

**CIVIL SERVICES AND STATE ADMINISTRATIONS (CSSA)**

**COUNTRY REPORT: ROMANIA**  
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# ROMANIA

## List of abbreviations

|       |  |
|-------|--|
| L     | Law  |
| GD    | Government Decision                                  |
| UGO   | Urgent Government Order                              |
| OM    | Official Monitor (Journal)                           |
| OMF   | Order of the Minister of Finance                     |
| DEI   | Department for European Integration                  |
| NPAA  | National Programme for the Adoption of the Acquis    |
| ROF   | Regulation of Organisation and Functioning           |
| MWFEP | Ministry of Water, Forest and Environment Protection |
| MLSP  | Ministry of Labour and Social Protection             |

## ROMANIA

### A. PUBLIC SERVICE CHARACTERISTICS

#### 1. LEGAL STATUS OF PUBLIC SERVANTS

##### ◆ Legal provisions defining the status of public servants

###### 1.1

There are several legal provisions related to the existence of the public service and public servants. Thus :

- Art.72(3) of the Constitution stipulates that the status of public servants is adopted through an organic law. Up to now, this status has not been adopted by parliament, but on 25 May 1999 the draft law was approved by the Chamber of Deputies (see annex 1).
- Art.115-122 of the Constitution sets down the general rules regarding the existence and organisation of central and local public administration bodies (see annex 1).
- Art.1, final paragraph, of GD no.667/1991 regarding some measures to ensure the social prestige of public servants, published in OM no.205/8.10.1991, provides the legal definition of a public servant (see annex 1). In addition, Art.147 of the Criminal Code defines the term “servant” (see annex 1).

Persons working within the budgetary system, such as the government, ministries, army, customs, local public administration, and other central and local administrative bodies, are usually considered as public servants.

- Articles 2 and 3 of L no.154/1998 regarding the system of establishing the basic pay within the budgetary sector and the indemnity pay of persons having a position of public dignity, published in OM no.266/16.07.1998, makes the distinction between persons permanently employed with an individual labour contract within the budgetary sector (so-called public servants) and persons elected or appointed in a public dignity position (see annex 1).

- Other special legal rules refer to : the Status of military staff (L no.80/1995); the Status of teaching staff (L no. 128/1997); the Status of the Financial Guard staff (L no.30/1991 and OMF no.817/1998); the Status of customs staff (GD no.16/1998); L no.115/1996 regarding the declaration and control of the fortune of dignitaries, magistrates, public servants and persons with leadership positions; other internal regulations of different ministries or central and local administrative units or institutions (see list in annex 1).

###### 1.2

Due to the fact that the status of public servants has not been adopted yet, basic rules regarding the rights and obligations of public servants are provided through the GD

referring to the organisation and functioning of different public institutions and the internal functioning regulations of each public institution (see the list mentioned in 1.1). Moreover, the specificity of different fields of activity imposes that different groups of public servants have special rights and obligations rather than a special status.

This is why, more or less, all public servants or so-called employees within the budgetary sector can be covered by different and specific rules in addition to the general employment laws.

### **1.3**

L no.154/1998 regarding the system of establishing the basic pay in the budgetary sector and the indemnity pay of persons having a position of public dignity makes the distinction between permanent public servants and persons having a public dignity position. Thus, according to articles 2 and 3 of that law:

- the public dignity position is a public position assumed directly through elections or indirectly through appointment;
- the public servant position is held by a person employed under an individual labour contract.

### **1.4**

In the central administration the following groups of public servants have a special status : customs staff, teaching staff, police, the staff of the Financial Guard, magistrates and the staff of the Court of Accounts.

#### **◆ Current status of implementation**

### **1.5**

The law defining the status of public servants has not been adopted, but there can be mentioned the full implementation of legislation on special status groups, such as police, magistrates, customs staff, military staff, staff of the Financial Guard and staff of the Court of Accounts.

#### **◆ Arrangements where laws/regulations are not yet in operation**

### **1.6**

In the present situation the right to join a trade union (if it exists in that field of activity) and to sue remain the only constitutional guarantees of public servants.

## **2. RECRUITMENT, SELECTION AND DEPLOYMENT**

### **◆ Selection procedures for entry**

#### **2.1**

Yes. According to the general labour law provisions, the selection to enter the public service is made through examination. By exemption, dignitaries are appointed or elected.

#### **2.2**

Usually, the human resources departments are in charge of the selection of public servants. In practice, the examination held with the head of the public institution or the hierarchical chief and experts.

Dignitaries who are not elected can be appointed by the President, the Prime Minister, a minister or the head of the public institution. For example, irremovable judges are appointed by the President, while judges on probation are appointed by the Minister of Justice; persons holding a public dignity position in the Office of Competition are appointed by the Prime Minister, and those with special positions are appointed by the Chief of the Office of Competition.

### **◆ Qualifications**

#### **2.3**

The examination procedure allows any person with service experience gained elsewhere to enter the public service. In fact, the scope of the examination is to verify whether a candidate has the necessary special knowledge and practical experience to occupy a specific position, rather than to control where these qualifications have been acquired. For candidates with equal results, the final decision depends on the length of service, diplomas or certificates, and recommendations.

Nevertheless, experience gained outside the public service is considered as length of service.

#### **2.4**

In order to screen whether prescribed qualifications are actually held by candidates, the examination commission verifies the candidates' school diplomas/certificates/training certificates and labour card registrations and assesses the results of the practical test.

### **◆ Probation**

#### **2.5**

Yes, the law (for example, GD no.281/1993) provides for a probationary period, but its length is different for specific categories of public servants (usually from three months up to one year). For example:

- Ministry of Home Affairs: three months for a leadership position and six months

- for graduates from university;
- Ministry of Justice (L no.92/1992 as modified and republished): two years for judges on probation if they have not graduated from the National Institute of Magistrature and only six months if they have;
  - Ministry of Finance: six months.

According to the provisions of L no.30/1990 regarding employment based on competence and of GD no.281/1993 regarding the pay of budgetary sector staff, at the end of the probationary period the hierarchical chief assesses the performances of public servants.

The probationary period does not exist for persons appointed as public servants.

#### ◆ **Transitional arrangements**

##### **2.6**

Firstly, labour laws allow any employee to terminate the labour contract (by mutual agreement of the parties or resignation). Secondly, any new law/GD/regulation can stipulate specific arrangements for pre-transition periods. As a conclusion, only a law (*lato sensu*) can provide pre-transition mechanisms or arrangements.

##### **2.7**

It is up to the pre-transition public servant to decide whether or not to continue under the new scheme of the public service. The only condition imposed by labour law is to give a minimum of 15 days' notice. The above period can be longer if a specific legal rule permits it.

#### ◆ **Mobility**

##### **2.8**

Yes, labour laws allow no restrictions on the transfer of public servants between institutions, but over the past three years the stability of public servants has become a major objective of the reform of the public administration. For this reason, for specific public servant positions or public institutions, a stability increment is added to the basic pay. The amount of that increment is specifically established by law for different categories of public servants.

Moreover, we wish to emphasize that a transfer has no influence on the examination imposed by law to enter the public service.

##### **2.9**

GD no.141/1995 and the NPAA provide that the government's Department for European Integration (DEI) initiates and establishes through special institutions the mechanisms to permit and to encourage the training of public servants in EC legislation in order to improve institutions' capacities to deal with EU accession.

Moreover, GD no.775/1998 regarding the approval of the methodology for establishing basic pay limitations and for the evaluation of individual professional performances of

public servants sets training as an important annual assessment criterion.

