

ROMANIA'S SECURITY POLICY CONCERNING THE FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME

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Abstract

The corruption is an ubiquitous phenomenon that can be met in different countries from an ideological, economical or state development point of view. Taking in consideration the way how this phenomenon affects the economy and the process of taking decisions in the public and private life, there is no doubt regarding the fact that the damages resulting from corruption exceed the individual interests acquired as a result of corrupt actions. The fight against the corruption must constitute one of the main points on Romania's public agenda, with a view of aligning to normality from a political, economical and social point of view, and also to the effective harmonization of the Romanian society with the European practice. The corruption is being perceived moreover like a severe and dangerous phenomenon undermining the force and the authority structures, deceiving the citizen's expectations concerning the maintenance of a social equity climate that can provide equal chances for everyone, but favoring the progress of certain groups and persons. The causes that generate this phenomenon are different from a country to another, from a region to another, generating specific forms of manifestation.

Keywords: "anti-corruption legislation", "national security", "organized crime", "conflicts of interest", "criminal investigation", "reports".

Introduction

The present work illustrates corruption like an expression of moral disintegration and spiritual degradation manifestations, a complex social problem, its modes of utterance, social consequences and solution ways concerning public opinion and the legalized level of social control.

Corruption is perceived as a major negative weak point, a disease of the Romanian transition society, which undermines the efficiency and the state institutions lawfulness and restricts the economic development in Romania.

Thus, it was obtained a work reflecting in detail how the state institutions intercede as a response to the necessity of performing rapidly the entire spectrum of action regarding civil security.

Through this work it is suggested the improvement of the existing regulatory framework to ascertain the efficient application of the law norm not only theoretically but also in practice, and at the same time, to outline an image of the corruption phenomenon against the state democracy, social equity, justice and human fundamental rights and liberties observance.

The national defence system, which at the present is undergoing a serie of changes, remains one of the fundamental pillars of our society. But this phenomenon developing to the level of the entire society affects also domains which jeopardize the safety and the integrity of the country. Hopefully, after finalizing the reorganization process in the designated state defence institutions, and by adopting adequate regulations, the corruption would disappear or at least decrease its ampleness.

Those situations can be avoided by taking certain measures like practicing severe and objective inspections from competent commissions on events that allow the appearance of this more and more wide-spread infringement of the law in our society. A measure like that could certainly reduce this constantly rising phenomenon proportions.

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The current state of corruption in Romania

The lack of transparency of regulations regarding public works contracting, fluctuating import duties, tax reductions, subsidies and access to foreign currency, can facilitate, unintentionally, criminal activities. If the law is confusing, it is easier for groups of criminals to circumvent or to interpret it for their benefit.

These problems are becoming more acute, due to the low level of funding for law enforcement institutions, lack of training and knowledge needed in the fight against organized crime and the insufficient level of cooperation and coordination on an international level. The emergence of corruption is related to the deterioration of morality in social relationships.

The economy has become increasingly stronger and the social system more complex, so corruption has taken various forms.

After a period of almost two decades of democratic development in post-communist space, we can estimate that the social-political system and administrative environment in Romania is vulnerable to corruption and this kind of risks have increased with the liberalization of movement of people and ideas.

In the early stages of transition, organized crime, through the forms of black and gray economy, filled much of the present vacuum in the legal economy, with few structures able to respond to this rapid change, especially economic ones.

Power structures of the old regime were abolished, and new ones have experienced a difficult process of affirmation. Thus, criminals were able to freely carry out illicit activities, such as bank fraud, extortion, illegal trade, illegal formation of corporations, embezzlement and the black market.

"Savage Capitalism" has become a dominant feature of the democratic germs in the last decade of the twentieth century in Romania.¹

Samuel Huntington said that, "In a society where corruption is widespread adoption and implementation of special laws against corrupt individuals only serves to multiply the opportunities for corruption"².

Given the scale and diversification of corruption, the government need to align to European standards, the Romanian authorities have adopted a "National Anti-Corruption Strategy" embodied in the "National Program to Prevent Corruption" and "national Action Plan Against Corruption" adopted by Government Decision no. 1065/2001.

The two programs express Romanian Government's position towards corruption, the unprecedented scale and diversification are the main motivation for developing a strong and unified strategy for the prevention and control in the future.

The adoption of a secondary anti-corruption legislation consisting in the Law side. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and business environment, preventing and punishing corruption, also arose from the same necessity.

The finding that corruption tends to globalize and embrace severe forms in Romania has become a regular coordinated of public speeches of high officials of the Romanian state, which permanently evokes new methods and tools for prevention and social control of corruption. As a member of the European Union, Romania has been the concern of the European Commission, which monitored and is still examining corruption in our country.

