be improved. Official studies confirm it is possible for the Government to influence decisions in judicial procedures. However, amendments to the laws and organization system as implemented in the Romanian judicial system should bolster its independence and increased efficiency. This implementation is a priority (page 1, Conclusions, European Commission 2004 Country Report, see at www.infoeuropa.ro); the HCM has begun to classify the complexity of the various types of cases brought before courts and to measure the average time needed for such cases, so as to help a more efficient management of human resources in the judicial system. (Pages 3-4, Conclusions, September 2006 Monitoring Report, see at www.infoeuropa.ro).

and servants); at present it is possible to measure such professionals' activity against the references in the law and the judicial practice or ethics.

Although at present there are no generally accepted criteria for the data to be collected to evaluate the judicial system – only targets set for accession – the survey showed that that effort to collect data should consist of evaluating justice in its wider context, e.g. in its interactions with other variables (judges vs. counsels, justice vs. police, jurisprudence vs. laws, etc.), because a significant part of the way justice works is a result of the lack of coordination between several factors. Additionally to a wide consensus on the magistrates' degree of satisfaction over their current position – 71.3% said they were satisfied and 22.6% very satisfied with the current conditions for the exercise of their profession – the survey also reveals a series of aspects that continue to necessitate improvement in point of optimizing the quality of justice for its beneficiaries. Thus, the biggest problems perceived by magistrates (judges and prosecutors) concern the organization of the system: *the workload* (felt as too high by over 40% of the respondents), *the unstable legal framework* (regarded by almost half of the respondents as a problem with the system's organization), *the need to unify judicial practice*.

The magistrates regard as failures of the reform the legal instability (25%) and the inconsistency of legal measures (7%). (see page 20, Table on indicators for the objective evaluation of the system in the Section on Judicial Organization).

Data collection and monitoring should be performed regularly, and the procedures undertaken by an independent body should be meant to provide rapid adjustment of courts' organization to changes in the caseload (see pages #16, 17, Tables showing the workload in the Section on Judicial Organization, pages #53-55 in the Section on Expectations and Perceptions concerning the Reforms).

Also, considering that Romania is facing budget constraints for the judicial system at the same time as there is an increase in the number of legal actions filed, the survey suggests the possibility of *evaluating the quality of judicial work, including a look at its social and economic effectiveness, using criteria that are sometimes similar to those used in evaluating other public services*.

The survey emphasizes the need to implement the recommendations to reduce the courts' workload.⁹

It is also crucial to emphasize the interaction between the *quality of justice and the presence of adequate infrastructure, as well as that of the ancillary staff* (see page #52, Table on the evaluation of the system by the respondents, in the Section "Expectations and Perceptions Related to Reform").

The quality of justice should not be construed as a synonym for the judicial system's "productivity;" a quality-based approach should rather address the system's capacity to respond to the need for justice according to the general goals of the judicial system,

⁹ Council of Europe, Recommendation #R (87) 18

where speedy trial is only one element (see pages #22, 23, 24, 25, Table on the Random Case Assignment in the Section on Judicial Organization).

2.

International experiences with judicial performance measurement

The very idea to measure judicial performance is in some sense rather new and in some other sense very old. Certainly, the core of most judicial systems has some traditional elements facilitating some extent of performance evaluation: hearings are public, sentences must be justified in writing and decisions may be appealed to a higher court. Furthermore, there is in most civil law countries an ancient tradition for keeping account with the performance of individual judges.

In France, for instance, the first written document about systematic gathering of data about the characteristics and performance of judges dates back to 1850, and this evaluation system is probably much older (Conseil Supérieur de la Magistrature, 2005; Errera, 2005). In most French and German civil law countries the systems for evaluation of judges have evolved into highly formalized procedures around assessing and assigning marks for the professional performance of judges, and applying these data as input to decisions about promotion. In Scandinavian civil law countries and the common law countries evaluation of the performance of individual judges have remained rather informal (Malleon, 1997), probably partly owing to the fact that judges in these countries are appointed at a much later stage in their professional career and do not face the same kind of post-appointment career-system with gradual promotions as is typical in most French and German civil law countries¹⁰.

The formal evaluations of individual judges are however of limited interest with regard to the assessment of either courts or the judicial system as a whole. For one thing, the results of such individual evaluations are generally not made available for public scrutiny. Furthermore, aggregations of individual evaluations are not likely to tell us much about the comparative quality or performance of a given court system. It appears that almost all Italian judges are rated as very excellent by their superiors and peers (De Federico, 2005), while the rating of German judges is more dispersed (Riedl, 2005), but we can obviously not reason from this alone that Italian judges are superior to German judges.

In addition to the individual performance assessments, it has in recent years become customary for national judiciaries around the world to provide some data about the performance of the entire judicial system. This is done out of the philosophy that the judicial system exists to service the public, and as all other public service organizations it should be required to document how it delivers value for the money received from taxpayers. Furthermore, economists have in recent years drawn attention to the possible link between judicial performance and economic performance. A vast number of studies have argued that a well-functioning judicial system is conducive to more efficient capital markets, economic growth and increases in the number of economic transactions (Johnson et al, 2002; Feld & Voigt, 2003; Djankov et al, 2007). Society at large appears thus to have a keen and legitimate interest in holding judiciaries accountable.

¹⁰ In addition, since the number of judges of in the small civil law countries and common law countries is comparatively low, it may be easier to maintain an informal system, since it is possible to more or less "know" all judges.

It may be true that judicial systems have been late to adopt the principles of performance measurement and new public management. In a study for the World Bank Dakolias (1999) complains that neither national judiciaries nor law scholars have historically been much concerned with performance data, and that studies in this area are therefore bound to have a rather preliminary nature. Blank et al. (2004) in their “benchmarking” of the performance of 11 European judicial systems go so far as to state that the major empirical finding of their study is exactly that there is “a distinct lack of consistent data made available by the countries under review”. Especially, they conclude that there is a lack of aggregate data, and that judicial system performance does not seem to be a key policy issue in several countries.

Moreover, we seem to lack international consensus about what it is important to measure. . Certainly, we can infer some very general standards and guidance as to what justice systems should be able to do from e.g. the international human rights conventions and other international treaties which contain some norms for justice systems. But these are mostly abstract ideals which will need to be operationalized and prioritized. The problem is aptly captured in the following statement by a recent World Bank “handbook on justice sector assessment”:

“...Having an ideal model would make the assessment process far easier and lend itself to the creation of a single assessment template. However, there is no consensus, in the global justice community or among justice scholars, on what this model should look like. Even in an organization such as the World Bank, the views of those engaged in justice sector work differ markedly... The values commonly pursued in any justice reform program - access, efficiency, fair and high quality judgments - are themselves often in conflict and therefore unlikely to be advanced equally over the short to medium run...”
(Reiling et al, 2007: 9)

In spite of these challenges it is beyond doubt that the focus on and practice of judicial performance measurement has increased substantially in recent years. In addition to the statistics produced by national authorities and the judiciaries themselves, a substantial number of international organizations do now provide data about the comparative performance of judicial systems. Usually, these assessments rely upon surveys carried out among experts, business leaders, lawyers or citizens. The organizations providing such judicial performance assessments of judicial systems include (just to mention a few): The World Economic Forum, the World Bank (Doing Business and BEEPS), the Economic Intelligence Unit, IMD, Eurobarometer and the European Values Survey.