On the other hand, each job description can include specific requirements connected to EU accession. These requirements will apply at the time of entry into the public service as well as during the annual evaluation.

As for the stimulation of staff, annual or exceptional bonuses can be awarded.

In conclusion, the legally defined mechanisms are entry requirements, training and bonuses.

#### ◆ **Appeal**

##### **2.10**

The general principle provided for by the labour law, especially by GD no.281/1993 regarding the pay of personnel in budgetary units, published in OM no.135/25.06.1993, is that those persons who are discontent can appeal a decision to the board of directors or to the head of the respective institution or ministry. The response should be transmitted within five days.

On the other hand, special rules can apply within different professional status groups; for instance, judges (L no.92/1992) can appeal to the Supreme Court of Justice.

### **3. CONDITIONS OF SERVICE, PAY AND CAREERS**

#### **◆ Employment system**

##### **3.1**

According to GD no.775/1998 previously mentioned, the employment system used in different administrative branches or institutions is post-based.

However, a career-based system applies to specialised diplomatic staff (no details are available).

##### **3.2**

Laws regarding the pay of public servants usually define the positions and their possible equivalents in each institution. The functions corresponding to a given post are then defined in the ROF of each institution. Based on that internal regulation and on the organisational structure approved for each institution through a GD, the payroll of each institution is established. The latter is approved by the Ministry of Labour and Social Protection. Under these circumstances, the law defines the positions/ functions or posts and establishes their comparability across different branches of the administration.

#### **◆ Rights and duties of public servants**

##### **3.3**

The general and common rights and service obligations of public servants are included in different legal rules, as follows :

- Rights :
  - to be paid (L no.14/1991 regarding the wages and L no.154/1998 regarding the system of establishing the basic pay in the budgetary sector and the indemnity pay of persons having a function of public dignity);
  - to retirement pay and social aids (L no.3/1977, successively modified up to L no.86/1997, regarding the retirement pay of state social insurance and social assistance);
  - to a weekly break, paid leave and other holidays (labour code and GD no.250/1992 as modified through L no.133/1995);
  - to join a union (L no.54/1991 regarding the trade union);
  - to strike (L no.15/1991 regarding the solving of collective labour conflicts);
  - to social protection for an unemployment period (L no.1/1991 regarding the social protection of unemployed workers and their professional reinstatement, as modified through UGO no.9/1997, UGO no.35/1997 and L no.65/1997);
  - to labour protection (L no.90/1996 regarding labour protection).
  
- Service obligations provided by L no.10/1972 (the so-called Labour Code) :
  - to protect public property;
  - to guard professional or state secrecy;
  - to observe the rules of labour protection;

- to observe the rules regarding order and discipline;
- to observe the working schedule;
- to fulfil his/her service requirements;
- to improve his/her professional qualifications.

As regards the special groups of public servants, they can have in addition other rights and service obligations stipulated in their special status, such as judges, staff of the Court of Accounts, staff of parliament, tax collectors and customs staff.

#### ◆ Career development and promotion

### 3.4

Theoretically, GD no.775/1998 regarding the approval of the methodology for establishing the basic pay limitations and the evaluation of individual professional performances of public servants opens up that possibility [special arrangements enabling public servants with special skills and qualities to progress in their careers]. Indeed, if the annual public servant's rating obtained through evaluation is higher than the maximum limit provided by law for the function/position or grade held, the public servant can be promoted through examination or competition (in the event that there are other candidates) to a higher position.

In practice the fast track is not possible due to legal and practice restrictions, such as length of service required for a particular position/function, financial constraints, and number of vacant positions.

As for public servants involved in key areas [for implementing the *acquis*], the same rules apply.

### 3.5

The criteria used in awarding promotion defined by GD no.281/1993 are:

- results of the examination and of previous performance;
- leadership and organising qualities;
- capacity to take decisions.

In addition, GD no.775/1998 stipulates the evaluation rating obtained during the past two years of activity.

On the other hand, a different professional status can add to these criteria. For example, according to Art. 66 of L no.92/1992, a judge's official and private behaviour and his/her professional development opportunities are also taken into account.

### 3.6

Yes, according to the provisions of L no. 154/1998, performance appraisal is used in connection with promotion. The appraisal is common to all branches of the administration, and is based on the criteria established in GD no. 749/1998 regarding the approval of methodology for establishing the evaluation standards of individual professional performances and for applying the criteria establishing the basic wage limitations.

Evaluation of individual performance is based on points (minimum of one point, up to five points).

◆ **Training**

**3.7**

Yes, there are institutional arrangements for training at each ministry level. For example, according to GD no. 850/1998 training was set up at the National Centre of Training for Local Public Administration. The Ministry of Home Affairs staff should, according to their specific status, periodically attend three-month professional courses and a three-month language course. At the Ministry of Finance, professional training is organised through the Superior National School of Finance, the Fiscal College and the Customs School. Short-term language training is also organised by this ministry.

**3.8**

Yes, there were training programmes for public servants in key areas for implementing the *acquis*, especially Phare programmes. For example, ROM-101 and ROM-102 for the Ministry of Environment staff, RO-9305-08 for public servants working within DEI. For judges and other officials in the judiciary, the TAIEX Programme was available and some attended study visits organised by the government's DEI through the Phare Programme.

**3.9**

According to GD no. 749/1998, training is an important criterion incorporated into the annual evaluation of public servants, but it is not compulsory.

◆ **Right to join a union and to strike**

**3.10**

Legal guarantees are provided by Art. 37(1) and Art. 40 of the Constitution, L no.54/1991 regarding trade unions and L no.15/1991 regarding the solving of collective labour conflicts. As a general principle, exemptions are specifically provided by law. In this respect, Art. 5 of L no.54/1991 establishes the categories of public servants which do not have the right to join a union (e.g. those in leadership positions, judges, public prosecutors, those exercising state authority, and military staff of the Ministry of Defense and the Ministry of Home Affairs). As far as the right to strike is concerned, Art. 45 of L no.15/1991 stipulates the cases in which the right to strike is forbidden or restricted (see annex 1).

**3.11**

Within the Ministry of Environment and the Ministry of Finance, there are no organised unions. However, in the environment field there are two unions : the Federation of Unions in the Environment Field and the Federation of Unions in the Forestry Field ("Silva"). (Note : there are no data regarding their proportion of representativeness.)

◆ **Pay components**

**3.12**

The components of public servants' basic pay are provided by Art.1 (2) of L no.14/1991, the so-called "wages law". According to that provision, the components of basic pay are : the basic salary, bonuses and increments.

A professional status can extend, and usually does, the elements included in the categories of increments or bonuses. For example, the praiseworthy salary, the fidelity increment, the stability increment, and the confidentiality increment have extended the elements of basic wages for many categories of public servants.

Art. 5 of L no.154/1998 has introduced four new components into the basic salary: the value of universal reference, the indicators of inter-sectoral priority, the value of sectoral reference and the grid of interval. Their amounts are established by law. In addition, Art. 8 of the above law stipulates that the basic salary of persons holding a leadership position includes an indemnity bonus provided by law.

[Note: for the legal text, see annex 1.]

### **3.13**

The proportion of take-home pay (which includes basic pay and all increments, bonuses and allowances) depends on the level of income tax corresponding to the monthly salary of each employee. The income tax list is established by law (L no.32/1991 regarding the income tax on salaries as modified by UGO no.6/1998) and sets a progressive taxation of up to 45% of the monthly wages.