Thus, according to European Commission's Report on Cooperation and Verification Mechanism in Romania, which was published on 18.02.2011, is required "independent review of the judiciary system, reform of the disciplinary system for judges and measures likely to increase the rapidity of the act of justice in cases of high level corruption and strengthen the overall policy in the fight against corruption.

¹ AbrahamPavel, *Coruptia*, Ed. Detectiv, 2005, p.420.

² *Ibidem*, p.420.

"Within the Cooperation and Verification Mechanism were established for Romania the following benchmarks:

- 1. providing a measure of justice more transparent and efficient, especially by strengthening capacity and accountability of the Superior Council of Magistracy; reporting and monitoring the impact of new civil and criminal procedure codes;*
- 2. establishment, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, with the task of issuing mandatory decisions based on which dissuasive sanctions can be applied;*
- 3. on the progress made so far, making further professional and impartial investigation regarding the allegations of corruption at high level;*
- 4. additional measures to prevent and combat corruption, especially in local government. ¹³*

It should also mentioned the results of studies conducted by international organizations such as Transparency International or Freedom House Inc.. presenting the main positive and negative aspects related to the efforts and recommendations of organization continuing fighting corruption in Romania (Annex 1)

The relationship of information services with law enforcement

Information Services provide information for judicial authorities regarding potential criminal activity. Not infrequently, such information is obtained from an underground hardly penetrated and inaccessible to judicial authority. In such cases, law enforcement is not possible without compromising sources and methods protection, because intelligence can not be admitted to the probation system.

Judicial authorities are different from traditional consumers of intelligence from at least the following respects:

- lack of experience in information services;
- their interest in specific subjects must not have operational priorities of the intelligence services, but post-operative problems;
- potential public use (under judicial investigation) of classified information which they receive.

Judicial authority need tactical information to serve criminal construction, that lead to certain people or to bribe, a source of material evidence or to suggest new directions of investigation, to indicate an aggravation or a mitigation of responsibility of subjects of the investigation.

According to data presented by the General Direction of Anticorruption account activity during 2010, the institution has conducted research and submitted to the prosecution 2.000 papers and criminal files (+40.15% compared to 2009). Of these, 424 were submitted to the National Anticorruption Directorate and 1576 the territorial structure of H.C.C.J (High Court of Cassation and Justice). A criminal investigation was initiated in 458 criminal cases (43%), of which 65 to the National Direction of Anticorruption and 393 to territorial structures of H.C.C.J. ⁴

In terms of intelligence for the purpose of achieving national security is a dissatisfaction with the manufacturers and suppliers of classified information about the degree of responsiveness shown by the recipients of information.

This problem is neither new nor unique, and cases deserve to be highlighted ca, at least the following aspects:

- conditions to obtain and limits of use secret information are not intimately known to recipients of that information;

³ <http://www.consult-avocat.ro/stiri/raportul-comisiei-europene-privind-MCV-in-romania.html>;

⁴ <http://www.mai-dga.ro/> "Analiza principalelor activități desfășurate și a rezultatelor obținute în anul 2010";

- acceptance, significance and meaning of information messages are different to law enforcement authorities, receiving information directly to the realities perceived by those who receive and provide information;
- important intelligence with obviously degree of relevance and utility are sometimes left unexploited because it could not create a possibility of their use under conditions not detrimental to the security interests or national security circumscribed to rules of classification;
- capitalization requirements of the information provided in the decisions of their beneficiaries are not always sufficiently well known to operators of information services;
- in the relationship between intelligence community and law enforcement involvement are some disorders that are perceived by the public, press, Parliament.

Nr.51/1991 Law on National Security of Romania

Currently, all laws that relate to this concept, refer to Law 51/1991 on national security, adopted shortly after the change in December 1989.

National security is defined in Article 1 of the Act, as "state of law, balance and social economic and political stability, necessary for the existence and development of the Romanian National State, as sovereign, unitary, independent, indivisible, maintaining the order of law and the climate of unrestrained exercise of the fundamental rights, freedoms and duties of citizens under the democratic rules and principles in the Constitution."

Threats to national security of Romania, under article 3 of Law on national security of Romania nr.51/1991 is the legal basis for the state authorities with responsibilities in national security, to propose to the state prosecutor, where justified, to request authorization to conduct certain activities to collecting information, consisting of:

- interception and recording of communications, seeking information, documents or writings to which access is required to obtain access to a place, an object or at the opening of an object;
- lifting and restoring to its place of an object or document, review it, extracting the information it contains, and recording, copying or taking of statements by any means;
- installation of objects, maintaining and taking them from places that have been submitted.

