



**“FIGHTING CORRUPTION –
A PRIORITY OF THE REFORM PROGRAM” –
FINAL REPORT ON FIVE SEMINARS
HELD BY ABA/CEELI
WITH SPONSORSHIP FROM SPAI**

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I. BACKGROUND

Corruption constitutes a threat to democracy, the rule of law and social justice. Furthermore, it undermines the principles of an efficient administration, harms a market economy and jeopardizes the stability of state's institutions. While corruption has always been known to exist, it is not acceptable for corruption to achieve a state of normalcy. Unfortunately, the Romanian population begs to differ and the great majority is convinced that the fight against corruption has "no meaning."¹ While a National Action Plan against Corruption was approved by the government at the end of 2001,² most Romanians are still convinced that the government is not genuinely interested in fighting corruption.³ As corruption and perception about corruption remain widespread and systematic and because Romania seeks accession to the European Union, the European Commission continues to vehemently criticize the Romanian government for the current situation.

According to a recent *Growth from Knowledge* (GfK)⁴ poll, the justice system is viewed as the second most corrupt body.⁵ The judiciary is perceived as less trustworthy than the police, army or religious institutions.⁶ Though alarming, the recent surveys do not provide any surprising information;⁷ other reputable institutions, such as the World Bank and the Open Society Institute (OSI), had previously reported on the level of corruption in the Romanian judiciary.⁸ According

¹ Alina Grigoras, *According to GfK poll, Romanians perceive increased corruption*, Nine O'Clock, no. 3155, p. 2, (Apr. 22, 2004) (citing to the recent findings of a public opinion survey conducted by the GfK institute). The GfK survey results may be found at http://www.gfk-ro.com/ccb/climatul_coruptiei.pdf.

² Guvernul Romaniei, *National Program for Prevention of Corruption and National Action Plan Against Corruption*, available at www.gov.ro/engleza/obiective/coruptieNATIONAL%20PROGRAM%20prevent-Corruption.pdf (accessed on May 10, 2003).

³ Alina Grigoras, *supra* note 1, at 2.

⁴ The GfK Group is a leading market research company which was established 70 years ago. It has more than 120 subsidiaries and approximately 5,100 employees in over 50 countries. See <http://www.gfk.com>.

⁵ Alina Grigoras, *supra* note 1, at 2.

⁶ OSI/EU Accession Monitoring Program, *Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy*, p. 496 (Q.E.D. Publishing 2002).

⁷ By contrast, the National Anti-Corruption Prosecutor Office has reported that during the year 2003, out of a total of 548 people charged with corruption-related offenses, only 1 judge, 1 prosecutor, 1 lawyer and 5 legal counsels have been charged with such offenses. See PNA, *Sinteza Raportului Activitatii Desfasurate de Parchetul National Anticoruptie in Anul 2003*, available at www.pna.ro/rum/bilant/html/bilant_2003.htm (accessed on May 10, 2004).

⁸ See generally, GRECO, *Evaluation Report on Romania*, available at <http://www.greco.coe.int/evaluations/Default.htm> (Mar. 8, 2002). The report does not specifically appraise the level of corruption in the Romanian judiciary, but it assesses the effectiveness of the measures adopted by Romanian authorities in their efforts to fight corruption. *Id.* See also, ABA/CEELI, *Judicial Reform Index (JRI) for Romania*, available at <http://www.abanet.org/ceeli/publications/jri/home.html> (May 2002). The JRI does not address directly the issue of corruption level among the Romanian judges. Rather, using a set of 30 factors important to judicial reform in emerging democracies such as Romania, the report describes a

to the World Bank, “the court system is among the institutions that are perceived by many to have widespread corruption.”⁹ OSI reported that “extremely high levels of distrust contribute to a generalised perception that Romania is governed by vested interests rather than the rule of law.”¹⁰

Romania has already a reasonably comprehensive legal and institutional framework in place to fight corruption. Corruption is defined in Articles 254-257 of the Romanian Criminal Code. Because the provisions of the Criminal Code cover only “traditional corruption offenses” such as active bribery, passive bribery, acceptance of undue advantages and trading in influence, they have been supplemented by Law No. 78/2000 on the prevention, detection and punishment of acts of corruption. However, both the Criminal Code and Law No. 78/2000 were amended many times in recent years. Moreover, Romania has introduced additional legal provisions regarding corruption-related matters. Last, but not least, Romania has signed or ratified various international conventions aimed at fighting corruption on a global level.¹¹ Such framework – coupled with the presence of various institutions charged with fighting corruption¹² – presents the danger of creating confusion when it is applied to alleged instances of corruption. A degree of incertitude exists among the judiciary regarding the proper application of the existing anti-corruption legislation.

Although several international institutions have reported on corruption in Romania, few have undertaken anti-corruption activities that would alleviate the problem. The American Bar Association/ Central European and Eurasian Law Initiative (ABA/CEELI), together and with support from the Stability Pact – Anti-Corruption Initiative (SPA), have been at the forefront of these activities.

Among its recent programs, CEELI sponsored a series of five training sessions around the country. The topic of the seminars was: “*Fighting Corruption – a Priority of the Reform Program.*” They were held in five cities – Oradea, Pitesti, Cluj, Galati, and Alba Iulia – where Court of Appeals are seated. The seminars were one-day long and they had two objectives: 1) analysis of specific recent legal provisions regarding corruption offenses and evidence related to such type of offenses, and 2) causes and factors favoring corruption in the judicial arena and the perpetuation of the public perception of the judiciary as a corrupt social body.

range of legislative, regulatory, and institutional shortcomings of the Romanian judicial system, with several of them bearing on integrity, accountability, and transparency.

⁹ World Bank, *Diagnostic Surveys of Corruption in Romania*, p.16, available at <http://www1.worldbank.org/publicsector/anticorrupt/RomEnglish.pdf> (Mar. 2001).

¹⁰ OSI, *supra* note 6, at 493.

¹¹ See, e.g., Council of Europe’s Criminal Law Convention and Civil Law Convention on Corruption, United Nations Convention on Transnational Organized Crime, European Convention on Extradition, and European Convention on Mutual Assistance in Criminal Matters and the Convention on the Transfer of Sentenced Persons.

¹² Some of the bodies or institutions charged with fighting corruption are: National Anti-Corruption Prosecutor Office, Public Prosecution Service Offices, the police, Customs Authority, Financial Guard, National Office for Preventing and Combating Money-Laundering, Prime Minister’s Monitoring Department, Competition Council and Competition Office.