### **3.14**

As a general rule, fringe benefits are determined depending on the professional status. For example, dignitaries or those public servants assimilated to them can have the use of office cars and houses; children of deceased customs officials have priority for enrolment in a customs unit after they have passed the professional exam; the police force, commissioners of the Financial Guard and other categories of public servants for whom a uniform is compulsory have special allowances to cover the cost of the uniform, food, medical care, medicine, houses, etc.; dignitaries and policemen receive a moving allowance, etc.

### **3.15**

The law does not stipulate any special pay arrangements for public servants involved in the implementation of the *acquis* or EU accession. In practice, in the case of good results, the hierarchical chief can decide on a special award or a better evaluation.

## **◆ Termination of service**

### **3.16**

The grounds and procedures for the termination of public service are provided by Articles 129-136 of the Labour Code. According to these provisions, the labour contract may end :

- when the period for which the contract was concluded has expired;
- by mutual agreement of both parties;
- by retirement;
- by the death of the public servant;
- by transfer, either at the public servant's request or on the institution's proposal

- but with the written agreement of the public servant;
- by release from public service (when the institution's activity ends or it is moved to another location to which the public servant does not want to move; when the public institution is reorganised; when the public servant obtains a poor evaluation rating). The release from office is subject to 15 days' notice, and during this period it is possible to reduce the work schedule by 50% without any decrease in pay;
  - by cancellation of the labour contract on the initiative of one party. In this case, the public servant can submit his/her resignation with 15 days' notice or can be dismissed as a result of a disciplinary sanction.

Termination of public service can be based on other grounds connected to special status, e.g. if judges do not pass or attend the admission examination to enter the magistrature), or according to Art. 9 of L no.80/1995 regarding the Military Staff Status.

### **3.17**

There are no general rules regarding severance pay for public servants. In practice, the category of public servants and possible severance pay are established by GD/UGO whenever severance occurs. For example, last year GD no.7/1998 established the severance pay for military staff.

### **3.18**

Usually, legal rules regarding the reduction of unemployment are general guarantees that redundant staff will be reintegrated in office, but not necessarily in the public service .

## **4. PERSONNEL MANAGEMENT STRUCTURES AND CONTROL OF STAFFING**

### **◆ Coordination of personnel management**

#### **4.1**

According to Articles 25 and 26(1) of L no.154/1998 and to GD no.510/1998 regarding the framework methodology of human resources management in central public administration, published in OM no.309/26.08.1998, the Ministry of Labour and Social Protection (MLSP) has the overall responsibility regarding the management of human resources within the public service. It can propose to the government measures to improve the efficient use of human resources in the public sector. It is also liable for monitoring the observance of legal rules in the labour market.

#### **4.2**

According to Art.28 of L no.154/1998, the provisions of that law apply to all branches of the administration except : judges (unless there is an appointed dignitary position); the president, vice-president and general secretary of the Romanian Academy; diplomatic and consular career staff; military staff.

#### **4.3**

According to L no.154/1998 and GD no.510/1998, the MLSP should coordinate and monitor the policy on personnel matters and should set standards. As regards the implementation of these rules, each minister/public institution is responsible and should collaborate with the unions or with the employees' representatives.

#### **4.4**

According to GD no.976/1999, the Department for Central Public Administration Reform was established within the structure of the government. This department has special tasks in the area of human resources management, as follows :

- upholds and promotes the organisation and operation of human resources management in the public administration;
- elaborates regulations regarding grades and job classification in the public administration;
- creates and upgrades the training and career development system for civil servants.

### **◆ Staff involvement in personnel decision-making**

#### **4.5**

Yes, generally speaking there are a couple of legal rules which provide this right, such as GD no.510/1998 and L no.154/1998, previously mentioned. But for different branches of the administration this right can be restricted or detailed. For example, within the Ministry of Home Affairs, this right does not apply. However, within the Office of Competition, a special GD has established as a consultative body the College of the Office of Competition. Within this college, the managers and the representatives of the personnel are involved in

the decision-making process. The major strategic decisions, and especially those regarding the status and pay of the staff, are taken by this college. A similar situation is stipulated by L no.92/1992 as regards the Superior Council of Magistrature.

◆ **Management and control of staffing**

**4.6**

Yes, the MLSP is empowered to control the staff planning process, but staffing levels are annually decided through the budget law.

**4.7**

The budget law and GD establish the staff ceilings and each administration institution monitors the existence and filling of vacant positions. For instance, GD no.104/1997 regarding the organisation and functioning of the Ministry of Water, Forest and Environment Protection (MWFEP) has established up to 1334 positions, the maximum number of positions within that ministry.

**4.8**

Personnel expenses are set according to the maximum number of positions established by the budget law. Money saved by not filling a position cannot be used for other expenses. This money can only be used for awarding the personnel for special job results, because it is considered that by their extra efforts the tasks of the vacant positions have been achieved.

◆ **Job evaluation and classification and job descriptions**

**4.9**

Yes, job evaluation and classification represent a legal requirement common to all branches of the public administration, as provided by L no.154/1998.

However, when the organisational structure of the institution has been changed or there has been a redistribution of tasks and attributions between different positions, a new job evaluation and job classification process occurs.

**4.10**

Yes, L no.154/1998 and GD no.749/1998 are the legal bases for establishing job descriptions. These legal rules also regulate the evaluation process and the person who is liable to carry it out. Thus, according to the tasks included in a job description, the hierarchical chief establishes the standards of performance proper to each position. These standards should be expressed, where possible, in quantified indicators. If the public institution has a specialised human resources department, it is empowered to establish these standards. The standards are approved hierarchically by the chief of the department, the board of directors or the head of the institution. The establishment of these standards takes into account an equal distribution of tasks within each department of a given public institution. Based on the standards approved, each position is evaluated and receives a number of points.

The job description is established whenever necessary (see answer to the previous

question).

#### **4.11**

According to law, the elements included in the job description are common to all branches of the administration. They cover: legal requirements for occupying the position, professional level of the position (executive, operational or managerial), tasks, limits of competence, specific duties and responsibilities, hierarchical and functional relations.

#### **◆ Management and control of pay and salary payments**

#### **4.12**

For those positions considered as “common” positions, there is a unique pay scheme provided by L no.154/1998 for all branches of the administration. Nevertheless, there are also specific schemes for some categories of public servants (provided in the annexes of the law).

#### **4.13**

L no.154/1998 provides for the budgetary sector the system of establishing the basic salary limitations, but the concrete salary level is established by each public institution based on the evaluation of individual professional performance.

Legislation regarding the pay system for public servants is proposed by the MLSP.

The Ministry of Finance drafts the methodology for setting the budget of revenues and expenses and for establishing the proposals regarding the legal expenses of salaries. It also controls the execution of these budgets. In case the expenses exceed the limits approved, the ministry can take measures to suspend the budgetary credit allocations for the future and charge the culpable persons with the illegal expenses.

#### **4.14**

The payroll system is computerised at the level of each public institution. Nevertheless, even if it is comparable between different institutions, it is not common throughout the entire administration.

#### **◆ Appeal against personnel decisions**

#### **4.15**

The legal but specific arrangements are usually provided by the professional status. As a rule, the public servant may appeal a decision on a personnel matter (including the amount of pay) to his/her hierarchical chief, to the board of directors or to the head of the institution. Moreover, persons in leadership positions may appeal to the minister. As for other personnel matters (in case of disciplinary dismissal, for example) the competency is with the court of law.

#### **◆ Evaluation of use of resources**

**4.16**

There are no such arrangements [public disclosure and scrutiny of the use of public service resources].