Some of these assessments provide analysts with rather interesting possibilities for comparing assessments by different categories of respondents. For instance, data from the EBRD-World Bank Business Enterprise Survey (BEEPS) which have polled approximately 20.000 firms in 27 transition countries, show that with regard to Romania those firms who had actually been involved in a civil or commercial case within the last three years were much more likely to consider the judicial system to be fair and impartial than those who had not. For some other countries (e.g. Croatia and Bulgaria), the situation was the reverse. One possible interpretation of this could be that the Romanian

judicial system is in fact better than its reputation.

While both evaluations of individual magistrates and assessments of entire judicial systems serve important purposes, it has in several countries been experienced that as a management tool, this information is of only limited value. With regard to individual assessments this is highly sensitive information because of the principle of judicial independence. With regard to the information at the systems level, this may sometimes be too general to act upon. For these reasons several countries have embarked upon measuring and benchmarking judicial performance at the court level.

The European Commission for the Efficiency of Justice (CEPEJ), established by the Council of Europe in 2002, has in a recent report documented that in the majority of European countries there exists some system of monitoring and producing statistical information about the activities of the individual court (CEPEJ, 2006)¹¹. In almost all countries there is a system to monitor the number of incoming, resolved and pending cases within each court, and courts are required to produce an annual report about their activities. Furthermore the majority of countries also reported to have some system for monitoring the length of proceedings within courts.

When it comes to actually having defined performance indicators at the court level, this is the situation in 22 European countries. In many of those countries specific targets for court performance have also been set up. User surveys at the court level are somewhat less common, but at least 12 countries report to carry out such surveys at either systemic or ad hoc basis.

Obviously then, there is no unitary approach to judicial performance measurement at the court level. Since it is generally a new invention, it appears that many countries are still very much within an experimental phase in this field.

Possibly, the country with the longest experience with performance evaluation at the court level is the United States. One of the first initiatives in this direction, and certainly the most well known, is represented by the US Trial Court Performance Standards (TCPS), which was developed from 1987 and on. They are different from the traditional approach to performance evaluation in two important respects. First, since it was and is by many Americans deemed inappropriate to gauge the performance of individual judges in the US, the use of the standards has not been intended or recommended for measurement of individual performance but rather of the performance of courts. It is thus a measure of the aggregate performance of judges and other staff in a given court, and has essentially been intended to provide feedback for internal debate and self improvement. Second, it has attempted to measure against what citizens are expected to want from courts. Instead of trying to identify what behavior or characteristics would make a judge deserve a promotion, the critical question and starting point for the work on the development of the Trial Court Performance Standards was to identify what courts should be accomplishing seen from the view of the citizen. One of the architects of the standards sums up that TCPS are constructed upon the notion that:

¹¹ This information relates to the situation as it was in 2004.

“Citizens want ready access to the justice delivered by the courts; they want that access to be safe, relatively convenient, and affordable. Once they have gained access, they want their business with the court dealt with expeditiously and fairly, according to the facts and the established rules. They want their disputes to get individual attention and to be dealt with fairly. They want their courts to be independent of other branches of government and other agencies to ensure that decisions and actions are based solely on legally relevant factors. Ultimately, they seek trust and confidence in the courts” (Keilitz, 2000: 583)

TCPS eventually identified five performance areas which were supposed to embrace the fundamental purpose and mission of courts. First, the court system should strive to provide access to justice, and thus eliminate all barriers to – physical, geographic, procedural and psychological, to court services. Second, focus should be on expedition and timeliness to ensure pace of litigation and reduction of delays. Third, courts should honor the right to due process and equal protection of the law and thus strive to achieve equality fairness and integrity. Fourth, the judiciary should strive to achieve a balance between independence and accountability, and in this way both maintain its distinctiveness as a separate branch of government, and maintain an effective working relationship with the other branches. Fifth and finally, courts should instill public trust and confidence since they derive their power and legitimacy from the public’s trust. TCPS did furthermore not only identify these performance areas, but also told courts exactly how the standards should be measured¹²¹³.

TCPS may not have been a huge success as a court management tool in the US. Schauffler (2007) sums up that the proposed measures (68), which were used to assess the performance in each area, were too many and complex, the court’s information systems were not designed to produce the required data, the manual data collection turned out to be much too cumbersome, and finally the economic pressure on courts which to some degree instigated the development of TCPS lessened as the economy recovered. In reality, the Trial Court Performance Standards did not change operations in more than a few courts, but at an intellectual level they appear to have changed the debate and changed the perception about the value of data. TCPS has left a legacy as an approach to judicial performance management. The core ideas that the unit of measurement should be at the organizational (court) level, and that the standards should be derived from expectations about what society wants from courts seem to be here to stay.

TCPS is currently being replaced by new and much simpler system named CourTools, comprised of just ten measures. When launching this new system, The US National Center for State Courts put forward the following major reasons for assessing court performance:

¹² This relates to the 2005-survey.

¹³ The TCPS uses a variety of data collection methods and techniques, including: a) observations by trained officials; b) structured interviews; c) case and administrative record reviews; and d) surveys of the general public or various reference groups, such as court employees or members of the media.

1. Perceptions and beliefs of court insiders about how work is getting done are not always accurate. Performance data allow everyone to test the reality of their assumptions.
2. Performance measurement forces court leaders and managers to be clear about desired outcomes. Setting clear targets for desired outcomes help court staff to better understand the importance of their individual contributions.
3. Performance data help focus and direct management effort by revealing which goals are reasonably being met, and which ones are marked by poor or unacceptable performance. As a result, data may show that some activities need tighter management oversight, improved administrative practices, more resources, or different configurations of personnel.
4. Performance data may assist courts and budgetary authorities when preparing, justifying and presenting budgetary requests.
5. Finally, formal performance assessment signals a court's recognition, willingness and ability to meet its critical institutional responsibilities as part of the third branch of government.

In a European context, one of the countries which have gone farthest with regard to performance measurement at the court level is the Netherlands¹⁴. The Dutch system, RechtspraakQ, is openly inspired from TCPS, but has been developed and modified to a considerable extent to fit the Dutch circumstances (Lauwaars et al, 2001). For instance, in the Dutch system the five judicial performance areas or standards have reference to the Article 6 of the European Court of Human Rights which states that judges should be independent and impartial, be accessible to anyone, conduct fair and public hearings, and pass judgments within reasonable time. Because the Dutch judicial system has faced particular problems with regard to the length of court proceedings, a lack of unity of law, and lack of public trust (Albers, 2002), the evaluation system was designed to emphasize and tackle these aspects in particular. The Dutch system comprises all in all 59 performance indicators which courts and court sectors use to get a "rough picture" of the quality of the court's or the court sector's performance in these areas.

The Netherlands also applies statistical data as the foundation for allocating human resources (and budgets). In the so-called Lamacie-model 48 categories of cases have been identified, and for each category a standard amount of time, needed for judges to handle the cases, has been defined by a committee of judges, who determined the average degree of complexity for each type of case. At the beginning of each year the Judicial Council in the Netherlands makes an estimation of the number of incoming cases (using the Lamacie case categorisation), and by using the Lamacie model, it can in this way also estimate how many full-time equivalent judges each court needs. This information is then used by the Judicial Council to negotiate with both courts and the Ministry of Justice about resource allocation.