The participants for each seminar did not exceed twenty-five judges and they were selected from the courts under the jurisdiction of the local Court of Appeals. Judges Angela Hărăstășanu, Roxana Trif and Alexandru Vasiliu (all judges of the Brasov Court of Appeal) were the moderators of the seminars. Judge Hărăstășanu conducted the seminars in Oradea and Galati, while Judge Trif and Judge Vasiliu formed a team and conducted the other three seminars by employing a co-training technique.¹³ Because both the moderators and the organizers wanted an interactive seminar which would assure the active participation of all judges, they selected as their teaching method the case study approach. An ongoing reciprocated dialog characterizes this method. It offers an opportunity for all participants to express their opinions individually, as well as to reflect together on the conclusions of the discussions.

The moderators selected their own hypotheticals (for a representative sample, see Appendix I) yet the materials were quite similar in substance and purpose. They covered provisions of Law No. 78/2000 on fighting corruption, modified by Law No. 161/2003, discussion of the organization and functioning of the National Anti-corruption Prosecutor's Office (NAPO) and other relevant documents such as "*The Reform Strategy of the Judiciary*" (Decision No. 1052/2003) and "*Fighting Corruption in Romania – Measures for Accelerating the Implementation of the National Strategy.*" ABA/CEELI provided the participants in advance both with the case studies and a list of the legal norms and documents which formed the basis of the seminar's discussions (see Appendix II).

The seminars were composed of two main sessions. The first one provided for an analysis of case studies with different factual scenarios and legal issues. Participants were divided in three working groups, in order to encourage discussion of controversial issues and lively debates amongst the participants, ensure the involvement of all the participants and identify distinct opinions about the same aspects of an issue. A spokesperson for each group presented the opinions and arguments in support of the different positions believed to be appropriate for the specific situations or issues arising from the hypotheticals. A general debate followed these presentations.

Using the same working groups approach, the second part of the seminar concentrated on a discussion of the causes and factors determining and favoring corruption in the judicial arena; the participants also offered solutions or mechanisms to prevent or stem corruption amongst the judicial branch.

All seminars were rated through evaluation forms, distributed by the organizers and filled out by the participants (for an aggregate response, see Appendix III).

II. DISCUSSION

A. Case Studies

¹³ All three moderators are experts of the National Institute of Magistrates, and they participated in a train-the-trainers session organized by the National Institute of Magistrates and the Netherlands Helsinki Committee. The training session on interactive pedagogy was organized in the Netherlands, in 2001.

During the first part of the seminar, participants reviewed two case studies (Appendix I). The seminar's moderators developed hypothetical situations to foster analysis of legal provisions, particularly new ones, and ensure a healthy debate about what rules are applicable. The main purpose of the ensuing debate was for the attendees to gain a thorough knowledge of the legislation on crimes specified by Law No. 78/2000, on the Organization and Operations of the National Anti-corruption Prosecutors' Office (NAPO), with subsequent modifications, and to discuss various aspects of criminal procedures through specific examples. The organizers anticipated that participating judges would have differing and, possibly, starkly contrasting views on the issues raised by the fact patterns. In fact, with the exception of a couple of minor points discussed below, judges in all locations agreed on interpretation of the laws and jurisprudence, and reached similar conclusions about each case.

The participants identified a series of difficulties faced by practitioners in a concrete *de facto* and *de jure* situation, as well as some unclear or controversial aspects related to the interpretation and application of legal provisions. The working groups separately discussed the two case studies, and gave the solutions and the causes of action they considered appropriate for each of the cases. In addition, the participants identified possible procedural errors that could result from differing interpretations of applicable legal norms. The judges who participated at the seminars are specialized in criminal matters and, since the case-studies scenarios addressed situations that they face in their courts, the discussions were lively.

Participants also showed a high level of interest in discussing legal provisions relevant to the scenarios. It was evident that the participants knew the substantive legal norms, even the recently adopted ones (Law No. 503/2002, Law No. 161/2003, Law No. 281/2003, OUG No. 109/2003 and OUG No. 102/2003).

During the case analysis, the participants had similar opinions regarding both the interpretation and the application of certain legal norms. For example, the attendees were unanimous in expressing concerns about the setting up of a *flagrante delicto* (entrapment) situation. In some of the seminars, the fact pattern indicated that the individual actually took the money while, in other seminars, the scenario had the money simply placed on a desk. In the case when he did not take the money, the participants were unanimous in opining that the evidence was not sufficient to sustain a charge of active bribery. In the case where the individual actually took the money, there was a debate on whether the evidence was satisfactory. Nevertheless, the general opinion was that the evidence obtained following an entrapment should not be admissible in criminal matters because it may be considered an incitement to commit an offense (in the case at hand, taking bribes). Moderators of the seminar underlined the fact that the setting up of a *flagrante delicto* runs counter to provisions of Article 68, paragraph 2, and Article 64, paragraph 2 of the Criminal Procedure Code. For this purpose, the participants were provided with Decision no. 2934/2002 of the High Court of Cassation and Justice; this court ruling determined that the *flagrante delicto* at issue violated Article 68, paragraph 2, of the Criminal Procedure Code which prohibits the solicitation of a person to commit or continue to commit a criminal act for the purpose of obtaining evidence (see Appendix IV). This High Court decision creates new jurisprudence in the area.

Some groups also exhibited a high interest in the clarification of some norms and adoption of others. For example, the group from Oradea recommended: modifying the last paragraph of Article 91/1 of the Criminal Procedure Code providing for judicial authorization for surveillance, interception and recording of conversations by an order such as “*dispoziție*” or “*autorizație*,” (judicial orders which are not available to the public and would therefore meet the purpose of such surveillance order) instead of “*încheiere*” (a judicial order which is available to the public), modification of Article X of the same law, by replacing the term “conversations” with the term “communications;” modification of Article 86/2 of the Criminal Procedure Code by placing the prosecutor and the defense attorney on the same footing in front of a judge; modification of Article 160 of the Criminal Procedure Code by eliminating interpretations related to the time when the age of a minor defendant is taken into account; adoption of a provision in the Criminal Procedure Code regarding the certification of documents prepared by undercover investigators; and adoption of a new provision which would allow a person held in pretrial detention to take part in the funeral of his/her spouse or a close relative.

B. Causes and solutions

The second part of the seminar focused on the causes that lead to corruption in the judiciary, factors that encourage it, and mechanisms for its prevention. Also, aspects related to the image of the judiciary, the causes that have generated the present public perception, and ways of changing such perception were discussed. Judges were quite vocal in identifying the causes of the existing situation in the judicial system and finding ways for its improvement. Participants’ comments throughout the seminars were both similar and distinct.