**4.17 - 4.18**

The audit of the use of human resources and personnel costs is achieved on three levels, as follows:

- the so-called internal audit, carried out by a special department in each public institution;
- the periodical audit of the Ministry of Finance;
- the annual audit of the Court of Accounts.

In addition, public institutions subordinated to a central or local institution are annually audited by the hierarchical institution (ministry, government, prefecture, etc.).

## **B. PUBLIC SERVANTS: PROFESSIONAL ROLE IN POLICY FUNCTIONS AND DECISION-MAKING; RELATIONS WITH THE PUBLIC AND WITH POLITICIANS**

### **5. LEGAL COMPETENCE, ABILITIES AND ACCOUNTABILITY MECHANISMS**

#### **◆ Legal basis for actions of public servants**

##### **5.1**

As a general rule, public servants undertake executive actions or administrative activities under the competencies and responsibilities established by the job description. Exceptionally, they can act under a special mandate given by their hierarchical chief or minister or by law.

#### **◆ Requirements to carry out government policy and to obey orders**

##### **5.2**

The law, the professional status and the ROF provide the hierarchical subordination, e.g. L no.80/1995 regarding the military staff status. These provisions are always very well enforced.

##### **5.3**

The professional status usually offers directly or indirectly legal guarantees which protect the public servants who are asked or required to take illegal actions. Thus, Art. 8 b) of L no.80/1995 provides that military staff are forbidden to give illegal orders or to fulfil such orders. A similar case is L no.21/1996 regarding competition, which stipulates the right of the staff of the Office of Competition to take a stand against unlawful legal texts which may destroy, restrict or eliminate a lawful competition, etc.

#### **◆ Lines of accountability**

##### **5.4**

It can be considered that there are three levels of independence :

- the lowest level is represented by any public servant who has, in fact, the relative independence to act within the limits of his/her tasks established by the job description;
- generally, persons holding a leadership position are independent under the law to take decisions, but they have to observe the orders of their hierarchical chief;
- special categories of public servants, e.g. judges, have to obey only the law, and therefore have the highest level of independence.

##### **5.5**

The accountability of public servants is covered by those legal provisions which allow them to act independently. Indeed, they are accountable to their hierarchical chiefs.

◆ **Ability to innovate**

**5.6**

The law does not provide any mechanisms for encouraging public servants to offer new ideas. In practice, new ideas are published in specialised newspapers or reviews or are made public in the course of scientific sessions, colloquiums, etc. (e.g. in the environment field there are the “Forestry” review and the weekly “Our Forest” newspaper).

◆ **Management practices**

**5.7**

In order to motivate staff and reward good performance, managers have, according to the law and/or professional status, the following possibilities :

- praiseworthy salary;
- monthly or annual stimulation salaries;
- monthly or annual bonuses;
- annual professional evaluation;
- system of periodical re-evaluations.

◆ **Management control**

**5.8**

Line managers supervise and control the quality of performance, productivity and expenditure within their units through different means, as follows :

- periodical evaluation of professional performance and promotion of those public servants with special achievements;
- rewarding of annual bonuses for those public servants with special results, etc.;
- differentiation of bonuses based on the quality of performance.

◆ **Parliamentary accountability**

**5.9**

According to provisions in the Constitution, the following mechanisms can be used by parliament to scrutinize the activity of public servants :

- indirectly -- through parliamentary questions addressed to a specific minister or to the government, through the minister’s appearance before parliament, and through the annual or periodical report of the government;
- directly -- through the parliamentary commissions which analyse or debate a particular field or a specific matter.

**5.10**

Yes, there is the practice of ministers or other heads of public institutions following up

parliamentary reports criticizing the administration and taking actions against those public servants who were at fault (usually, disciplinary measures provided by the Labour Code).

◆ **Non-judicial accountability**

**5.11**

Yes, according to the legal provisions, the following institutions can investigate actions taken by public servants (regardless of their level or responsibilities):

- the government -- through the Prime Minister's special Control Body;
- the Court of Accounts;
- the Ministry of Finance -- through its control bodies.

**5.12**

Yes, these institutions can initiate actions or recommend different measures against those public servants found to be at fault, and the public institutions should take them into account.

◆ **Judicial accountability**

**5.13**

According to Art. 6 of L no.29/1990 regarding administrative contentions, published in OM no.122/8.11.1990, and modified through L no.59/1993 published in OM no.177/226.07.1993, tribunals and courts of appeal (according to their competence) are responsible for resolving actions aimed at changing an administrative decision. More specifically, according to Art. 1 of the law mentioned above, any natural or legal person who considers his/her right(s) infringed by an administrative act, or by an unjustified refusal of an administrative authority to respond to his/her request based on a legally recognised right, may claim in court the annulment of the act, recognition of the right(s) and redress of the injury caused.

**5.14**

According to Art. 6 corroborated by Art. 12 of L no.29/1990, these proceedings are brought either against the public institution in which the public servant is employed or directly against the public servant who issued the unlawful act. Moreover, when the person claims only the annulment of the act without redress of the damages caused, the civil action for damages is independent of the administrative proceeding. In the case of an action taken by a civil servant in the course of his duties which has a criminal character, the criminal court action is also independent of the administrative proceeding.

**5.15**

According to the law mentioned previously, before the persons use their right to sue, they should first make a claim to the issuing public institution to annul the act or to issue a legal Act. The persons who claim the changing of an administrative act are protected by law (e.g. they can be represented or assisted by lawyers, the amount of tax for such court proceedings is established by law, and the request introduced before the public institution is free of charge).

## **6. PUBLIC SERVANTS AND POLITICS**

### **◆ Legal provisions defining the principle of professional independence of public servants**

#### **6.1**

The Constitution has several provisions regarding the professional independence of public servants, such as Articles 101,106,120-122, etc. Provisions on the same subject are also included in various professional status or internal regulations, e.g. L no.92/1992 regarding judges' independence or the Office of Competition's ROF which allows employees to be engaged in political activities, but only outside working hours. On the other hand, by stipulating the categories of public servants forbidden to be politically involved, the law usually gives a negative connotation to their political involvement.

### **◆ Political affiliation and activities of public servants**

#### **6.2**

According to Art. 37 of the Constitution, the judges of the Constitutional Court, people's advocates, magistrates, active military staff, police forces and other categories of public servants established through organic law are forbidden to be members of a political party. Moreover, Art. 4 of L no.27/1996 regarding political parties provides that the same categories of public servants mentioned above and members of the Court of Accounts, as well as members of the Legislative Council and others categories, are forbidden to be involved in political activities or to be affiliated to a political party.

### **◆ Contacts with political parties/parliamentary organisations**

#### **6.3**

No, there are no legal provisions on that matter [professional interaction of public servants with political parties or interest groups (lobbies)], and the interviewed ministries did not respond to this question.

### **◆ Role of public servants in policy-making**

#### **6.4**

There are no specific legal provisions in place which facilitate impartial and professional advice given by public servants, but in practice, in order to meet institutional requirements and to apply government policies and strategies, decision-making is based on such advice.

On the other hand, legal provisions exclude that professional performance evaluation and dismissal of public servants be based on political grounds, except for those persons holding public dignity positions.

**6.5**

Ministers should make use of professional and impartial policy advice of public servants, but the decision to do so is their own.

**◆ Changes of officials on changes of government**

**6.6**

Yes, according to GD no.864/1998 dignitaries or persons holding an assimilated position can be changed upon a change of government. The means used are transfer and resignation.