The allocation of resources and benchmarking of court performance has also been a

¹⁴ The measuring system was initially tested in 2001 in the district court of Roermond. Based on this experience the system was adjusted, and then tested again in the Maastricht district court and the criminal law sector of the Amsterdam district court. The system has since then been gradually enrolled, and will be operating on a full national scale in 2007 (Raad voor de Rechtspraak, 2005).

major focus of the Danish judiciary since the establishment of the independent judicial council to administer the courts in 1999 (Wittrup, 2005). Since 2000 the performance with regard to timeliness and productivity of each district courts have been recorded in an annual court report which compares the court's performance with average performance, top-performance and national targets. An important intention with introducing this type of performance measurement has been to stimulate courts to improve performance, and it has in fact been documented that performance improved considerably since 2000.

A second objective was to assist the judicial council (or Courts Administration) in its efforts to plan and allocate resources. As a very simple illustration, the introduction of this type of performance measurement allowed to council to distinguish among the following four types of courts (see table).

		Productivity (cases resolved divided by resource input)	
		Low	High
Timeliness (ability to resolve cases within established time standards)	Good	C	A
	Poor	D	B

The “star” performers are then placed in cell A. These courts with high celerity and high productivity are considered to be Best Practice courts, and a special team of Best Practice consultants were established by the council to analyze and identify the practices which allows these particular courts to perform so well, and to disseminate this knowledge to other courts.

Courts in cell D are the worst performers. They may need some special attention, encouragement and assistance from the judicial council. Courts in cell B are rather likely to be understaffed, since they do not manage to solve cases on time, even though they have a high productivity. Conversely, courts in cell C might be suspected to be overstaffed. Thus the indicators will assist the council when allocating resources.

A particular successful element with regard to the Danish approach to performance measurement appears to have been the consistent dialogue and mutual cooperation between courts and the council about the establishment, further development and interpretation of the indicators. All indicators have been developed in cooperation with judges and clerks, and within each court report the court comments upon the indicators.

These comments have supplied the council with much better foundation for interpreting assessing the performance of the court (e.g. in some instances there may be some very reasonable explanations for why a particular court has temporarily inferior performance), and it has also led to a more profound understanding of the weaknesses in the data, thereby showing where it was needed to improve statistical methods.

Finally, it should be mentioned that the Danish judiciary has also developed a methodology for measuring judicial quality which is to be integrated with the indicators

mentioned above. This model focuses on measuring 1) the quality of judicial decisions; 2) the degree to which court officials treat the parties in a case with due respect; 3) impartiality; and 4) the quality of court management. These indicators are to be measured by a mix of audits, statistical data and user surveys.

While it may for an outsider appear that it is a very easy and simple job to introduce such judicial performance indicators, any discussions with those who have been involved will reveal that this is by no means the case. In USA, the Netherlands, Denmark and elsewhere this change project has tended to be very difficult, and have been met with resistance and occasional set-backs. The very idea of being held accountable by performance indicators is something which it takes time for magistrates to get used to. For example, the recent introduction of judicial performance indicators in France provoked according to two observers, the following reaction:

“...After a period of indifference and amused detachment towards the heralded technocratic approach... the judicial professions began to worry as they realized that this was no mere piece of window-dressing without effect... but rather a far-reaching change with direct implications for professional practice. Measures driven by the Ministry of Finance, such as setting an overall allocation for each court, drawing up performance indicators and introducing performance incentives considerably disturbed the judicial community...” (Jean & Pauliat, 2005)

The main lessons to be learned from these international experiences with judicial performance measurement may then be summed up like this:

1. **Measuring court performance serve important purposes.** It is not enough to measure at only at the individual and the systems level. Performance measurement at the court level may support a process of continuous evaluation and learning, provide a foundation for more efficient budgeting and allocation of resources, serve to motivate staff to improve performance, and serve to improve the court's standing and reputation within society by documenting to stakeholders that the organization is concerned about its performance.
2. **There is no single receipt for how it is to be done.** Different countries have different challenges with regard to improving judicial performance and different traditions, and the performance measurement system should be tailored to confront these particular challenges.
3. **Be careful when interpreting the indicators.** A set of perfect performance indicators doesn't exist. Statistics alone will never provide a fully accurate picture of court performance. Because of that it is important to consider the indicators not as the final say about court performance, but rather as a starting point for further discussion and exploration.
4. **Don't aim for perfection.** Since perfect performance indicators do not exist, it is futile to look for them. Doing so will likely cause frustration and endless delay in the process of developing useful indicators.

5. **Limit the number of indicators.** Too many indicators will render the performance measurement system too complex and too cumbersome to have real benefit.
6. **Develop a culture of transparency, open dialogue and critique about the use and further development of the indicators.** Truly active participation by court staff when using and developing performance indicators is a prerequisite for success.

3.

Possible performance indicators for the courts and prosecutor's offices in Romania. How do they practically work while being measured?

In the proposed analysis, we identified a number of 13 performance indicators for the Romanian courts and 11 performance indicators for the prosecutor's offices, whence the quality of the judicial act in Romania can be measured. The results of these indicators shall not be interpreted singularly, but, as stated before, within the general context of the judicial acts enforcement, which implies actions from a number of other state organs other than courts or prosecutor's offices, observance of the contradictory character of the proceedings, experts or lawyers involvement and, last but not least, the existence of certain procedural terms that should be respected, of some procedural rights that impose a certain procedural path or some issues that shall be taken upon concretely, for every single case.

The indicators estimation leads to some statistical data, upon which the line in efficiency and transparency towards our courts can be indicated. Regarding the calculations in the present study, they are based on the statistical data sent by the courts and prosecutor's offices, based on the IPP public information requests. A number of 180 requests has been totally sent by the Institute for Public Policy (IPP) to the courts and the prosecutor's offices (all Courts of Appeal and the prosecutor's offices next to them, 2 tribunals under each Court of Appeal and the prosecutor's offices next to them, respectively 3 country courts under these Tribunals and the prosecutor's offices next to them). In selecting the courts, the geographical dispersion criteria took prevalence (the courts and prosecutor's offices had to have their headquarters in different localities). The response rate was 78,72% for the courts and 64,98% for the prosecutor's offices¹⁵.

Consequently, the values presented therein have representative character regarding the institutions that supplied the data requested by IPP and they are presented for practically arguing the way in which the indicators are calculated.

Following the synthetic presentation of these indicators, they will be analyzed in turn, establishing connections, conclusions and follow ups for fulfilling the optimal values for an efficient Romanian judicial act, under the perspective of these results.

¹⁵ The reference material was realized by PPI, based on the public information requests addressed under the Law nr. 544/2001 and took place in the period March – May 2008.