1. SIMILAR OPINIONS REGARDING CAUSES OF CORRUPTION WITHIN THE JUDICIARY

a. The role of the government and the influence of the media on the public and its perception about the judicial system

When discussing “*Fighting Corruption in Romania – Measures for Accelerating the Implementation of the National Strategy*,” the participants looked at a chapter titled “*The Status of Implementation of the National Action Plan against Corruption - III.1 Justice*.” This chapter was part of the materials posted on the Ministry of Justice’s website in October 2003. The participants from the Oradea group noted that the assertions about the “causes of existence and perpetuation of corruption in justice” (unstable legislative framework, excessive publicity of some negative comments in the media regarding the courts’ global or individual activity, etc.) generate in fact, in most of the cases, the public perception that judges are not worthy of confidence because they are corrupt or incompetent.

Though in a different form, the participants from the other seminars shared the opinion of their counterparts from Oradea. For example, the participants from Pitesti stated that confusion of the public and its perception related to the responsibilities of the judiciary bodies is fuelled not only by the media, but also by the police.¹⁴ They also mentioned that some individuals holding high

¹⁴ For instance, when reporting on ongoing investigations in allegedly well-supported cases, the media makes a blanket accusation and blames the entire judicial system for certain action or non-action.

positions in the political, executive or economic areas use the media to exert pressures on the judicial system, by publicly suggesting, before a case is adjudicated, what is the right solution for the respective dispute, or by accusing magistrates of incompetence or having an interest in the case. The participants suggested that magistrates must be intransigent about such infractions against the judicial system but, at the same time, the Superior Council of Magistrates should take a stand and defend the unfounded allegations against the judiciary.

The participants from Cluj thought that making “eradication of corruption” a priority of each governmental program contributes, implicitly, to acknowledging corruption as a given fact. They also noted the negative role of the media which, because of its lack of professional standards and deliberate misrepresentation of information obtained from the court spokespersons, misinforms a public that has a low level of legal literacy and is unable to determine whether the information is accurate or well-founded. The Cluj participants mentioned that lawyers have a responsibility in the shaping of public mentality. Some attorneys represent that judges are corrupt, to explain why they lost the case, and others tell their clients that they have the necessary connections to influence judges’ decisions.

The participants from Galati shared their colleagues’ opinion regarding the pressure put on magistrates by both the media and the parties involved in the case. They had concerns about the influence of the media when it questions the quality of the judicial system. Similar causes that contribute to the negative public perception of the judiciary were identified: lack of communication with the civil society, need for information easily accessible to the public regarding the organization and administration of the courts, unresponsiveness of the Ministry of Justice and some professional associations to allegations brought against magistrates, and lastly, erroneous opinions about the justice system, expressed even by those who are part of the judiciary.

The participants from Alba Iulia also shared their colleagues’ concerns about media’s lack of professionalism and its negative presentation of the judiciary. They, however, opined that some judges are unprofessional themselves. They noted that suggestions offered by magistrates on draft laws are ignored, and that the Ministry of Justice continues to overlook the problems faced by the magistrates. Participants also criticized the lack of timing and correlation in drafting the laws on judicial organization, on the statute of magistrates and on the statute of the Superior Council of Magistrates. Other causes thought to taint the image of the judiciary were: lack of unity amongst the judges, the absence of a judicial reform strategy, the need for a consistent selection process for magistrates and a selective application of the law when NAPO undertakes investigations.

b. Other similar causes

The participants in all the seminars identified the insufficient number of judges, the resulting overload and the inappropriate salaries, as some of the main obstacles to eradicating corruption

The media does not make any effort to identify the judiciary bodies that have exclusive jurisdiction over criminal investigations, and does not exclude the courts which are not part of these judiciary bodies. Moreover, this practice is sometimes fuelled by the police’s spokespersons who publicly criticize specific decisions or judicial orders. Such comments exceed the police’s competencies and are unethical.

or dissipating the perception of corruption. The lack of adequate equipment and working conditions and the absence of a random case assignment were recurring points throughout the discussions. Legislative fluidity and “inflation,” the lack of a consistent and stable legal framework, and inconsistent practices in courts across the nation (and sometimes even within the same jurisdiction) were mentioned as causes that generate a negative public perception about the Romanian judicial system. Inappropriate relationships between judges, lawyers and litigants and the current mindset of litigants, court support staff and magistrates, were listed as some of the sources of corruption or perception of corruption by most of the groups.

2. ADDITIONAL OPINIONS REGARDING CAUSES OF CORRUPTION WITHIN THE JUDICIARY

The participants from Pitesti said that the poor quality of written opinions generally results from sub-standard professional training and lack of interest in continuing legal education (CLE). They opined that some judges are not interested in changing their own mentality about their own role in society. In addition, the current evaluation process contains too many statistical data and not enough information related to magistrates’ competence and qualifications. Lastly, the image of justice is affected by tangible, unavoidable factors, such as dissatisfaction of persons who lose cases in court; as a result, poll surveys are not an accurate instrument to assess public confidence in the judicial system, unless such factors are considered.

The participants from Cluj shared the opinion of their counterparts from Pitesti that one of the external causes for the perception of a corrupt judicial system is the subjectivism of the litigants who lose the cases in which they are parties. They viewed the creation of the National Anti-Corruption Prosecutor’s Office (NAPO) as useless and an external cause which fuels the perception of corruption. They listed as another cause the fact that the executive branch of the government does not recognize the judicial authority as one of the branches of state power. As internal causes for corruption, they mentioned: the low professional qualification of magistrates, the lack of tact and patience of some judges (a situation that has worsened lately due to the introduction of one-judge panels), and the lack of training of the support staff and its unprofessional behavior in their contact with the public.

The participants from Galati identified as causes for corruption or perception of corruption in the judiciary the following factors: public’s lack of confidence in the judiciary, the abuse of power in performing professional duties by some magistrates, lack of transparency in the administration of justice, professional and ethical deficiencies of some magistrates, open access to the judges’ offices by lawyers and litigants, inappropriate behavior by some judges both in the court and outside it, and lack of courtesy by the court’s supporting staff in its relations with the litigants.