**6.7**

No, the replacement of permanent public servants upon a change of government is neither regulated by law nor recognized in practice, even if such cases may exist.

## **7. STANDARDS OF CONDUCT; MECHANISMS FOR ENFORCEMENT; SANCTIONS**

### **◆ Regulation of administrative functions**

#### **7.1**

Usually, the ROF of each ministry or public institution establishes the procedures that public servants have to follow when performing their administrative tasks or in their relations with third parties.

#### **7.2**

The laws in force and many ROF do not lay down standards of promptness and fairness, but do provide the time limit within which the administration is required to resolve a private claim.

### **◆ Transparency in decision-making**

#### **7.3**

As a general rule, administrative actions should be subject to transparency and openness. In practice, this is a very delicate issue.

#### **7.4**

Yes, law (L no.23/1971 regarding the protection of state secrecy) and more specifically the internal regulations of different public institutions (e.g. the Office of Competition) define the confidentiality of information and service secrecy. Administrative actions and decisions are usually not confidential.

#### **7.5**

Yes, in order to protect persons' rights to dispute administrative decisions, legal provisions impose that they be in writing, give reasons and identify the public servant involved.

#### **7.6**

No, there are no such arrangements in place [for encouraging reporting by public servants of wrongdoings and maladministration].

### **Standards of conduct of public servants**

#### **7.7**

Since the status of the public servant will be adopted, there are no general standards of conduct for all categories of public servants. However, the ROF usually provides minimum principles of conduct for different categories of public servants, such as the deontology code of the Ministry of Interior's public servants, the principles of discipline and conduct of the Office of Competition's personnel, and the judges' code of conduct.

## 7.8

The hierarchical chief or head of the public institution has the competence to dispose of investigations whenever standards of conduct are breached and to proceed with disciplinary actions or criminal prosecutions. Moreover, the internal control bodies of each public institution or the police should inform the above-mentioned bodies of any unlawful actions. For the Ministry of Home Affairs, the special bodies empowered to investigate breaches of conduct by the personnel and to dispose of disciplinary sanctions are, according to Art. 35 of L no.80/1995, the council of honour and the council of judgment.

## 7.9

Yes, the common grounds for disciplinary actions are legally defined by the Labour Code and the particular grounds are stipulated by the professional status. Public servants are protected by legal means against the illegal enforcement of a disciplinary sanction. They thus have the right to be heard, to hierarchical appeal, to be represented or assisted by a lawyer, and to sue the institution.

## 7.10

No, there are no such arrangements [for resolving day-to-day ethical problems].

### ◆ Mechanisms preventing incompatibilities and conflict of interest

## 7.11

Yes, L no.115/1996 regarding the declaration and control of the fortunes of dignitaries, magistrates, public servants and other categories of persons holding a leadership position, and the provisions of GD no.667/1991 regarding some measures to ensure the social prestige of public servants, published in OM no.205/8.10.1991, have established institutional mechanisms to prevent incompatibilities. Moreover, the professional status could establish other mechanisms as well.

## 7.12

Yes, the legal provisions and the professional status stipulate the restrictions on employment as well as the leaving restrictions. In practice these restrictions are actually applied.

### ◆ Mechanisms for combatting corrupt activities

## 7.13

The following institutional mechanisms have been established to prevent corrupt activities :

- internal financial control departments in each public institution;
- the Prime Ministry's special control department (body);
- the Court of Accounts.

## 7.14

No, there are no independent bodies other than the Financial Guard and the police empowered to investigate allegations of corrupt activities.

## 7.15

Data non available.

**7.16**

No, there are no special bodies, and the competence to prosecute public servants for corrupt actions and to enforce sanctions against them belongs to the courts of law.

## C. PUBLIC SERVICE DEVELOPMENTS AND CONSTRAINTS

### 8. PUBLIC SERVICE DEVELOPMENT

#### ◆ Government action on public service development

##### 8.1

Previous governments (post-1989) considered within their programmes the development of the public service as one of their priorities. Unfortunately, there was not enough determination to either create the necessary legal and institutional frameworks or implement reform measures. Thus, during the 1990-1996 period, little progress was made in public service reform which, in fact, remained almost unchanged. However, some steps should be recognized, such as the adoption of new legal rules, especially for the reorganisation of ministries/public institutions and for setting up new central public institutions. These efforts were unfortunately not supported by real changes in the old structures and thus the entire governmental strategy did not achieve significant results.

##### 8.2

After 1996, the government decided to develop a political strategy for administrative reform. Thus, the *1997-2000 Governance Programme* set the objective of creating a flexible civil service with more decentralised responsibilities. That programme established as main priorities the improvement of service delivery to citizens, human resources management reform and more flexible personnel management practices in public administration. Moreover, the deconcentration of managerial responsibility in human resources management was considered a particular target of the reform.

In addition, the government has promoted some laws currently under discussion in parliament, such as the Civil Service Act, the Law regarding the organisation and functioning of the government and ministries, the Law on ministerial accountability, and the modification of Law no.69/1991 on local public administration.

The NPAA refers, in a special chapter devoted to the public administration, to the objectives and principles regarding public administration reform. The NPAA identifies the following objectives of public administration reform: separation of political and administrative functions, creation of a politically neutral career system, autonomy of local decision-making, transparency of government and administration, simplification of procedures and legislation, review of responsibilities, etc.

##### 8.3

The Governance Programme and the NPAA can be considered as published policy documents. The key issues dealt with in those documents are: objectives of reform, priorities, means to achieve the proposed objectives (drafting of laws/regulations, setting up of new structures, training of personnel).

The main policy document issued and published by the government is the Governance Programme. The key objectives of this programme are:

- to clarify the role and responsibilities of the political and administrative function; to clarify the civil servant function;
- to develop human resources; to review the occupational standards in the public administration; to initiate training for negotiators with a view to EU accession;
- to restructure the personnel according to the agreed objectives;
- to develop sustainable communication between central public administration bodies on the one hand, and between central and local public administration bodies on the other.

In addition, the achievement of different actions is reflected in the monthly newsletters of the government printed by the Department for Public Information.

#### **8.4**

In December 1998, in the reorganisation of the government, the Department for Central Public Administration Reform was set up with the task, among others, of dealing with the reform of the public service.

In order to support the development of the public service's activities, the following set of normative acts have been elaborated and approved:

- L no. 213/1998 regarding public property and its juridical statute;
- L no. 219/1998 regarding the concessions' regime;
- methodological norms regarding the application of the Law on Concessions (to be published in the OM);
- UGO no. 29/1998 regarding the setting up, organisation and functioning of the National Authority of Settlement in the Energy field (NASE - ANRE).

The transformation of the autonomous regimes of public utilities for electrical energy (RENEL), natural gas (ROMGAZ) and railway transport (SNCFR) into national companies has created the conditions for the de-monopolization of public service activity in these areas. It has also created the possibility of privatization of some activities in order to satisfy citizens' needs on the highest qualitative level. The national company RomTelecom, which represented the public service in telecommunications, was also privatized.

At present, a draft has been elaborated regarding communal husbandry services, which establishes a unitary juridical framework for the setting up, organisation, co-ordination and control of communal husbandry public services within districts, towns, cities and communes, with a view to satisfying the social needs of their inhabitants. This draft has been forwarded to parliament. The Department for Central Public Administration Reform is drafting a law of public services, which will aim to open up competition through decentralization and the development of public/private partnerships.