Courts	Prosecutor's offices
Celerity	
Ind. 1: Procedure efficiency index = nr. of cases solved within the <i>reasonable term</i> /nr. of cases entered within the <i>reasonable term</i> ¹⁶	Ind. 1: Procedure efficiency index = nr. of cases solved ¹⁷ within <i>the reasonable term</i> / nr. of cases entered within the <i>reasonable term</i> ¹⁸
Human resources management	
Ind.2: Optimal number of judges per court = nr. of cases of the court within one year/nr. of cases at the national level within one year x total nr. of judges at the national level for the respective year	Ind.2: Optimal number of prosecutors per prosecutor's office = nr. of cases of the prosecutor's office within one year/nr. of cases at the national level within one year x total nr. of prosecutors at the national level for the respective year
Ind. 3: Optimal number of clerks per court = nr. of cases of the court within one year/nr. of cases at the national level within one year x total nr. of clerks at the national level for the respective year	Ind. 3: Optimal number of clerks per prosecutor's office = nr. of cases of the prosecutor's office within one year/nr. of cases at the national level within one year x total nr. of clerks at the national level for the respective year
Ind. 4: Optimal activity charge = nr. of cases solved within one year/nr. of judges of the court for that year	Ind. 4: Optimal activity charge = nr. of cases solved within one year/nr. of prosecutors of the prosecutor's office for that year
Ind. 5: Average cost of case solving = expenditure of the court within a year /nr. of cases solved for that year	Ind. 5: Average cost of case solving = expenditure of the prosecutor's office within a year /nr. of cases solved for that year
Ind. 6: Managerial index = nr. of management positions in the court scheme/total nr. of positions in the scheme	Ind. 6: Managerial index = nr. of management positions in the prosecutor's office scheme/total nr. of positions in the scheme
Transparency and trust in the quality of the judicial act	
Ind. 7: Citizens' contentedness index = nr. of citizens who have answered they	

¹⁶ To be determined; for the civil cases, this term shouldn't be longer than one year.

¹⁷ With solution for trialing / not trialing.

¹⁸ For the prosecutor's offices, still to be determined.

were satisfied and very satisfied with the way in which the court acted	
Ind. 8: Impartiality perception index = nr. of citizens who have answered the judges were impartial during the session	
Ind. 9: Transparency index = nr. of public information requests answered by the courts/ total number of public information requests sent to the courts x 100	Ind. 7: Transparency index = nr. of public information requests answered by the prosecutor's offices/ total number of public information requests sent to the prosecutor's offices x 100
Ind.10: Trust index = nr. of challenging request formulated + nr. of displacement requests / total number of cases solved by the court within one year	Ind. 8: Trust index = nr. of complains against non trialing solutions/ total number of cases solved within one year
Quality of the judicial act	
Ind. 11: Cassation index = nr. of cassations per year/ total nr. of cases solved by the court within one year	Ind. 9: Criminal pursuit restore index = nr. of files restored to the prosecutor's office within one year / total number of cases solved within one year
Ind. 12: Imputable cassation index = nr. of imputable cassations within one year/ total nr. of cases solved by the court within one year	Ind. 10: Repeal index for the non trialing solutions = nr. of repealed non pursuing resolutions and ordinances + nr. of repealed resolutions and ordinances for expelling from the criminal pursuit + nr. of repealed cessation (of the criminal pursuit) resolutions and ordinances / total number of cases solved within one year
System predictability	
Ind. 13: Number of measures enforced by the court towards jurisprudence uniformity	Ind. 11: Number of measures enforced by the prosecutor's office towards jurisprudence uniformity

Celerity

Indicator nr. 1: Procedure efficiency index

Procedure efficiency index represents the first argument in establishing the contexts and the causes under which the length of the procedures evolves, as part of the right of every individual to a fair trial, as stated by Art. 21(3) of the Romanian Constitution.

An efficient procedure means, in our opinion, a legal proceeding whose solution is pronounced in a reasonable term, under the reserve of its correctitude and complete character, without inflicting the individual procedural rights. The collocation “reasonable term” does not have any legal definition either in the Constitution or in the internal laws and more, in the international treaties ratified by the Romanian Parliament, like the European Convention on Human Rights- ECHR.¹⁹

From this perspective, the reasonable term regarding a legal proceeding and consequently the efficiency of the procedure itself shall be appreciated and estimated concretely, for each case. It’s the same conclusion that we find in ECHR jurisprudence, which, of course, operating with a high level of abstraction and generalization, makes connections with the concrete appreciations for the procedural terms provided by the legislation of each member state of the Council of Europe.

Using these assertions, the procedure efficiency index can be generally expressed, both for the courts and the prosecutor’s offices, as the ratio between the amount of cases solved by a court or prosecutor’s office and the number of cases entered within the reasonable term.

$$\text{Procedure efficiency index} = \frac{\text{Nr. of cases solved within the } \textit{reasonable term}}{\text{Nr. of cases entered within the } \textit{reasonable term}}$$

The reasonable term is, in fact, the one that should be determined, because beyond the inconstancies and the variables of every procedure, the majority of the magistrates consider that, at least for the civil cases, this reasonable term should be of approximately one year.

¹⁹ Art. 6 al. 1 ECHR- **extras** - In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Human resources management

Human resources management has an extremely important weight in the activity of the Romanian courts and prosecutor's offices, because depending on that, the institution can handle optimally the tasks and the competences assigned to it. Starting with the human resources and ending with the material ones, they all determine and influence the modality of solving any lawsuit, being at the same time an extension of the aforementioned indicator. That's because the due diligence obligation of complying in a reasonable term with the requests of any legal proceeding implies the rational use of the resources the court or prosecutor's office currently disposes of.

For analyzing the resources management issue, we identified the following performance indicators under which the quality of the judicial act can be measured, as follows:

Indicator nr. 2: Optimal number of judges / prosecutors per court / prosecutor's office

The number of magistrates within a court or prosecutor's office is essential in measuring the general quality of legal proceedings enforcement, simply because an appropriate number of magistrates, proportional with the number of cases entered, will increase the chances for solving these cases within a reasonable term and according to all the procedural requirements.

Consequently, a low number of magistrates activating in a court or in a prosecutor's office increases the activity charge, meaning the number of cases to be solved per magistrates, which often leads to a low output because this materialized impossibility of solving a number of requests that is too large for the human and logistic capacities. More, this leads to an increment of the backlog, constantly leading to very long procedural terms, which makes the individual unsatisfied with his endangered right to a fair trial and the instance incapable of exercise its competencies.

This indicator has been drafted as a ratio between the number of cases entered in a court or prosecutor's office within a year and the total number of cases entered at the national level within the same year, reported to the number of magistrates in activity for that year, as follows:

$$\text{Optimal number of judges / prosecutors} = \frac{\text{Nr. of cases of the court / prosecutor's office within one year}}{\text{Nr. of cases entered at the national level}} \times \text{total nr. of judges / prosecutors at the national level per year}$$

For the 94 courts and 94 prosecutor's offices for whom we've practically analyzed this indicator for the year 2007, the following data has been attained: from the information sent by the Superior Council of Magistracy, the Romanian courts solved 1.452.951 causes in 2007 and the Romanian prosecutor's offices solved 426.676 causes for the same year, with 4259 judges and 2309 prosecutors in activity. The analyzed formula varies with the number of requests received by each court and prosecutor's office, and the results will be compared, according to the table below, with the real number of magistrates in activity for each court or prosecutor's office.

As an example, we have chosen a number of 3 courts and 3 tribunals for which we calculated this indicator.