The participants from Alba Iulia noted that the current human resources policy is deficient and leads to the recruitment of magistrates who lack the necessary minimum professional qualifications. They also said that the unprofessional behavior of support staff badly reflects on the judges themselves. Moreover, because there is no Code of Ethics for lawyers, the bar is not guided by moral obligations. Since lawyers do not appear to be interested in preserving or advancing the integrity of the judicial system, they directly contribute to a distorted image of the judiciary in the eyes of the public. Citizens’ lack of legal education and the negative influence of various interest groups have a great impact on public perception about the judicial system.

Lastly, the inappropriate burden of non-adjudicative responsibilities and the permanent stress under which judges operate were also listed as internal causes leading to the current image of the judiciary.

3. SIMILAR SOLUTIONS TO COMBAT CORRUPTION

Some of the solutions offered to remedy the existing situation were understandably related to the aforementioned causes. The participants called for building a collaborative relation between the courts and the media, even to the point of developing a national strategy, in order to ensure accurate reporting. This could be accomplished only if the journalists have a minimum amount of legal knowledge. Other common solutions mentioned by all or most of the groups were: increased number of judges and court support staff, computerization of court's activities, introduction of a random case assignment system,¹⁵ better salaries, improvement of working conditions and equipment of the courts, establishment of a uniform jurisprudence, drafting a consistent and stable legal framework, communication of draft laws to judges for comments and additions, and timely notification of new or amended laws.

4. ADDITIONAL SOLUTIONS TO COMBAT CORRUPTION

The participants from Oradea stated that steps must be taken to improve the magistrates' recruitment and promotion process, their training and last, but not least, their mentality. They called for strengthening the role and involvement of professional associations charged with improving the judges' activity and public image, cessation of interference from the Ministry of Justice in the activity of courts, and respect of the presumption of innocence for magistrates accused of improper or corrupt behavior.

The participants from Pitesti suggested that press releases should explain to the public the responsibilities of each judicial body, especially when the judiciary is directly and solely accused of improper activities. As previously mentioned, they thought that when pressures are exerted on the judiciary to reach a certain decision, the Superior Council of Magistrates should intervene and take a stand. In addition, they called for the development and holding of regular training sessions in criminal and anti-corruption law, introduction of a new course on professional ethics for law school graduates, coordination of various ethics seminars for the current judges, establishment of a closer collaboration between the Parliament's legal commissions and the specialized departments within the Ministry of Justice when drafting laws, founding an up-to-date legal library, launching an aggressive advertising campaign for a computerized random case assignment, observing the continuity of court panels (by expressly prohibiting changes to a panel's composition, except where continuity becomes impossible i.e. absence of a judge or incompatibility), organizing seminars, at the local level, with the assistance of facilitators and participation of representatives of the civil society who would help shape the public opinion, and lastly scheduling meetings with high school students to introduce them to the justice system.

¹⁵ Participants were informed that the *Softwin Company* created a software program in 2003 with funding from USAID under ABA/CEELI's programs and, since February 2004, the Ministry of Justice had full rights to use the program. Currently, the Pitesti Court, the Arges Tribunal and the Fifth Sector Court in Bucharest use the program and they are satisfied with the benefits of the software.

The participants from Cluj stressed that if the executive branch does not accept the judiciary as a branch of the state's power, it needs to be made aware of the importance of judges in a civil society. Raising the legal awareness of the public and the media was also viewed as an essential step in remedying the perception of corruption. Moreover, basic legal knowledge (elementary notions about the rule of law, democracy, organization of the judiciary, etc.) should be introduced in the educational process. A computerized database containing collections of decisions of other courts was listed as necessary to establishment of a consistent jurisprudence. Availability of legal references to judges is also essential to their issuance of improved written opinions. The Superior Council of Magistrates or magistrates' associations should block interference from the executive branch when appropriate. Further, the Superior Council of Magistrates, as a guarantor of judicial independence, should no longer be confirmed by the Parliament. Professional associations of judges should be created. Magistrates or the Superior Council of Magistrates should establish the budget of the judiciary, and then present and defend their recommendations before the Parliament. There should exist, as part of the entrance exam for magistrates, an interview to be conducted either by the Superior Council of Magistrates or the National Institute of Magistrates. Lastly, the participants from Cluj represented that caseloads could be reduced through the introduction of alternative dispute resolution such as mediation.

The participants from Galati concluded that, in general, the judiciary as a whole is not affected by corruption. It was opined that there are only a few isolated cases, which, most of the times, are generalized, and affect the entire system. The participants suggested a series of mechanisms to prevent corruption and some solutions that could solve part of the system's deficiencies: transparency of court activities, compliance, by the magistrates, with the duties stipulated in the law on Status of Magistrates and in the Code of Ethics, application of disciplinary sanctions, up to dismissal, to magistrates who violate the law and the applicable ethical norms, assurance of full and real independence of magistrates, both financially and professionally, election of court presidents by the magistrates working in the respective court, avoidance of personal relationships with litigants and practicing attorneys, improved knowledge of the legal norms and the Code of Ethics, and provision of correct information to the public and the media, through court spokespersons.

The participants from Alba Iulia recommended the following solutions to resolve some of the system's deficiencies: training journalists specialized in reporting on justice matters, periodical organization of press conferences, a clear job description for the position of court spokesperson and a clear outline of his/her assignments, creation of a court spokesperson position for the Superior Council of Magistrates, taking into account the opinions of practitioners when drafting legal norms, promoting court transparency, and testing the judges' practical skills both when they are recruited and promoted. They also thought that the other two branches of the government should show respect for the judiciary. In addition, judges should be made aware of the consequences of an inconsistent practice. For future seminars, the participants suggested to invite representatives of the Ministry of Justice and/or of the Superior Council of Magistrates who have the authority to decide on justice matters; and all the seminar materials, together with the case studies, should be sent to the participants in advance.

It must be noted that the moderators in Cluj and Alba Iulia distributed additional questionnaires to the participants, at the beginning of the seminar. The purpose was to identify factors that

determine judges' independence and impartiality, as well as recognize the priority role and goals of the judicial system. Statistical results of the questionnaires are compiled in the tables below.