In addition, in order to implement the Civil Service Act, draft legislation has been elaborated regarding the establishment of an Agency for Civil Servants. By the end of 1999 draft legislation regarding the development strategy for public administration will be

issued.

### **8.5**

The regulations and programmes regarding the eradication/prevention of corruption in the public administration is within the competence of the Ministry of Justice, Ministry of Internal Affairs and the Department of Control of the government.

The NPAA has devoted a special section (2.6) to actions against corruption, organised crime, drugs and fraud.

#### **◆ Staffing strategies to facilitate EU accession**

### **8.6**

The National Programme for Romania's Accession to the EU is now being elaborated under the co-ordination of the Department for European Integration and comprises the main development objectives in each domain, public administration included.

The NPAA stipulates the reorganisation of the Department for European Integration within the government structure and at ministerial level, as well as the tasks of other structures involved in EU accession. As for the Department for European Integration within the government, 70 positions of experts are mentioned by the NPAA. Besides these provisions, the government has not made public any overall strategy regarding staffing needs in connection with preparation for EU accession.

### **8.7**

As soon as the Civil Service Law will be adopted, civil servants will be guaranteed job stability, and training and development programmes will be elaborated in compliance with EU standards.

At present, there are no personnel management mechanisms in place to ensure stability in the staffing of key functions for EU accession. According to information received, the only current mechanism to ensure staff stability is a higher monthly salary.

#### **◆ Resourcing public service development**

### **8.8**

In 1999, the Department for Central Public Administration Reform was established within the government structure (following the suppression of the Council for Reform) and has 45 posts, excluding the office of dignitary. The government's policy regarding local public administration is carried out by the Department for Local Public Administration, which has 80 posts, excluding the office of dignitary.

### **8.9**

The Government did not respond to this question.

◆ **External assistance and conditions**

**8.10**

The Department for Central Public Administration Reform has included in its work schedule for 1999, through foreign assistance obtained from the PHARE Programme, the elaboration of a public service development strategy, in accordance with EC legislation.

The Department for European Integration within the government is responsible for the coordination of external assistance, and there are directorates for EU integration in each ministry.

**8.11**

EU foreign assistance programmes are implemented by the beneficiaries of these programmes (ministries and other public institutions) and are monitored by the Ministry of Finance. At present, within the Department for Central Public Administration Reform, SMART II is continuing and the TOR for PHARE Programme 9804.04 have been elaborated.

## D. NUMBERS AND TABLES

### 9. DATA

#### ◆ Numbers and distribution of public servants

**9.1** Note: According to the national statistical system, the public administration data include central public administration and local public administration as well. For 1997, data are not available yet.

| <b>Labour force*</b>  | <b>(in thousands)</b> |             |             |             |
|-----------------------|-----------------------|-------------|-------------|-------------|
|                       | <b>1994</b>           | <b>1995</b> | <b>1996</b> | <b>1997</b> |
| Total (country)       | 10.011                | 9.493       | 9.379       | --          |
| Public administration | 125,457               | 130,607     | 125,145     | 130,344     |
| Private sector        | --                    | --          | 4.828       | --          |

\* Source : Romanian Statistical Yearbook 1997, Chapter 3, page 125.

**9.2** Note: According to the national statistical system there are no accurate data available to respond to this question.

Data available refer to the "Structure of employment by age and area" and to the "Employees by activities of national economy by gender" in 1996.

#### **Structure of employment by age, gender and area (1996)\***

|          | Total | 15-24<br>years | 25-34<br>years | 35-49<br>years | 50-64<br>years | 65 years<br>and over |
|----------|-------|----------------|----------------|----------------|----------------|----------------------|
| country  | 100%  | 13,8%          | 23,3%          | 35,6%          | 19,1%          | 8,2%                 |
| admin.   |       |                |                |                |                |                      |
| clerks : | 100%  | 9,1            | 32,0           | 48,5           | 10,2           | 0,2                  |
| - male   | 100%  | 9,6            | 29,9           | 45,4           | 14,6           | 0,5                  |
| -female  | 100%  | 8,9            | 32,6           | 49,5           | 8,9            | 0,1                  |
| -urban   | 100%  | 8,7            | 32,0           | 49,1           | 10,1           | 0,1                  |
| -rural   | 100%  | 8,7            | 32,0           | 49,1           | 10,1           | 0,1                  |

\* Source: Romanian Statistical Yearbook, 1997, Chapter 3, pages 129-133.

**Employees by activities of national economy and by gender (31.12.1996)\***  
(in thousands)

|  | Total employees |      |        | of whom : Workers |      |        |
|--|-----------------|------|--------|-------------------|------|--------|
|  | total           | male | female | total             | male | female |
| Public administration and defense ; compulsory social assistance | 125             | 57   | 68     | 14                | 9    | 5      |

\* Source : Romanian Statistical Yearbook, 1997, Chapter 3, page 144.

**9.3**

Within the national statistical system there are no data on this subject.

**9.4**

Within the national statistical system there are no data on this subject.

◆ **Pay levels**

**9.5**

Note: according to the national statistical system, available data refer only to the entire administration. The exchange rate is provided in ECU and not in EURO because the latter did not exist in the 1994-1997 period.

| Basic pay levels*       |     | 1994                          | 1995   | (lei/ECU)<br>1996 | 1997    |
|-------------------------|-----|-------------------------------|--------|-------------------|---------|
|                         |     | Gross basic pay (public adm.) | lei    | 171.118           | 235.890 |
|                         | ECU | 80,18                         | 71,50  | 62,15             | 76,71   |
| Minimum national salary | lei | 65.000                        | 75.000 | 97.000            | 250.000 |
|                         | ECU | 30,46                         | 22,73  | 19,38             | 28,19   |

\* Source : National Commission for Statistics

The exchange rate (lei/ECU) on 31 December of each year was :

- on 31.12.1994: 2134 lei/ECU;
- on 31.12.1995: 3299 lei/ECU;
- on 31.12.1996: 5005 lei/ECU;
- on 31.12.1997: 8867 lei/ECU.

**9.6**

Within the national statistical system there are no data available for either different branches of the administration or different public institutions.

### 9.7

Within the national statistical system there are no data on this subject.

#### ◆ Turnover rates among public servants

### 9.8

Note: available data refer to the entire administration. The exchange rate is provided in ECU -- see point 9.5/

| Turnover rates*                                       |     | (lei/ECU) |         |         |         |
|---|-----|-----------|---------|---------|---------|
|   |     | 1994      | 1995    | 1996    | 1997    |
| Monthly average net turnover in public administration | lei | 149.888   | 225.914 | 304.649 | 608.716 |
|   | ECU | 70,24     | 68,48   | 60,86   | 68,65   |
| Average net turnover in private sector                | lei | 133.964   | 184.917 | 281.744 | 516.540 |
|   | ECU | 62,77     | 56,05   | 56,29   | 58,25   |

\* Source : National Commission for Statistics

### 9.9

Data are not available at either the National Commission for Statistics or the government level.

#### ◆ Redundancy and termination rates among public servants

### 9.10

Within the national statistical system there are no data on this subject.

### 9.11

Within the national statistical system there are no data on this subject.

### 9.12

Within the national statistical system there are no data on this subject.

#### ◆ Training of public servants

### 9.13

Data are not available at the government level.

**9.14**

General data are not available at the government level.

For MWFEP, 5% of its employees participated in donor-funded training programmes. 1994-1997.  
As for the Ministry of Justice, at least 90 judges participated in the 9305-08 Phare Programme.

**9.15**

General data are not available at the government level.

For MWFEP, 5% of its employees participated in language training, 1994-1997.