Court / prosecutor's office	Nr. of cases entered in 2007	Number of magistrates per court / prosecutor's office in 2007	Optimal number of magistrates that should have been activated for 2007 within the courts / prosecutor's offices
Court of Appeal Pitești	5515	40	16,16
Constanța Tribunal	20990	43	61,52
Session court Onești	7829	16	22,94
Prosecutor's office next to the Court of Appeal Craiova	887	8	4,8
Prosecutor's office next to the Tulcea Tribunal	6295	19	34,06
Prosecutor's office next to the Sinaia Session Court	1492	4	8,07

Analyzing the table, one can easily see that there's no identity or equality between the number of magistrates that activated within the courts and prosecutor's offices and the number of magistrates that should have been active within the same institutions. For some of the cases, like Pitesti Court of Appeal, the number of active judges is even bigger than the optimal one, which leads to the conclusion that, at least theoretically, for this kind of court all the premises of having a reasonable and appropriate trial, with all the procedural guarantees, are established.

But generally, the number of magistrates is under the average ratio, which implies aspects that endanger the optimal development of any legal proceeding. From this point of view, such a court cannot offer the observance of all the procedural guarantees and mainly of those related to the reasonable term of solving the respective request.

Related to the analyzed indicator, the courts and the prosecutor's offices in Romania do not have in principle and from the human resources point of view the capacity of solving all the legal proceedings issued, within a reasonable term, due to the insufficient number of magistrates to the cases annually entered.

Indicator nr. 3: Optimal number of clerks per court / prosecutor's office

Similarly with the precedent case, this indicator has been conceived as a proportion between the number of cases entered within a court / prosecutor's office within one year and the total number of cases entered at the national level within the same year, reported to the number of clerks in activity for that year, as follows:

Optimal number of clerks =	$\frac{\text{Nr. of cases of the court / prosecutor's office within one year}}{\text{Nr. of cases at the national level per year}}$	x total nr. of clerks at the national level
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In the same conditions as the precedent indicator, an appropriate number of clerks in a court or prosecutor's office represent one of the guarantees of an efficient judicial act, while on the contrary, and insufficient number of clerks reported to the activity charge affects the timely accomplishment of all the cases entered in the respective court / prosecutor's office.

From this perspective and related to the Romania jurisprudence, the magistrates have constantly stated that the number of clerks per each court is insufficient reported to the activity charge, and more, the clerks are obliged to look upon other kind of activities as

well, not necessarily related to the jurisdictional tasks, like the administrative activities, that can also lead to inadvertences towards the quality of the judicial act in general..

From the perspective of the last two performance indicators, we can conclude that, within the courts and the prosecutor's offices in Romania, the general rule is the insufficiency of the human resources involved in the deployment and enforcement of most of the legal proceedings. Of course, this conclusion is limited to the number of courts and prosecutor's offices analyzed, with the mention that there are cases where the human resources issue is not decisive in enhancing an efficient judicial act. Still, we consider that the data acquired based on this indicator should be taken prevalence upon while allocating the number of magistrate position within the courts, while enforcing selection procedures for the magistrates and, not least, while qualifying the activity of a court as performant or less performant.

Indicator nr. 4: Activity charge (workload)

The optimal activity charge represents the number of cases that every court or prosecutor's office is currently dealing with and at the same time an exemplification of an equitable judicial act, coherent as procedure and reasonable as length. Once again the optimal activity charge index is reflected in the evolution of the first performance indicator analyzed, the one referring to the length of procedures, with the mention that, statistically speaking, in order to attain performance in the activity of the courts, the values of the optimal activity charge are generally in inverse ratio with the efficiency of the legal proceeding. A larger number of cases per magistrate mean a lower quality of the legal act. On the opposite, a number of cases proportional with the number of magistrates means increasing chances for a feasible and reasonable legal proceeding.

The indicator was conceived as a ratio between the number of cases solved within one year by the court or the prosecutor's office and the number of magistrates in the respective court or prosecutor's office, as follows:

$$\text{Optimal activity charge} = \frac{\text{nr. of cases solved within one year}}{\text{nr. of judges /prosecutors of the court / prosecutor's office for that year}}$$

For the pattern we have chosen, the optimal activity charge was calculated for 2005, 2006 and 2007. As an example, in the table below there are the results of the indicator for three courts and three prosecutor's offices, results that shall be discussed in the forthcoming paragraphs.

Court / Prosecutor's office	Year	Number of cases solved	Number of magistrates	Optimal activity charge
Court of Appeal Ploiesti	2005	11252	50	225,04
	2006	8155	42	194,16
	2007	6389	52	122,86
Satu Mare Tribunal	2005	5153	22	234,22
	2006	8451	23	367,43
	2007	7702	22	350,09
Costești Session Court	2005	1346	5	269,2
	2006	2384	5	476,8
	2007	1872	5	374,4
Prosecutor's office next to the Court of Appeal Brașov	2005	228	9	25,33
	2006	327	12	27,25
	2007	483	11	43,90
Prosecutor's office next to the Suceava Tribunal	2005	471	7	67,28
	2006	477	7	68,14
	2007	548	8	68,5
Prosecutor's office next to the Târgoviște Session Court	2005	2604	8	325,5
	2006	3330	10	309,7
	2007	3532	8	382,25

Firstly, the sample results of the indicators are generally constant for the three years, for each court or prosecutor's office analyzed. Provided that these are the values obtained by the courts and prosecutor's office in our pattern, reported to their activity during this three year period, the results have been appreciated as optimal due to the fact that, with a certain number of magistrates, a certain number of solutions has been pronounced yearly. It's practically the expression of the productivity the court or prosecutor's office had for the reference year.

In addition, for appropriately analyze the low or high quality of the judicial act, this indicator shall be ascribed to an ideal value, meaning the number of solutions one court or prosecutor's office should pronounce for a number of x magistrates. Anyway, the number of trials cannot be considered as constant as it depends on a certain sum of variables due to the fact that the citizens' access to justice cannot be limited. Therefore, an ideal certain value of what a court or prosecutor's office should do in terms of volume of work cannot be absolute or expressed only by figures.

Indicator nr. 5- Average cost of case solving

The average cost of case solving is also one of the indicators with a significant influence over the quality of the judicial act, because it determines how much from the budget of a court or prosecutor's office is assigned for one case solving, including incomes and dues for the staff involved in the jurisdictional activities, logistic expenditure, influencing also the celerity of case solving or payments for *ex officio* legal assistance.

This indicator has been conceived as a ratio between the expenditure yearly level per court or prosecutor's office and the number of cases solved for that year, as follows:

$\text{Average cost of case solving} = \frac{\text{Expenditure of the court within a year}}{\text{Nr. of cases solved for that year}}$
--

The average cost of case solving can determine whether a sufficient sum is assigned for case solving from the total budget of a court or prosecutor's office and therefore we can conclude that a sufficient allocated sum can represent one of the necessary conditions for a productive judicial act. In the same way, an insufficient sum allocated for case solving is generally leading to an increment of the activity charge, with all the subsequent consequences as analyzed before.

More, a coordination of the budgetary procedures is necessary at the national level, and a correlation of the budgetary figures with certain practical situations, taking into account, for instance, that the budgets for the session courts are allocated and controlled by the hierarchically superior courts.

In this context, we consider that in order to make reference to certain budgetary standards, the situation should be analyzed for each court or prosecutor's office in the system and from here the establishment of some minimal and maximal limits regarding the budgetary assignments. This is the context in which we propose the analysis of this indicator, provided its character of one of the most pragmatic means in which the quality of the judicial act can be measured as it represents by itself a basic condition for optimal enforcement of any legal act.