	Judge's independence		Judge's impartiality	
	Most assured by	Least assured by	Most assured by	Least assured by
Cluj	1) impartiality, proper mentality, high professional qualifications 2) solid moral conduct 3) proper wages 4) legal norms to guarantee judges' independence	1) support of judges' interests by professional associations 2) defense of judges' interests by the Superior Council of Magistrates 3) positions adopted by other branches of the state's power	1) independence 2) fair mindedness towards all parties 3) solid knowledge and strict observance of the law 4) guarantees provided by law 5) respect and courtesy towards litigants 6) a permanent inner reform of judge's own mentality	1) concern for understanding social phenomena 2) moderate and fair conduct of the media
Alba Iulia	1) legal norms to guarantee judges' independence 2) judges' own mentality 3) solid moral conduct	1) support of judges' interests by professional associations 2) positions adopted by other branches of the state's power 3) conduct of the court's leadership	1) solid knowledge and strict observance of the law 2) independence 3) fair mindedness towards all parties	1) moderate and fair conduct of the media

	What is a judge?	
	Most important factors	Least important factors
Cluj	1) guarantor of observance of the citizens' rights and freedoms 2) the law and a guarantor of the existence of the rule of law 3) guarantor of a democratic society 4) a balance between the processes of drafting laws and enforcing them	1) the political branch of the state's power 2) the state's interests
Alba Iulia	1) guarantor of observance of citizens' rights and freedoms 2) the law and a guarantor of the existence of the rule of law 3) guarantor of a democratic society 4) the law	

III. CONCLUSION

Participants' comments during the seminar's discussion are consistent with well-known principles or universal problems. It should not come as a surprise that when working conditions are substandard, salaries are low and judges' caseloads reach unmanageable proportions, the quality of judicial decisions, in particular, or justice, in general, is greatly affected. In turn, this has a domino effect on the existence or the perception of corruption within the Romanian judicial system. Without doubt, the necessary source materials – such as new laws and regulations – along with the appropriate training and continuing legal education seminars must be available and easily accessible to judges. Moreover, the establishment of a consistent and stable legal framework and a uniform jurisprudence would be helpful in changing the public's perception about the justice system in Romania. A random computer assisted case assignment system¹⁶ would undeniably help the image of the judiciary accused of manipulating case assignment at intake.

The bar, the public and the media must be involved in the justice reform process. This means a more active participation and a closer collaboration between these groups and the judiciary. Moreover, such activities would provide judges with a new perspective on how they are perceived outside their own institutions, and assist them in changing their own mentality about their role in today's society. In order for the public's perception to change and build public support for the judiciary, transparency of the judicial branch's activities must be real and ongoing. In addition, both the public and the media need to be educated about the legal system and the critical contribution of the judiciary to a democratic society. In order to help inform the press and other public groups about the court, encourage openness, and assist in accurate reporting about the court, special seminars should be organized. Lastly, the Superior Council of Magistrates must be assured independence from the other branches of the government and it should take a stand when grossly inaccurate information is transmitted to the public or pressures are exerted on the judges to reach a certain decision.

Perception is as important as substance if any improvement is to materialize. Popular perceptions of corruption in the courts affect the way people deal with the court system. If there is a perception that judges take bribes, for example, it may well become a self-fulfilling prophecy because parties will feel compelled to offer bribes. While transparency, training, and other educational opportunities will not totally purge corruption or the perception of corruption in the Romanian judicial system, they could certainly be important building blocks in alleviating the problem. A careful reading of opinions expressed by participants during these seminars could lead to the development and implementation of a sound judicial reform strategy, and amount to significant results demonstrating a genuine interest in changing the *status quo*.

¹⁶ Put simply, the computer system would assign each new case to a judge picked at random by the system. The software needs to include computations designed to avoid over-loading any judge with too many cases or too many complex ones. The system should allow for changes, following computer-aided assignments, but access should be restricted and tracked. A number of additional safeguards must be part of the design to protect its integrity.

APPENDIXES

- I. Case studies scenarios**
- II. List of reference materials provided to participants**
- III. Evaluations**
- IV. High Court decision No. 2934/2002**

I. Case studies scenarios

National Institute of Magistrates ABA/CEELI Ministry of Justice Seminar on the topic “Fighting Corruption - a Priority of the Reform Program”

Case Study No. 1

Defendant A.B. was charged with taking a bribe and ordered to appear in court.

At the hearing, the defendant pleaded not guilty, asserting that the indictment was based only on a *flagrante delicto* charge prepared and acted upon by law enforcement officials in violation of the governing rules of procedure.

C.D., the accuser, had reported to the police that A.B., a public servant, had asked for 3,000 Euros, in order to prepare a document that was part of his professional responsibilities. The police, together with a prosecutor, marked several bills – for a total of 3,000 Euros – and sent C.D. to meet with the defendant. When C.D. arrived at A.D.’s office and placed on A.D.’s desk the envelope containing the money, a team of three police officers and one prosecutor entered the room, and made a report of the event.

The defendant also invoked the fact that his file included reports prepared by a police officer detailed to NAPO (anti-corruption unit), and that these reports were based on verbal instructions from the prosecutor, and, as such, invalid.

1. *What, in your view, is the correct solution?*
2. *Do you think criminal procedure norms were violated?*
3. *If yes, please identify the violations.*

Case Study No.2

A criminal investigation was initiated by a prosecutor of the Prosecutors’ Office attached to the Pitesti Court of Appeals, against defendant G.G. accused of taking a bribe. It was established that G.G., a guard at a commercial warehouse, received 3,000 Euros, in order to allow his accomplices D.S. and D.R. to steal tires, valued at 500,000,000 Romanian lei, from the warehouse.

Once these facts surfaced, the defendant’s labor contract was terminated.

D.S. and D.R. offered 2,000 Euros to police inspector A.A., who, in his turn, warned them about the date and time when there would be a search of the place where they had hidden the stolen goods. This gave D.S. and D.R. time to transfer the tires to another location. The prosecutor established these facts by ordering a wiretap of D.S. and D.R. phone conversations.

In the meantime, defendant D.S., the sole owner of commercial company with limited responsibility, prepared forged invoices which he presented to the prosecutor as proof that he owned the tires.

On October 30, 2003, a prosecutor brought D.S. and D.R. before a judge of the Arges Tribunal and asked that they be detained before trial. The arrest warrant for D.R. stipulated that he should be held only for 20 days, because he was only 17 years old on the date the offense was committed, and turned adult only on October 25, 2003.

On November 10, 2003, defendant D.R. filed a petition to cancel his preliminary detention order, because a medical exam had established that he was suffering from diseases that could not be treated in a detention facility.

On November 15, 2003, the prosecutor brought defendant G.G. to court and asked for pretrial detention. The judge ordered his arrest and detention, taking into consideration provisions of Article 148, point e) of the Criminal Procedures Code, e.g. the fact that the defendant might recidivate if released.