The proposal is made in writing and must include:

- *data or evidence showing the existence of a threat to national security, for whose discovery, prevent or counteract the issue, an authorization is required;*
- *categories of activities which is necessary to authorize: the identity of the person whose communications must be intercepted, if known, or person holding the information, documents or objects to be achieved;*
- *general description, if where and when possible, the place where the activities are authorized to be made, the duration of the authorization.*

The proposal is submitted to the general prosecutor of the High Court of Cassation and Justice and is examined in terms of merits and legality by the specially appointed prosecutors. If satisfied that the request is justified, with the completion of admission, the judge issuing the warrant authorizing the carrying out proposed activities.

Application, issuance and implementation of the mandate are the observance of the Law 182/2002 on protection of classified information.

In special situations which require immediate removal of threats to national security, specialized state authorities in this field may perform those activities without the required permit, followed: it may be claimed as soon as possible but no later than 48 hours.

If the judge considers that no further work performed without authorization is necessary, he dispose immediately cessation of them.

Anti-corruption campaigns

As noted in the report of Freedom House, the most important anti-corruption campaigns have been "Coalition for a Clean Parliament" and "Do not give bribe. "

The first was aimed at informing citizens about the integrity of the candidates on lists in parliamentary elections in November 2004, being mentioned candidates who have been involved in various scandals. This campaign was conducted at the initiative of major non-governmental organizations, including the Pro Democracy Association. The objectives of this campaign, voter education and the empowerment candidates can be said that have been if not totally satisfied, at least useful, showing that the initiative will not remain without an echo in public opinion in Romania.

The second campaign involved here, was one entitled "Do not give bribe." To conduct this campaign, there was collaboration between the Concept Foundation, Media Transparency International Oops (See Appendix 6.).

This was meant to warn the population through mass media on the negative effects of the practice is bribery. Through television and radio spots as well as the placement of billboards containing the message "Do not give bribe" people would be followed to inform and especially aware of the extent that it has "small" corruption in Romania. The target population for this campaign was created by the population aged between 15 and 25 years in urban areas, which according to the initiators of the campaign is most receptive to such a post but at the same time the bribery among which produces a feeling of frustration or even revolt.

At the initiative, the campaign was widely appreciated, but an impressive number of difficulties and obstacles to achieving this campaign was revealed by the Concept Foundation executive director, Radu Mateescu. From the absence of initial investigations to even refusing to transmit certain television commercials⁵, along with the already usual funding difficulties (including those by European programs), have hampered development and likely diminished the impact of campaign against small corruption.

With all this indicative of the difficulties encountered by organizations that have taken the initiative campaign, as in fact is mentioned in the report of Freedom House, the campaign was recognized as a success.

These were the main campaign of civil society structures in Romania to raise awareness about corruption, and despite remaining obstacles (charges of libel, financial bottlenecks, etc..) they are likely to continue to exist and may even become more frequent.

In January 1997 was established at the initiative of the presidential institution, the National Action Against Corruption and Organized Crime Council (N.A.A.C.O.C.C.) as informal structure designed to facilitate cooperation in investigating corruption cases thoroughly for submission to court. This "collective" organism with an advisory and coordination role, has been challenged from the outset on grounds it violates principles of separation of powers is a political interference in the judiciary.

Eventually, in early 1998 to boost efficiency concerns for combating corruption, a part of overall efforts N.A.A.C.O.C.C. were taken and continued by the Consultative Group on preventing and combating crime, organized by the Ministry of Justice.

Bringing together representatives of all institutions involved (except those of the judiciary) working group examined in the fortnightly sessions, issues of corruption, so preoccupied with the shortcomings of the Romanian legislation in force and its improvement opportunities, as well as difficulties encountered in the practice and the legal treatment of some important cases.

The effectiveness of the fight against corruption were reflected in the reorganization in 1998 of the Prosecutor's Office Supreme Court of Justice by establishing anti-corruption Department,

⁵ An example would be considered even if the TVR spots as "violent. "

forensic investigators and that it was intended to strengthen the capacity of the Public Ministry to deal with corruption cases throughout the country and resolve the priority of new cases of corruption.

It has been founded the National Institute of Forensic Expertise aiming at streamlining these procedures required in criminal proceedings⁶, and the Division for coordination strategies to prevent and combat corruption and crime⁷, was created within the Ministry of Justice.