Indicator nr. 6- Managerial index

As a general rule, all the other indicators analyzed depend on the results of the managerial index. For instance, if in a court the number of management positions is correctly assigned and proportional with the activity charge, we find again, in principle, the fundamentals for optimal enforcement of any judicial act.

This is because the presidents of the courts of the chief-prosecutors within the prosecutor's offices, through their competencies and legal obligations, and based on the internal regulations of each court or prosecutor's office, have the leading role in managing and coordinating the jurisdictional, research or cooperation activities between the courts and the other institutions or entities involved in the judicial act (experts, interpreters, translators etc.)

More, they have the task of coordinating the activity of all the other magistrates within the court or prosecutor's office and from here, the capacity of anticipation and the approach towards different issues related to the judiciary, which of course can lead to better conditions for carrying on the judicial acts. Still, such an index may not exceed an average level as it should be established based on general consensus, otherwise we would have courts with half of the judges occupying executive positions, while in reality such a structure is not necessarily functional.

This indicator represents the ratio between the number of management positions occupied within one court or prosecutor's office and the total number of positions in the scheme, as follows:

$ \textbf{Managerial index} = \frac{\text{nr. of occupied management positions in the court scheme}}{\text{total nr. of positions in the scheme}} $

For the sample we have chosen for this analysis, the managerial index has been calculated for 2005, 2006 and 2007. As an example of this calculations, please see the table below:

Court / prosecutor's office	Year	Nr. of management positions occupied	Number of magistrates in scheme	Managerial index
Court of Appeal Oradea	2005	9	30	0,3
	2006	8	30	0,26
	2007	10	30	0,33
Covasna Tribunal	2005	7	14	0,5
	2006	8	14	0,57
	2007	8	14	0,57
Mediaş Session Court	2005	2	12	0,16
	2006	0	12	-
	2007	0	12	-
Prosecutor's office next to the Court of Appeal Iaşi	2005	4	15	0,26
	2006	4	15	0,26
	2007	4	15	0,26
Prosecutor's office next to Maramureş Tribunal	2005	8	13	0,61
	2006	8	13	0,61
	2007	8	13	0,61
Prosecutor's office next to Session Court Sector 3, Bucureşti	2005	2	22	0,09
	2006	2	22	0,09
	2007	2	22	0,09

Based on the data provided by the courts and the prosecutor's offices, it's easy to observe that the assignment of the management positions is generally constant at the level of the reference years. In all the cases, we can observe the sub unitary character of the ratio and a certain constancy for the results obtained. Our first conclusion can be that the managerial index has generally values between 0 and 1 and therefore the allocation of the management position is in principle uniform for all the judiciary. Certainly, we cannot generalize this conclusion as practical situations are more and more diverse. For instance, at Medias Session Court none of the management positions are occupied and therefore, it's easy to identify a lower capability in coordinating and controlling the current issues under its competence.

As a conclusion and as a recommendation at the same time, the capacity and the professional capability of those involved in the courts management should be strengthened in order to attain a certain constancy in coordinating and resolving the current issues of the respective institution and an integrated approach towards the quality of the judicial act for the courts and prosecutor's offices and, in the end, for the hole judiciary.

Transparency and trust in the quality of the judicial act

Indicators nr. 7 and 8: Citizens' contentedness index and Impartiality perception index

This indicators are first of all tied to some recommendations the present study is addressing to the Romanian judiciary, taking into account that the public perception regarding the quality of the judicial act is in fact the perception of the final recipient of each legal proceeding and, at the same time, the best expression of the way in which the courts and the prosecutor's offices act as guarantors of the citizens' rights and fundamental freedoms.

Therefore, the proposal addressed to the judiciary is related to the initiation of a broad polling process for all the citizens involved in legal proceedings in front of a court at a certain time. It's about soundings based on filling questionnaires whose results shall be analyzed and centralized periodically. This is because the public perception on transparency is the one of the most important indicators for the performance of the judiciary as it makes the most accurate representation of the expectancies and needs of the ones addressing to the justice.

Our study proposes the calculation of the **Citizens' contentedness index** as follows: from the total number of filled questionnaires, calculation of the proportion of those who have declared themselves content or very content with the way of enforcing the legal proceedings in the respective court.

Related to the **Impartiality perception index**, the study proposes the calculation of the

proportion of those who considered the judges were impartial during the session from the total number of filled questionnaires.

Among the criteria the respective questionnaires should contain there are:

- Professional knowledge and consequently the decisions of the judge, as perceived by the citizens
- Ability of applying theoretical knowledge
- Capacity of anticipating and organizing the activity of the court
- How do the citizens see the impartial way in which the session has been conducted by the judge.

Still as a recommendation, we also consider as useful such kind of measure towards its convergence with the objectives stipulated by the strategy papers at the national level²⁰ that aim at granting an efficient and transparent judicial system.

Indicator nr. 9: Transparency index

Transparency index is a general indicator, analyzed strictly from the perspective of the public information requests addressed by IPP to the courts and prosecutor's offices in our pattern. The indicator represents the percentage of the answers received by IPP from the total number of requests sent to the 94 courts and 94 prosecutor's offices next to them.

$\text{Transparency index} = \frac{\text{nr. of public information requests answered by the courts}}{\text{total number of public information requests sent to the courts}} \times 100$

For obtaining the data necessary for this indicator and consequently for realizing the support database for the estimation of all the other indicators, IPP used the provisions of Law nr. 544/2001 regarding the Access to Public Information. After sending specific questionnaires to the courts and prosecutor's offices in our pattern, starting March 2008, the figures for our indicator are:

²⁰ Annex to Government Decision nr. 1346/31.X.2007, regarding the approval of the Action Plan for accomplishing the conditions within the cooperation and verification mechanism for the progresses made by Romania in the judiciary reform and within the fight against corruption. Official Monitor Nr. 765 / 12 November 2007

	Sent requests	Answers received	Transparency index
Courts	94	74	78,72%
Prosecutor's offices	94	61	64,89%

Although the response rate is beyond the average and despite the fact that the public authorities have the legal obligation of providing the public information as requested, still there's a significant number of courts and prosecutor's offices that did not comply with this obligation. It's true that Law nr. 544 / 2001 was adopted in a period when a large consensus over the idea of transparence existed in the Romanian society, but the idea of legitimacy of this right of obtaining public information upon request is the one that mostly determines the proportion and the modality in which the public information request are honored by the public authorities and especially by the courts and prosecutor's offices.

Indicator 10: Trust index

Trust index is specifically based on some personal arguments of the citizen involved in a legal proceeding, as the latter one either feels threatened in his procedural rights by the quality of a judge, either considers that the respective court cannot offer all the guaranties of independence and impartiality and therefore asks displacement of the case.

In this context, the indicator has been conceived and calculated for the instances as follows:

$\text{Trust index} = \frac{\text{nr. of challenging request formulated} + \text{nr. of displacement requests}}{\text{total number of cases solved by the court within one year}}$
--

The simplest observation is that, the lower are the values of this indicator in terms of challenging and displacement requests, the higher is the trust of the citizens in the jurisdictional activity. On the opposite, the higher are the values of the indicator, the lower is the citizens' trust in the judicial act and consequently the quality of the judicial act is, at least at the level of public perception, low as well.