On November 20, 2003, the Prosecutors' Office indicted defendants G.G./D.S./D.R. and A.A. and asked the Arges Tribunal to review and adjudicate their case. The charges included the forgery of invoices which defendant D.S. had admitted, but criminal charges were not pressed for offenses specified in Article 290 of the Criminal Procedures Code. When issuing its decision, the court convicted D.S. of forgery, arguing that this was part of the indictment.

What are your observations concerning:

- *Adherence to rules of jurisdiction;*
- *Cause of action for the alleged offenses;*
- *Preliminary detention;*
- *The court decision in the case of defendant D.S.;*
- *Consequences resulting from the enforcement of Article 91/1 et.seq., of the Criminal Procedures Code, on January 1, 2004, as a result of amendments introduced by Law No. 281/2003.*

Case study No. 3.

1. In order to facilitate the release of defendants in a pending case, judge Z gave an amount of money to judge Y, who claimed that he could influence the panel of judges deciding the case.

Please, state the cause of actions for the acts committed by the two judges and the applicable sanctions.

Please, identify the criminal investigation authority and the court having jurisdiction over the case, determining the panel's composition and taking into account that judge Z was an appellate court judge and judge Y was a judge in a territorial military tribunal.

2. The acts allegedly committed by the two judges were discovered as a result of wiretapping an electronic communication of one of the judges with a person who was suspected of

committing offenses of trafficking persons and drugs. The prosecutor issued an authorization to wiretap the suspect's communications on January 15, 2000, January 15, 2002, and January 15, 2004.

Please, identify who has jurisdiction to authorize wiretapping of phone and other type of communications, after January 1, 2004.

Please, establish whether an intermediate judicial order ("incheiere") authorizing wiretapping of a person's communications and issued by the court's president should be an order delivered in public session or not. Please, use arguments in support of your position. Describe the consequences resulting from the failure to list any of the elements set forth by paragraph 7 of Article 91/1 when such judicial order is issued.

3. A case dealing with traffic of persons, specified by Article 13 of Law no. 278/2001, and corruption crimes, was tried in public court sessions; defendants were juveniles and persons who reached the age of majority; two of the defendants submitted a request to the court to revoke a preliminary arrest order, as their mother had deceased and they wanted to attend her funeral.

Taking into account the reason given by the two defendants, what decision do you think the court should have taken?

Do you think that the review of the case in a public session was correct?

4. The court ordered the preliminary arrest for all defendants in a case after 60 days from the last review, even though some of the defendants were 14 years old when they committed the offense, 16 years old when the court was notified and, by the time the previous intermediary decision maintaining the preliminary arrest was delivered, they had reached the age of majority.

Do you think that provisions of Article.160^h, paragraphs.2 and 3 of the Criminal Procedure Code have been violated?

5. During the trial, defendants requested the court to declare some of the evidence null, for the following reasons: the undercover investigator had prepared, as preliminary documents, reports on the offenses that were to be committed, but such reports were not certified in any way. Further, they were not signed by the person who had prepared them or by the prosecutor or the police officer; these documents were not registered with the prosecutors' office registry.
6. Drugs purchased by an undercover investigator from a defendant have been sent to a laboratory, to determine their composition. The analysis found that they were high-risk drugs. The drugs were then destroyed; consequently, the court could not confirm the results of the analysis through a new one as requested by the defendant. *(The defendant challenged the evidence that could not be verified by the court during the trial in the lower court).*
7. Taking into account the importance of witnesses, whose identities are protected when they assist with the discovery of corruption and give depositions in such cases, please refer to the

applicability of certain principles such as “*nemijlocirea*” (court’s direct involvement in examining the witnesses) or “*egalitatea armelor*” (“equality of arms” between parties to legal proceedings) when the witnesses testify in compliance with procedures required by Article 86² of the Criminal Procedure Code.

8. Please, specify the moment when the court may deliver an intermediate decision as specified by Article.91³, paragraph 6 of the Criminal Procedure Code, regarding the destruction of recordings that have not been used as evidence in a case.

II. List of reference materials provided to participants

- 1) Law no. 78/2000 on Prevention, Identification and Sanctioning of Corruption-Related Offences, with subsequent modifications and additions;
- 2) Government Emergency Decree no. 43/2002 on the National Anticorruption Prosecutors' Office, with subsequent modifications and additions introduced by law no. 503/2002 on approval, and the Government Emergency Decree no.102/2003;
- 3) Law no. 161/2003 on Steps to Ensure Transparency when Holding High Official Positions, Public Positions, and in the Business Environment, on Preventing and Sanctioning Corruption (excerpts);
- 4) Government Emergency Decree no. 109/2003 on the modification of the Criminal Procedures Code.
- 5) Government Decree no. 1052/2003 on approval of the Reform Strategy of the Judicial System (excerpts)
- 6) The National Program for Preventing Corruption and the National Action Plan against Corruption (Ministry of Justice, 2001).

III. Evaluations

**National Institute of Magistrates ABA/CEELI Ministry of Justice
Seminar on the topic “Fighting Corruption - a Priority of the Reform Program”**

**RESULTS OF THE EVALUATION
- 5 seminars - 95 participants -**

I. By using a scale from 1 to 5 (5=most useful, 1=useless), please answer the questions below:

1) How do you rate this seminar’s organization?

Oradea	Pitesti	Cluj	Galati	Alba Iulia
4-2 participants 5-15 participants	3-1 participant 4-1 participant 5-22 participants	4-2 participants 5-20 participants	5-15 participants	4-3 participants 5-14 participants

Comments:

- I think a representative of the Ministry of Justice should have been invited to take part in the discussions about the image of the judiciary; he/she could have informed the Ministry’s leadership of the participants’ opinions - 1 participant;
- sending the agenda of the seminar in advance, allowed for documentation and, implicitly, for informed opinions on the topics subject to debate during the seminar - 1 participant;
- the topic of the seminar is interesting and timely, and the manner in which it has been conducted is well suited – 1 participant;
- I would like such seminars to be held at least twice a year – 1 participant;
- one day is not sufficient for debates on such complex topics – 7 participants;
- organizers’ involvement in such a topic – which brings us closer to the Western legislation- has been remarkable – 1 participant;
- the seminar was very well organized – the suggested topics sought to discuss the latest legislative modifications in the area – 8 participants;
- congratulations for the manner in which the seminar was organized! – 1 participant;
- useful and well organized – 4 participants;
- I particularly appreciated the fact that moderators insisted on stimulating magistrates’ free thinking, through open discussions, and, to a lesser extent, on a scholastic, dogmatic method – 1 participant.
- participants have been actively involved in discussions, which allowed for a useful exchange of opinions among judges of different courts - 1 participant;
- the topic of the seminar is very timely, due to the new modifications in the legislation and to the existing image of the judiciary, both at the national and European levels – 1 participant;
- a positive aspect was that participants were provided with the necessary legal norms and materials; the case study was very well chosen – 1 participant;
- the group discussions and the case studies gave each participant the opportunity to find the best solutions and they were not based on traditional teaching methods– 3 participant;
- discussions focused on very interesting, actual and very controversial legal issues; this has made the seminar both useful and attracting; the most remarkable aspects of the seminar were communication and the interactive discussions; it is a pity that time does not allow for a more thorough discussion of the topics – 1 participant;
- I think it would have been very useful if the time granted for such a seminar was longer (minimum two days) - 2 participants;

2) How do you rate the seminar's teaching method?