**◆ Disciplinary proceedings against public servants****9.16**

Within the national statistical system there are no data on this subject.

## E. THE JUDICIARY

### 10. DATA ON THE JUDICIARY

#### ◆ Branches; hierarchical structure; distribution of officials

##### 10.1

According to Art. 125 of the Constitution and Art. 10 of L no.92/1992, modified and republished in the OM no.259/30.09.1997, there are the following courts :

- courts of law -- for each town or city and of Bucharest;
- tribunals -- for each administrative unit (county) and of Bucharest. The tribunal's circumscription includes all of the courts of law located in the same administrative unit;
- courts of appeal -- their circumscription includes more tribunals. The number of appeals courts and tribunals attached to them is established by law;
- Supreme Court of Justice.

In addition, within the limits established by law there are also military courts.

We wish to emphasize that each court of law from the above categories has its own material and territorial competence and can judge any kind of trial : civil, criminal, commercial, administrative and labour cases. It means that there are no specialised courts but, according to Art. 13 of L no.92/1992, based on the nature and number of cases, at tribunal and court of appeal levels two or more specialised sections can be organised. There are usually civil, commercial and criminal sections. Moreover, military courts have special competence. The Constitutional Court is not considered as part of the judiciary.

##### 10.2

The law does not provide any hierarchical structure of the courts within the branches of law and moreover, each judge, regardless of the category of court, is independent in his judgment and only obeys the law. However, the courts can be considered as part of a hierarchical structure as far as their material competence is concerned, because each of them can judge only specific categories of cases. We emphasize that three judgment levels are usually provided by law for any law suit: the judgment in the first instance, the appeal and the recourse. According to these judgment levels, a hierarchical structure of the courts is possible. Thus, according to Art. 20 of L no 92/1992 modified and republished, the town courts of law are competent to judge in the first instance all cases, processes, claims and requests, except for those given by law to the competence of other courts. Art. 23 of the same law provides that tribunals have the competence to judge in the first instance the processes and requests stipulated by law. As courts of appeal, they judge the appeals against town courts' decisions and as courts of recourse they have the final judgment regarding town courts' sentences which are not submitted for appeal. Art. 25 of L no.92/1992,

republished, provides the appeals courts' competence as courts in the first instance, as courts of appeal and as courts of recourse. The competence of the Supreme Court of Justice is regulated by L no.56/1993. As far as the military courts are concerned, L no.54/1993 provides their organisation and competence.

### 10.3

#### Number of judges for 1994-1997

| Year         | Town Court | Tribunal | Court of Appeal | Total |
|--------------|------------|----------|-----------------|-------|
| 1994         | 1414       | 603      | 252             | 2269  |
| 1995         | 1520       | 699      | 301             | 2520  |
| 1996         | 1616       | 707      | 326             | 2649  |
| 1997         | 1750       | 781      | 355             | 2886  |
| <b>Total</b> | 6300       | 2790     | 1234            | 10324 |

### 10.4

Data not available.

#### ◆ Integrity of judges

### 10.5

The status and independence of judges is stipulated by Articles 123 (2) and 124 of the Constitution and by special L no.92/1992 regarding judicial organisation.

### 10.6

Generally speaking, laws regulating the judiciary do not require special voting, but like any other organic law they need a majority vote of the members of each chamber in order to be passed or modified.

### 10.7

Judges are selected from among Romanian citizens having full legal capacity, residing in Romania and meeting the general requirements provided by Art. 46 of L no.92/1992 to enter the magistracy (graduation from a law faculty, trainee period, no criminal record, enjoying a good reputation, speaking the Romanian language, medically capable of practicing, graduation from the National Institute of Magistrature or having passed the admission examination to enter the magistracy).

Irremovable judges are appointed by decree of the President of Romania based on the proposal of the Superior Council of Magistrature. Judges of the Supreme Court of Justice are appointed in the same way for a six-year term and can be reappointed. Judges and public prosecutors (attorneys) on probation are appointed by the Minister of Justice. Appointment of public prosecutors on probation is based on the proposal of the General Prosecutor of the Supreme Court of Justice.

Irremovable judges' tenure is submitted to the general rules of labour law. Judges on probation are submitted to a trainee period (two years if they have not graduated from the National Institute of Magistrature and only six months if they have). After the trainee period judges on probation must pass an examination of capacity. If a candidate fails twice or does not attend the examination of capacity, he/she is withdrawn from the body of magistrates.

The promotion of judges is based on their annual evaluation and on their seniority. The annual evaluation is carried out by the hierarchical chief. It takes into account the professional results of the magistrate, his/her official and private behaviour, his/her human qualities, as well as his/her long-term professional opportunities. For magistrates with management tasks, the annual evaluation should compulsorily mention their managerial abilities. Leadership positions are held for a four-year term and can be renewed.

According to Articles 69 and 94 of L no.92/1992, the promotion of judges to a higher court is decided by the Superior Council of Magistrature and with the consent of the person. There is also the possibility of promotion in the same position.

### **10.8**

According to annex 1 of L no.50/1996 modified by Government Order no.9/1997, published in the OM no.177/1997, L no.154/1998 and L no.92/1992 republished, the pay levels in monetary terms depend on the court level. Thus, on 1 September 1998 the basic pay was:

- Supreme Court                    2.620.000 lei (204,9 ECU);
- Courts of Appeal                2.576.000 lei (201,4 ECU);
- Tribunals                         2.508.000 lei (196,12 ECU);
- Town courts                      2.374.400 lei (185,68 ECU).

[Note : 1 ECU = 12.788 lei]

To the basic pay are added different increments, such as for length of service, risk, stability, leadership position, scientific title, and attendance at a court session.

### **10.9**

Data not available.

### **10.10**

Judges cannot be replaced as a consequence of a change of government since, according to Art.124 (2) of the Constitution and Art. 110-111 of L no.92/1992, magistrates are forbidden to belong to a political party or to carry on public activities of a political character.

◆ **Court proceedings**

**10.11**

**Court proceedings and sentences**

|                         | <b>1994</b> | <b>1995</b> | <b>1996</b> | <b>1997</b> |
|-------------------------|-------------|-------------|-------------|-------------|
| <b>Town courts</b>      |             |             |             |             |
| -cases                  | 1.281.933   | 1.269.548   | 1.353.628   | 1.375.116   |
| -sentences              | 935.163     | 902.206     | 980.568     | 103.679     |
| <b>Tribunals</b>        |             |             |             |             |
| -cases                  | 330.324     | 342.330     | 316.161     | 340.109     |
| -sentences              | 257.022     | 210.521     | 227.982     | 256.517     |
| <b>Courts of appeal</b> |             |             |             |             |
| -cases                  | 63.639      | 67.240      | 76.477      | 86.917      |
| -sentences              | 50.401      | 48.068      | 58.095      | 68.521      |
| <b>TOTAL</b>            |             |             |             |             |
| -cases                  | 1.675.896   | 1.679.118   | 1.746.266   | 1.802.142   |
| -sentences              | 1.242.586   | 1.207.356   | 1.266.645   | 1.357.717   |

**10.12**

The average time for a court proceeding during the 1994-1997 period was a maximum of six months.

**10.13**

According to law, the plaintiff or another interested party in court proceedings has the following legal aids:

- right to be represented or assisted by a lawyer;
- right to have all documents or debates translated;
- right to dispute a judgment;
- right to be remitted of tax.