The indicator has been calculated for the courts and prosecutor's offices in Romania for the last three years: 2005, 2006, 2007 and some of the results of our patter will be exemplified as follows:

Court	Year	Number of challenging requests entered	Nr. of displacement requests entered	Total nr. of cases solved	Trust index
Court of Appeal Alba	2005	68	0	8260	0,008
	2006	100	0	5760	0,017
	2007	83	0	4828	0,017
Sibiu Tribunal	2005	11	0	5973	0,001
	2006	29	0	8679	0,003
	2007	29	0	7718	0,003
Mangalia session Court	2005	12	1	2940	0,004
	2006	8	1	3639	0,002
	2007	17	1	3097	0,005

Besides the fact that these indexes are around the value of 0,01, the variables for each court within the 3 years are not high as well. With all these, the volume of challenging and displacement requests is still low, which can lead to some supplementary guarantees for the feasibility of the Romanian judiciary.

Similarly with the estimations and conclusions for the courts, this indicator can also be calculated for the prosecutor's offices in the pattern, as follows:

$\text{Trust index} = \frac{\text{nr. of complains against non trialing solutions}}{\text{total number of cases solved by the prosecutor's office within one year}}$
--

Quality of the judicial act

Indicator 11: Cassation index / Criminal pursuit restore index

Cassation index is the expression of the number of repealed solutions for one court, after appealing that solution. The first conclusion we can draw from here is that, the lower is the number of the solutions appealed, the higher is the trust of the citizen in the quality of the solution pronounced.

Hence, the indicator has been conceived as a proportion between the number of cassations for a court within a year and the total number of solutions pronounced by the respective court in the same year.

$$\text{Cassation index} = \frac{\text{nr. of cassations per year}}{\text{total nr. of cases solved by the court within one year}}$$

Still as an example, in the table below we have calculated the indicator for three courts in our pattern. As a general rule, the lower is the value of this indicator, meaning a smaller number of solutions appealed for a bigger number of solutions pronounced, the higher is the public perception over the efficiency of the judicial act.

Court	Year	Nr. of cassations	Total nr. of cases solved	Cassation index
Court of Appeal Braşov	2005	7	8030	0.000872
	2006	7	4658	0.001503
	2007	35	4481	0.007811
Neamţ Tribunal	2005	150	6330	0,023697
	2006	125	10106	0,012369
	2007	491	8103	0,060595
Rm. Vâlcea Session Court	2005	416	13354	0.031152
	2006	465	12663	0.036721
	2007	418	10566	0.039561

Following the same path, the value of the criminal pursuit restore index was established

for the prosecutor's offices. Once again, the lower is the value s of the indicator for the prosecutor's offices, the better are created the premises for a more efficient judicial act.

$\text{Criminal pursuit restore index} = \frac{\text{nr. of files restored to the prosecutor's office within one year}}{\text{total number of cases solved within one year}}$

Here are some examples for the years 200, 2006 and 2007:

Prosecutor's office	Year	Nr. of cases restored	Nr. of cases solved	Criminal pursuit restore index
Prosecutor's office next to the Court of Appeal Timișoara	2005	3	183	0,019
	2006	2	207	0,009
	2007	0	449	-
Prosecutor's office next to the Vrancea Tribunal	2005	7	1209	0,005
	2006	8	1011	0,006
	2007	10	407	0,019
Prosecutor's office next to the Rm. Sărat Session Court	2005	2	1625	0,001
	2006	3	1505	0,001
	2007	0	1361	0

Indicator 12: Imputable cassation index / Repeal index for the non trialing solutions

Both the Imputable cassation index and Repeal index for the non trialing solutions represent a variant of the precedent indicator analyzed, with the addition that besides the repealed solutions, we're speaking about the imputable misconduct of the magistrate that pronounced the repealed solution. It's clearly stated that practically this indicator should have minimal values, the ideal case being zero, because it proves and infringement of a due diligence obligation on the part of the magistrate. One gladdening aspect regarding the pattern we have analyzed is that the values are very close to zero and in some of the cases even zero for the number of imputable cassations or repealed non trialing solutions.

For the courts, the imputable cassation index has been conceived as a ratio between the number of imputable cassation per year and the number of cases solved by the court in the respective year, as follows:

$$\text{Imputable cassation index} = \frac{\text{nr. of imputable cassations within one year}}{\text{total nr. of cases solved by the court within one year}}$$

For the prosecutor's offices, the repeal index for non trialing solutions has been conceived also as the ratio, as follows:

Repeal index for the non trialing solutions

nr. of repealed non pursuing resolutions and ordinances +
nr. of repealed resolutions and ordinances for expelling from the criminal pursuit +
nr. of repealed cessation (of the criminal pursuit) resolutions and ordinances

total number of cases solved within one year

We should also mention that the existence of the imputable cassations and of the repeal index does not exclusively offer us information on the activity of the magistrate. On the contrary, such aspects have a significant weight in appreciating the performances of the court, of the prosecutor's office and even more, are the proof of the quality of a certain repealed judicial act.

Below there's the example of three courts for whom we have calculated, based on the first presented formula, the imputable cassation index.

Court	Year	Nr. of imputable cassations	Total nr. of cases solved	Imputable cassation index
Court of Appeal Braşov	2005	0	8030	0
	2006	0	4658	0
	2007	0	4481	0
Buzău Tribunal	2005	128	5668	0,02
	2006	107	8323	0,01
	2007	106	8327	0,01
Rm. Vâlcea Session Court	2005	135	13354	0,010
	2006	198	12663	0,015
	2007	173	10566	0,016

System predictability

Indicator nr. 13: Number of measures enforced by the courts / prosecutor's offices towards jurisprudence uniformity

Jurisprudence uniformity is a *sine qua non* condition for the quality of the judicial act and of the judiciary in general. Practically, this implies the same solution for similar cases, the same way of interpreting and applying the law and the same manner of enforcing legal proceedings.

For the present study, some aspects regarding the uniform practices can be identified, mostly regarding the way in which the courts and prosecutor's offices understood to enforce the provisions of the Law nr. 544 / 2001, based on which IPP has developed a comprehensive database, as stated before.

That's why, as a recommendation and in agreement with all strategy documents at the national level, some correlations between the concrete measures should be enacted. That's why this last indicator has to be especially regarded in the context of all the other performance indicators described before. Hence, the practical measures adopted by the courts and the prosecutor's offices are tied with the management system of the respective court or prosecutor's office, with the analysis of the evolutions or involutions of the quality of the judicial act, correspondingly with the proposed indicators: workload, management index, contentedness of the public opinion etc.

In the Report regarding the evolution of the accompanying measures 2007, it's stated for instance that a periodical consulting mechanism has been instituted for the courts and the prosecutor's offices in Romania, in order to keep all these institutions involved in unifying the legal practice within the system. Starting January 2007, according with the 2006 Action Plan elaborated by the Superior Council of Magistracy (SCM), periodical meetings among the Presidents of the High Court of Cassation and Justice Sections and the presidents of the courts of appeal sections have been established, for elaborating proposals for unitary practice. In February 2007, SCM instituted the obligation for each court of organizing monthly meetings of the judges, in order to enforce an adequate communication among the practitioners. The Council also elaborated a central mechanism through which periodical meetings for creating a forum in which all the courts that give solutions in the last instance (HCCJ and Courts of Appeal) should establish a common cassation practice. Our indicator could measure how many of these measures have been applied at the level of the courts and prosecutor's offices. For instance:

- a) Quarterly meetings with the judges from the judiciary control court (the hierarchically superior one);
- b) Information of the magistrates regarding the results of the periodical meetings organized by SCM;
- c) Monthly discussions over the cassation practices and of the HCCJ practice in the relevant field
- d) *Newsletter* sent by the Judiciary Inspection regarding the results of the controls;
- e) *Newsletter* / intranet regarding the judiciary statistics / criminality –causes and punishments pronounced in definitive decisions.