Oradea	Pitesti	Cluj	Galati	Alba Iulia
4-1 participant 5-16 participants	4-2 participants 5-22 participants	5-22 participants	4-1 participant 5-13 participants - 1 participant did not answer the question	5-17 participants

Comments:

- the teaching method is the most appropriate; we do not agree with the didactic style, where we receive only theoretical information and no practical cases are discussed - 1 participant;
- the teaching method is attractive due to its novelty and also because it allows for an analysis of our own opinion compared to the opinions of the other participants – 1 participant;
- extremely constructive, stimulating, well focused, and captivating – 1 participant;
- the seminar was conducted in a very pleasant way, stimulating free expression of ideas, and reasoning – 1 participant;
- the teaching method was very well chosen, and the seminar was a real exchange of experience among judges – 1 participant;
- the seminar's interactive nature, and the addressed topics resulted in the involvement of all participants – 10 participants;
- you can feel a Westerner "air" – the teaching method is very good for us, specifically in the legal field – 1 participant;
- a very fortunate combination between theory and practice; discussion of case studies and collaboration between groups were particularly useful – 1 participant;
- interesting and exciting – 1 participant;
- discussion of more case studies and study of jurisprudence in the area would have been extremely interesting – 1 participant.
- the teaching method was exceptional; the moderator explained very clearly the tasks of the participants in resolving the case study, and judges participated effectively in debates - 1 participant;
- corruption is one of the priorities of the reform program – 1 participant;
- the topic is very timely – 1 participant.
- the teaching method was extraordinary – 1 participant;
- the teaching method was stimulating. I suggest that possible comments should be made after the discussion of each topic subject to debate – 1 participant;
- the interactive method stimulates the participants' stamina and reveals valuable ideas – 1 participant;

3) Do you think this seminar has been useful for your professional activity?

Oradea	Pitesti	Cluj	Galati	Alba Iulia
3-1 participant 4-2 participants 5-15 participants	5-24 participants	5-22 participants	5-15 participants	4-3 participants 5-14 participants

Comments:

- yes, due to open discussions and to the case studies we debated – 1 participant;
- the usefulness of the seminar is unquestionable, from the viewpoint of the topics subject to debate

during the seminar. However, it remains to be seen to what extent the opinions expressed during the discussions will have the expected impact – 1 participant;

- very useful, taking into account my very limited personal experience in the area – since I did not resolve any corruption cases until recently, when I was promoted to Tribunal judge – 1 participant;
- particularly the part related to corruption crimes – 1 participant;
- many useful, practical, and pertinent aspects were addressed – 1 participant;
- very useful – 3 participants;
- the seminar compensated for the lack of jurisprudence in the area of corruption crimes - 1 participant;
- it gave me the opportunity to make an analysis of the discussions and to broaden the extent of my thinking – 1 participant;
- it helped me hear other opinions – 1 participant;
- a presentation of controversial practice in courts would have been useful – 1 participant.
- there is a lack of legal literature and jurisprudence in this area; under the circumstances, such training sessions are absolutely necessary – 1 participant;
- as a magistrate and as a judge specialized in criminal cases, I am interested in improving my conduct and professional performance – 1 participant;
- the case study subject to debates led to a point of view adequate for resolving such situations in the future – 1 participant.
- it was useful, as many aspects leading to an erroneous interpretation of the law have been clarified – 1 participant;
- useful, taking into account the new legal regulations in the area – 2 participants;
- yes, as it clarified many controversial aspects related to procedural and legislative modifications – 2 participants;
- the acquired knowledge can be used in my activity as a magistrate – 2 participants;
- being focused on practical aspects, the seminar is useful in our professional activity – 1 participant;

4) How useful were the training materials?

Oradea	Pitesti	Cluj	Galati	Alba Iulia
3-1 participant	4-2 participants	5-22 participants	4-2 participants	2-1 participant
4-3 participants	5-22 participants		5-13 participants	4-3 participants
5-15 participants				5-13 participants

Comments:

- more case studies should have been subject to debates – 1 participant;
- it was a good idea to send the case studies in advance, in order to be discussed and resolved – 1 participant;
- materials would have been of much more help if they had been sent to us in advance – 1 participant;
- I particularly appreciated the materials referring to the strategy of the judicial system reform - 1 participant;
- they matched the addressed topics – 2 participants;
- they helped us in discussing the topics – 1 participant;
- very useful, both for discussions and for our future activity – 1 participant;
- the materials are of no use to us. We do not have the time to read them, and I think that the laws, updated with all the amendments, would have been useful to us. For example, Law no. 78/2000 should have contained amendments included by Law 161/2002. Updated text of the law is available on the *Legis* website. However, the case studies have been well selected. – 1 participant;
- training materials, together with the discussions, contributed to the clarification of some aspects that are not treated consistently – 1 participant;

- they were appropriate to the topic of the seminar, and very informative – 1 participant;
- the topics brought into discussion are actual, referring to very important special laws, adopted recently. Also, modifications of the Criminal Procedures Code were discussed, and many of the issues were clarified – 1 participant;
- they included the legislation necessary for the resolution of case studies – 1 participant;
- the disseminated materials covered all issues raised by the case studies – 2 participants;
- the materials were extremely useful – 1 participant;
- additional materials should have been consulted, such as the recent jurisprudence of the High Court of Cassation and Justice – 1 participant;
- I think a brochure containing the topics discussed in this seminar and in others of this kind would have been useful – 1 participant;

5) How useful were the group discussions?