In November 1998 he signed a Protocol of Cooperation between the Ministry of Justice, Ministry of Public, Ministry of Administration and Internal, Ministry of Finance (Directorate General of Customs and Finance Guard), the Romanian Intelligence Service and Foreign Intelligence Service, under which national and county will establish working groups coordinated by prosecutors to speed up prosecution and coordination of the institutions involved to better handling of cases of corruption, organized crime, money laundering.

National Office for Preventing and Combating Money Laundering⁸ was established in 1999 consisting of representatives of the Ministry of Finance, Justice, Internal, Prosecutor of the Supreme Court of Justice, National Bank, the Romanian Banking Association and the Court of Auditors. The office was established as a specialized authority of the Government's aims to prevent and combat money laundering activities that aim receives, analyzes and processes the information and notify the competent authorities⁹.

In May 2000 Law 78/2000 was promulgated on preventing, detecting and sanctioning corruption¹⁰. For tracking and investigation of offenses under this law, in June was set up Anti-Corruption Department of the Supreme Court of Justice and the prosecution services in the specialized tribunals which have not worked because there were busy vacancies contest.

In the Ministry of Administration and Internal was established the Central Task Force Organized of Crime and Corruption Group.

Since 2001 they focus in particular on concrete measures to combat corruption. The government program, some of the set priorities includes restoration of state authority, reducing bureaucracy and fight corruption and crime.

In the National Program for Prevention of Corruption prerequisites to success are predicted in this fight, the political will, accountability of institutions, the correct estimate of the cost, transparency and public access to information, support civil society and the media are highlighted.

The program details the notion of corruption as the misuse of public power to obtain improper benefits and makes direct reference to the abuse of power in the line of duty, fraud (deception and harm another person), use of illicit funds to finance political parties and campaigns elections, establishment of an arbitrary mechanism for the exercise of power in the area of privatization or procurement and conflict of interest (commitment in transactions or acquiring of a position or an incompatible commercial use is with their role and official duties).

Government Control Office Department was reorganized in the Control and Corruption Department¹¹.

This change was one of the points of the *acquis communautaire* to be performed by Romania in order to integrate into European structures, to have a specialized state authority to combat corruption. Later, is organized the Prime Minister's Control Authority part of the apparatus of the Prime Minister headed by a secretary of state named by decision of the Prime Minister¹², and its functions including the detection and reporting corruption cases to empowered state authorities in criminal investigations.

⁶ It was established by Government Decision nr.368 dated 03 July 1998.

⁷ It was established by Government Decision nr.487 / 1998.

⁸ It was established under Law No. 21 of 1999.

⁹ National Program for Accession to the European Union, version 1999.

¹⁰ Published in the Official Gazette of 18 May 2000 nr.219.

¹¹ Government Decision nr.22/2001 nr.71/09.02.2001 published in the Official Gazette.

¹² According to Law 90/2001 in the Official Gazette 164 of 02 April 2001.

Alternatively, with the Government Emergency Ordinance no. 5 / 2002¹³ were thus set some limitations for local elected officials and civil servants. Are covered exactly the situations where local officials are managers, members of the board of directors or hold other leadership positions within companies, in which case they can not enter commercial service contracts, execution of works or supply of goods to public authorities to which they belong, with RAs under the authority of local council or companies that were set up by local councils or county councils¹⁴.

A series of regulations to reduce corruption are contained in the Law on local government which sets out the principles of local autonomy and decentralization of public services, prohibitions and incompatibilities to avoid conflicts of interest, elements of transparency and public participation to drafting judgments and decisions, control and responsibilities for local government, including the legality of control exercised by the prefect, the terms and obligations in the administration of the patrimonial administrative unit - territorial, concessions and public procurement regime.

A highlight of actions to combat corruption in Romania is the decision to align to European requirements and the implementation of experience of other countries with experience in fraud detection and investigation, National Anticorruption Prosecution (N.A.P.) being established by the Government Emergency Ordinance no.43/2002 as independent structure, specialized in combating corruption crimes.

In the period 2002-2004, trying to answer alarming dimensions of the phenomenon of corruption in Romania, there have been numerous legislative measures which were referred to the activities of this institution. Also, international and European authorities, in particular the European Union, but also similar specialized structures in the Member States of the European Union, have offered N.A.P. professional and financial assistance in order to make it more effective. At the same time, he was constantly criticized the lack of activity of N.A.P. in serious corruption¹⁵.

National Anti-Corruption Department was established by the Emergency Ordinance 134 / 29 September 2005, following the reorganization of N.A.P. Emergency Ordinance nr.235/2005 respond to Constitutional Court and the decision meant regaining power and anti-corruption prosecutors to investigate crimes of corruption committed by Members of the Parliament.