◆ **Training of judges**

**10.14**

The Ministry of Justice has no statistics on this subject, even though its Department of Human Resources keeps dossiers on each seminar, visit, workshop, grant or study tour. Nevertheless, it is well known that the number of judges participating in training in EC law has increased over the past two years. The forms of training used were seminars, study tours or workshops in EU countries and/or EU institutions, training programmes in EU institutions, and grants for Romanian magistrates or judiciary officials.

## ANNEX 1

### 1. Romanian Constitution

**Art. 37** (1) Citizens may freely associate in political parties, in unions and in other association forms.

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(3) Judges of the Constitutional Court, people's advocates, magistrates, active members of the army, policemen and other categories of public servants established by organic law cannot belong to political parties.  
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#### **Art. 72 Law categories**

(1) The Parliament adopts constitutional laws, organic laws and regular (ordinary) laws.

-----  
(2) Through organic law are regulated : a) the electoral system; .... i) the status of the public servant,.....  
-----

#### **Art. 115 The Structure**

(1) Ministries are organised only under Government subordination.

(2) Other special bodies can be organised under Government or ministries or as independent administrative authorities.

#### **Art. 116 The Establishment**

(1) Ministries are set up, organised and function according to law.

(2) Government and ministries, with the accord of the Court of Accounts, can set up special bodies under their subordination, but only if the law recognizes that competence.

(3) Independent administrative authorities can be set up through an organic law.

#### **Art. 119 Basic Principles**

The public administration of local administrative units is based on the principle of local autonomy and on the principle of decentralisation of public services.

### 2. Criminal code

**Art. 147 Servant** - By "servant" it is understood any employee who exercises, permanently or temporarily, with any title no matter how invested, a duty in the service of a body or of a state institution, or of an enterprise or state economic organisation.

Assimilated to servants are those persons who fulfil a duty in the service of any of the organisations provided in paragraph 1, whether or not they receive any remuneration.

**3. Government Decision no. 667/23.09.1991 regarding some measures to ensure the social prestige of public servants, published in the OM no. 205/8.10.1991**

**Art. 1** The public administration authorities - ministries, governmental agencies, departments, secretaries and sub-secretaries, other structures, prefectures and mayoralities, each in their own field of activity, are in the service of the citizens, in order to satisfy their social needs, through the correct application of law and of other legal provisions, or in any case, through the organisation of law application, with a view to achieving the policy established by the Government as provided by its governing programme.

According to the tasks which are incumbent to the public administration authorities, the public servants are liable to loyally and conscientiously fulfil their job duties and to refrain from any act that may jeopardize the institution in which they work.

Moreover, the public servants are obliged to dedicate their professional activity to the accomplishment of the professional tasks for which they have been appointed, with a view to achieving the objectives of their institution and for the public welfare.

The status of public servant, in the sense of the present decision, is that of all persons appointed in a public position which has a permanent character within central or local authorities of public administration.

**4. Law no.154/1998 regarding the system of establishing the basic pay in the budgetary sector and the indemnity pay for persons having a position of public dignity, published in OM no. 266/16.07.1998**

**Art. 2** The provisions of the present law apply to persons having a position of public dignity, as well as to persons employed under an individual labour contract in the budgetary sector.

**Art. 3** In the sense of the present law, the public dignitary position is that public position obtained through direct mandate by organised elections or indirectly through appointment, according to the law.

**5. Law no.15/1991 regarding the solving of collective labour conflicts**

**Art. 45**

(1) Cannot declare a strike :

a) the employees who hold special positions within the Parliament, the Government, the ministries and other central bodies of state administration, the prefectures and mayoralities, the positions of public prosecutor or judge, the personnel of the Ministry of National Defense, Ministry of Home Affairs and of units subordinated to those ministries, as well as the military personnel of units subordinated to the Ministry of Justice;

b) the employees of national energy system units, operative services of nuclear plants, units with a non-stop schedule which, by stopping, risk an explosion, as well as those units which perform production for the country's defense needs.

(2) In case a labour conflict exists between the unit and the employees provided in para.1b) or the civil personnel of units subordinated to the Ministry of National Defense and to the

Ministry of Home Affairs, the trade union body or, the employees' representatives will deal with the claims through direct negotiation and with the participation of the delegate of the Ministry of Labour and Social Protection.

(3) The personnel of the all air, naval and land transport cannot declare a strike, from the time of their departure until their arrival. The personnel embarked on ships of the merchant marine under the Romanian flag can declare a strike only in observance of the rules established through international agreements ratified by Romania.

(4) In medical, educational, telecommunication and radio and television units, railways units, including those for repairing rolling materials, units for river transport, civil aeronautic units and those state units which provide common transport and local salubrity, as well as those supplying the public with bread, milk, meat, gas, electric energy, heat and water, a strike is permitted under the condition that the organisers provide the essential services at a level of no less than 1/3 of the normal activity.

## **List of legal provisions regarding the public administration and public institutions**

### **Central and local public administration**

- The Constitution - Art. 115-118 - independent administrative authorities, organisation and functioning
- Romanian Academy- structure and organisation - Decree-Law no.4/1990 and GD no.569/1990
- National Bank - activity and status- L no.33/1990 and L no.34/1990 modified in 1998
- Council of Competition - L no.21/1996
- National Audio-visual Council - L no.48/1992
  
- Central public administration authorities, ministries :
  - Foreign Ministry - GD no.479/1994
  - Ministry of Food and Agriculture - GD no.390/1997
  - Ministry of National Defense - L no.41/1990 and GD no.110/1997
  - Ministry of Water, Forest and Environment Protection - GD no.568/1997
  - Ministry of Research and Technology - GD no.729/1997
  - Ministry of Communications - GD no.129/1997
  - Ministry of Culture - GD no.642/1994
  - Ministry of Home Affairs - L no.40/1990
  - Ministry of Finance - GD no.447/1997
  - Ministry of Industry and Trade - GD no.382/1997
  - Ministry of National Education - GD no.690/1997
  - Ministry of Justice - GD no.65/1997
  - Ministry of Public Works and Territorial Arrangement - GD no.456/1994
  - Ministry of Labour and Social Protection - GD no.448/1994
  - Ministry of Health - GD no.244/1997
  - Ministry of Privatization - UGO no.88/1997
  - Ministry of Transport - GD no.44/1997
  - Ministry of Youth and Sport - GD no.405/1997
  - Ministry of Tourism - GD no.58/1997
  
- Local public administration ( local authorities, decentralisation, authorities of local public administration) :
  - Constitution - Art. 119-121
  - elections - L no.70/1991 and GD no.87/1997
  - local authorities, setting up and functioning - L no.69/1991
  - local budgets - L no.72/1996
  - competence to establish local taxes and fees - L no.27/1994
  - town hall counsellors, election - L no.69/1991

■ Financial administration :

- organisation of fiscal bodies - GD no.537/1990
- stimulation fund of fiscal bodies - GD no.537/1990 and GD no.281/1993
- unemployment aid - L no.1/1991

■ Public servants :

- Constitution - Art. 37
- entry into the public service - L no.30/1990, L no.281/1993, GD no.749/1998 and GD no.775/1998
- declaration and control of fortune - L no.115/1996
- public dignitaries - GD no.755/1994
- dignitaries' cabinet - UGO no.32/1998
- ensuring their social prestige - GD no.667/1991
- individual labour contract - L no.10/1972 and L no.83/1995
- payment of staff of budgetary units - GD no.281/1993 and L no.154/1998
- management of human resources in central public administration - GD no.510/1998
- trade unions - L no.54/1991
- collective labour conflicts - L no.15/1991