Oradea	Pitesti	Cluj	Galati	Alba Iulia
4-4 participants 5-13 participants	4-1 participant 5-22 participants - 1 participant did not answer the question	4-1 participant 5-21 participants	4-1 participant 5-14 participants	4-4 participants 5-13 participants

Comments:

- they revealed a series of causes that led to the current image of the judiciary-1 participant;
- all members contributed with their ideas, leading to a group conclusion – excellent collaboration – 2 participants
- I will use the information I acquired during the seminar in performing my professional duties – 1 participant;
- the working group method allowed us to discuss, with no inhibitions, many legal aspects, and to express our opinions and ideas freely– 1 participant;
- extremely useful for our practical activity – 3 participants;
- listening to various ideas will always be beneficial– 1 participant.
- discussions were very useful, because we learned other viewpoints on the topics subject to debate during the seminar – 1 participant;
- group discussions were extremely useful, because they provided additional information, and resulted in solutions and corrections of certain errors – 1 participant;
- communication among judges is critical in their professional training – 1 participant;
- the discussions were useful because they involved all participants – 1 participant;
- discussions did not contain sufficient legal reasoning – 1 participant;
- discussions proved to be useful; from now on, the legislators need to clarify the controversial situations – 1 participant;
- discussions were constructive – 1 participant.
- discussions were very interesting because theoretical and practical aspects related to application of Law No. 78/2000 were discussed – 1 participant;
- group discussions resulted in finding correct answers and original points of view – 1 participant.

II. On a scale from 1 to 5 (5 = very much, 1 = not at all), please rate the following statements:

1) The seminar moderator (trainer) succeeded in keeping the participants' interest at a high level:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
4-1 participant 5-16 participants	4-2 participants 5-22 participants	5-22 participants	4-1 participant 5-14 participants	4-1 participant 5-16 participants

2) All the tasks were clearly explained:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
4-1 participant 5-16 participants	4-3 participants 5-21 participants	4-3 participants 5-19 participants	2-1 participant 4-3 participants 5-11 participants	4-2 participants 5-15 participants

3) It has been very difficult for me to read all the materials during the training course:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
1-11 participants 2-4 participants 4-2 participants	1-16 participants 2-1 participant 3-2 participants 4-1 participant 5-2 participants - 2 participants did not answer the question	1-15 participants 3-3 participants 4-2 participants 5-1 participant - 1 participant did not answer the question	1-6 participants 2-1 participant 3-2 participants 4-3 participants 5-3 participants	1-6 participants 2-2 participants 3-3 participants 4-5 participants 5-1 participant

4) Communication with the moderator was very good during the seminar:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
4-1 participant 5-16 participants	5-24 participants	5-21 participants - 1 participant did not answer the question	1-1 participant 5-13 participants - 1 participant did not answer the question	4-1 participant 5-16 participants - 1 participant did not answer the question

5) You would prefer a more interactive seminar:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
1-13 participants 2-1 participant 3-2 participants 5-1 participant	1-4 participants 2-2 participants 3-8 participants 4-2 participants 5-6 participants - 2 participants did not answer the question	1-11 participants 2-1 participant 3-3 participants 4-3 participants 5-4 participants	1-9 participants 2-1 participant 3-1 participant 5-2 participants - 2 participants did not answer the question	1-11 participants 2-1 participant 3-2 participants 4-1 participant 5-2 participants

III. Please, answer YES or NO the questions below:

1) I consider the seminar was extremely interesting and useful:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
YES-17 participants	YES-24 participants	YES-22 participants	YES-15 participants	YES- 17 participants

2) The topic of the seminar is very useful to magistrates:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
YES- 17 participants	YES-24 participants	YES- 22 participants	YES- 15 participants	YES- 17 participants

3) I will use the information acquired during the seminar in performing my professional duties:

Oradea	Pitesti	Cluj	Galati	Alba Iulia
YES- 17 participants	YES-24 participants	YES- 22 participants	YES- 15 participants	YES- 17 participants

IV. High Court decision No. 2934/2002

TAKING A BRIBE. SETTING UP A *FLAGRANTE DELICTO*

If a person reports to criminal investigation authorities that a public servant asks for an amount of money in exchange for fulfillment of an activity related to his/her professional duties and that person offers money to that public servant at the request of the criminal investigation authorities in order to set up a *flagrante delicto* of taking a bribe, such an action shall be considered a violation of Article 68, paragraph 2 of the Criminal Procedure Code which prohibits the solicitation of a person to commit or continue to commit a criminal act for the purpose of obtaining evidence.

The Penal Section, Decision no. 2934 on June 6, 2002

Through intermediary decision no. 1 on May 28, 2002, delivered, in the Council Chamber, by the Penal Section of the Oradea Court of Appeals, the complaint filed by defendant P.B.E. against the Order on May 24, 2002 and against the pretrial arrest warrant no. 11 on May 24, 2002, issued by the Prosecutors' Office attached to the Oradea Court of Appeals, was rejected; the defendant is under investigation for having committed the offense of taking a bribe.

The defendant filed an appeal against this intermediary decision, asserting that the pretrial arrest was illegal, because of the setting up of the *flagrante delicto*.

According to provisions of Article 148, paragraph 1 of the Criminal Procedure Code, a pretrial arrest warrant may be issued only if conditions specified by Article 143 are met, in situations expressly specified by law.

As for the conditions specified by Article 143, paragraph 1, the lower court correctly found that there is clear evidence that the defendant had committed the offense of taking a bribe, as specified by Article 254, paragraph 1, of the Criminal Procedure Code, by asking for 100 million ROL from witness H.C., who was an evaluating expert in a bankruptcy case, in order for the defendant to approve – as a bankruptcy judge – the payment of a fee to the expert.

According to the last paragraph of Article 143 of the Criminal Procedure Code, existing information in the case file and particularly the depositions of expert H.P, as a witness in the case, constitute clear indications which justify the finding that the defendant committed the offense.

Hence, there are clear indications, and not evidence, because the *flagrante delicto* set up in the case violated the prohibitions specified in very strict terms by paragraph 2 of Article 68 of the Criminal Procedure Code, which specifies that it is prohibited to solicit a person to commit or continue to commit a criminal act for the purpose of obtaining evidence. Or, expert H.C. was

persuaded – after he reported the asking of a bribe – to commit a criminal offense of giving a bribe or to continue committing it, by trying to give the respective bankruptcy judge the amount of 100 million ROL.

All these findings related to the legality of setting up the *flagrante delicto* in this case shall be considered in reviewing the complaint filed against the pretrial arrest order, as an examination of the legality of such an order, requires also an examination of the legality of obtaining evidence used to support the pretrial arrest order.

Since the pretrial arrest order was found to be supported by other evidence presented in the case, the appeal filed by the defendant was rejected.