Corruption in international law

There are numerous international initiatives to fight corruption belonging to international authorities such as the United Nations, the Organization for Economic Cooperation and Development (O.E.C.D.), World Customs Organization, the Council of Europe, the Commonwealth, the Group of Eight, etc.

These initiatives may include exchanging information, promoting best practices, developing international recommendations and development of international law in order to encourage national programs to combat corruption and foster international cooperation and technical cooperation in this field.

The most important international legal instruments that enable collaboration in combating corruption states are:

• O.E.C.D. Convention on combating corruption of foreign public officials in international business transactions;

The scope of the O.E.C.D. Convention is relatively close and specific. His only objective is to use national law to criminalize acts of corruption committed by foreign public officials. The Convention deal in particular with active corruption, such as the offense committed by the person

¹³ O.U.G. No.5 of 2002 on the establishment of elected local ban was published in the Official Gazette Nr.90/02.02.2002.

¹⁴ See art.1 of O.U.G. nr.5/2002.

¹⁵ See European Commission country report in October 2004.

who promises or offers a bribe, as opposed to passive corruption, that the offense committed by the public official receiving the bribe.

• Revised OECD Recommendation on combating corruption in international business transactions:

It covers several areas such as taxation, accounting rules and operations of the institutions, regulations and procedures relating to the control, banking and financial provisions, public funds, public authorizations, etc.

• Inter-American Convention against Corruption:

It is the first international document against corruption that has ever been adopted (March 6, 1997). It has been ratified by 29 countries, and its scope is broader than the O.E.C.D. Provisions of the Convention can be classified into three main groups: preventive measures, criminal offenses and mutual judicial cooperation. European Union Convention on combating corruption involving European Community officials or officials of Member States.

• Council of Europe Criminal Law Convention on Corruption:

This agreement is drafted as a legal instrument of coercion and applies to a wide range of activities and circumstances. It contains specific provisions that criminalize various forms of corruption, cover active and passive corruption, private and public sector.

• Council of Europe Civil Law Convention on Corruption:

This is the first attempt to define common international rules in civil actions in cases of corruption. While the Criminal Law Convention seeks to control corruption by ensuring that crimes and penalties are clearly established, the Civil Law Convention requires Member States to proceed so that those who were affected by corruption can bring a civil action when they are identified offenders of corruption, which, in practice, victims of corruption in integrating anti-corruption strategy.

• United Nations Convention against Corruption.

In the period 1999-2001 were conducted negotiations which was developed this international legal instrument of coercion, applicable worldwide. Negotiations have been used not only for specific development tool, these are also a forum in which all United Nations member states can come together to evoke the problems of corruption, to apply effective measures to combat corruption and to reach an international consensus in favor of these measures.

The Convention was signed by more than 90 countries, entered into force on 14 December 2005 and provides for joint action by governments and specific measures, such as:

• public policy control of assets for public officials, senior civil servants, magistrates and others;

- implementing the law on protection of whistleblowers;
- international mechanisms for the repatriation of assets acquired through corruption;
- strengthening institutions for prevention of conflicts of interest and incompatibilities;
- prevention of corruption in business¹⁶.

Conclusions

Corruption has become a structural and professional phenomenon, who, through informal networks of organizations and individuals, can influence decision makers in the sphere of political, legislative, judicial or administration and thus national security, so the measures and targets that must take into account immediate and future dynamics of the Romanian reality, to eliminate causes of corruption, in areas where the coefficient of vulnerability is high.

"Corruption" is both an expression of the proliferation of negative phenomena which are amplified in the context of globalization, as well as a direct consequence of inefficient management

¹⁶ www.onuinfo.ro/biblioteca/sistemul_de_documente.

of political exchanges, economic and social depth that occurred in Central and Eastern Europe in the disappearance of the communist regimes.

From 1989 until now, Romania has made significant changes, but nothing comparable to the capitalist society, explicitly embracing the idea of modernization and transition, as such, the European model.

Transitions are efforts to change the societies by groups of politicians with initiative who are proposing to modernize the company they run. Romania has seen many transitions and so far none of them fully succeed. Therefore, Romania is currently in a position underdeveloped society, and the distance from the developed world tends to increase. Romania currently has, however, by joining the European Union, a very special opportunity to modernize.

Unanimous opinion of theorists, lawyers and experts in economics is that, today, corruption has reached a significant size and the underground economy and organized crime increases by a huge amount that these forms convey them to criminal and protection.

Corruption is perceived more as a serious and dangerous phenomenon that undermines the power and authority structures, deceiving peoples expectations about maintaining a climate of social justice to ensure equal opportunities for everyone, but encouraging the rise of groups and individuals.

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