4.

Few conclusions on the opportunity / necessity of establishing a survey practice on the performances of the courts and prosecutor's offices

The first argument in choosing these indicators was their essentially practical features, of measuring the modalities and the means that contribute to the enforcement, efficient or not, of the judicial act in Romania. The calculations for the indicators are an easy task, taking into account that IPP realized a comprehensive database, using the information provided by the courts and prosecutor's offices in Romania, together with the Superior Council of Magistracy.

Given the fact that the efficiency, impartiality, transparency or reasonable terms in which any court or prosecutor's office shall pronounce a solution are basic principles of the judiciary in general, these indicators are in the end an inherent argument for measuring the performances of the judiciary, based on these principles.

Of course, the calculations within this study represent only gross or empirical forms of the analysis criteria, because on the one hand they can be modified and improved and, on the other hand, the enactment of a judicial act is not a singular process, but it has to be regarded in the judicial and extrajudicial context of its display. Thus, we cannot appreciate the productivity of a judiciary only in terms of costs, celerity or resources management and therefore the results of these indicators have to be interpreted concretely, for each court and each prosecutor's office. The outcome of these indicators cannot be applied generally, for all the judiciary, as they are only a base for estimation, calculation which makes possible further and in depth evaluations over the pattern.

More, each of these indicators contribute to the broad image over the proportion and over the means in which every court or prosecutor's office contribute to the unitary practice in the judiciary, as the expression of the system predictability or of the security in the legal reports.

court for not communicating public interest information			
No. of judges in the organizational chart			
No. of actual judges			
No. of candidates for judges vacant positions' contests			
No of judges for the			
Total no. of top executive positions of the instance			
Total no. of executive positions <i>occupied</i>			
No. of delegations approved			
No. of judges for the administrative department (<i>contencios</i>)			
No. of court clerks			
No. of session rooms			
Overall surface (in square meters) for offices			
No. of computers			
No. of disciplinary actions against judges			
No. of disciplinary actions against judges admitted			
No. of appeals to disciplinary actions			
No. of intimations of Deontology Code infringement			
No. of intimations of Deontology Code infringement admitted			
Total number of cases per instance (initial number + new entered cases minus suspended causes)			
No. of cases for judiciary inspection			
Average number of cases per session			
Average number of cases per judge/month			
Average number of cases solved/year			
No. of recordings according to article 98 from the Internal Standing Orders (replacement in panel)			
No. of judges who attended professional training courses			
Total amount spent by the instance with professional training of judges			
No. of cases solved through direct mediation			
No. of cases solved through judiciary transaction			
Total no. of experts agreed by instance			
No. of topographic experts agreed by instance			
No. of forensics agreed by instance			
No. of technical judiciary experts agreed by instance			
No. of judiciary experts			
No. of causes with ordinary appeal			
No. of causes with extraordinary appeal			
No. of court decisions annulated (cassation)			
No. of imputable cassations			
No.. of convictions communicated by ECHR			

No. of complaints against the state of Romania communicated			
No. of rejection (<i>recuzare</i>) requests			
No. of rejection (<i>recuzare</i>) requests admitted			
No. of displacement requests			
No. of displacement requests			
No. of abstentions			
No. of civil cases/year			
No. of penal cases/year			
Total no. of court decisions per year			
No. of empowered judicial decisions			

Sample Questionnaire used in collecting information from Prosecutor's Offices

The questionnaire hereto is part of the project "Performance indicators – a fundamental instrument for measuring the quality of the justice act in Romania", a research targeting the analysis of receptivity and availability of the prosecutor offices in observing the rights of the NGOs to public information. Thus, one may observe to what extent the prosecutors offices have a similar approach in applying Law no. 544/2001 and in the communication of information deemed as being of public interest.

*The topics have been selected in such a way to provide a benchmark between peer institutions. In order to allow the processing of the collected information, please explicitly specify the 0 values (0 measuring units) **differently against the cases when you do not have information** (that shall be marked with X).*

The list comprises public interest documents from the activity field of prosecutors offices but also documents issued and/or managed by the prosecutors offices.

In this context, we ask you, under the provisions of Law no. 544/2001 concerning the free access to the public interest information, to provide us the information contained in the questionnaire hereunder. Where you deem necessary, please attach as well other additional documents/information that would render as faithfully as possible the specific of your prosecutor's office, the problems having generated a non-unitary practice in applying this normative act.

1. Is there, at the level of your institution, record of prosecutors appointed in managing positions in the period 2005, 2006, 2007?

YES NO

If yes, please submit us a copy of the same.

2. Please specify if there is any record of the continuous training courses/sessions.

YES NO

If yes, please submit us copies of the certificates, the writs certifying the same.

3. Please specify the average number of files older than one year you have under processing. _____

4. Please provide certain information (broken on the years 2005, 2006, 2007) concerning the following aspects:

	2005	2006	2007
No. of received public information requests under Law no. 544/2001			
No. of answered requests			
Total no. of prosecutors of the prosecutor's office			
No. of vacancies for the filling of the prosecutor position			
No. of candidates that have presented for the filling of the vacant prosecutor positions			
Total no. of existing managing positions within the prosecutor's office			
Total no. of filled managing positions within the prosecutor's office			
Total no. of existing executive positions within the prosecutor's office			
Total no. of filled executive positions within the prosecutor's office			
No. of prosecutors – forensic section			
No. of prosecutors – penal prosecution and criminal section			
No. of prosecutors – human resources and documentation section			
No. of work spaces reserved to prosecutors			
No. disciplinary actions issued against prosecutors			
No. of admitted disciplinary actions			
No. of contestations to the disciplinary actions			
No. of intimations of the violation of the Deontological magistrate code addressed to the Magistrates' High Council			
No. of admitted intimations for the violation of the Deontological magistrate code			
Total no. of files received for settling in a year by the prosecutor's office			
Average no. of files distributed for settling per month to a prosecutor			
Total no. of absences of prosecutors in one year			
No. of prosecutors having attended continuous training courses			
Amount spent with the annual professional training of prosecutors			
No. of files within a year where "not to sue" solutions have been decided			
No. of cases when the re-submittal of the file to the prosecutor was decided			
No. of files within a year where indiction solutions were given			
Total no. of resolutions formulated by prosecutors			
Total no. of ordinances formulated by prosecutors			
No. of "not to sue" solutions			

No. of prosecution removal solutions			
No. of prosecution ceasing solutions			

5. Please submit us two copies of the following documents afferent to the years 2005, 2006, 2007:

- b) Attendance records
- c) Job description of the prosecutors in managing positions
- d) Prosecutor appreciation sheets
- e) Accounting balance

6.

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