ROMANIA

The National Integrity System

Transparency International Romania is a nongovernmental organisation whose primary objective is to prevent and fight corruption on a national and international level, mainly through researching, documenting, informing, educating and raising the public awareness level.

Ever since 1999, the year it was established, TI Romania has been an accredited National Chapter of Transparency International, the global civil society organisation leading the fight against corruption.

The National Integrity Studies are analysis reports comprising an in-depth, nuanced evaluation of national anticorruption systems. The NIS reports provide important evaluation instruments, that complete Transparency International's global indexes and surveys – such as the Corruption Perception Index, the Bribe Payers' Index and the Global Corruption Barometer – by exploring practices and circumstances that are specific to each country.

After the 2005 edition, this is the second National Integrity System study released by TI Romania.

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FOREWORD

Over the last decade, post-communist societies have faced multiple challenges due to their profound transformations following the transition from authoritarian rule to democracy: the rearrangement of economies, the construction, or reestablishment of public institutions, and the realignment to the international environment. In addition to these trials, widespread corruption has proven to be another major concern for these new democracies.

The aim of the present National Integrity System (NIS) study, which succeeds the 2005 edition, is to present a comprehensive description of the current state of affairs of the main Romanian public institutions and sectors with regard to accountability, integrity, and transparency.

Transparency International's (TI) National Integrity System (NIS) assessment is a unique approach in measuring corruption on a systemic level. It provides a framework that can be used by a large number of anti-corruption stakeholders. More than 70 NIS country studies have been conducted since 2001.

The idea behind the NIS assessment is that a well-functioning NIS provides effective safeguards against corruption. The NIS highlights the main state actors and institutions that influence the manner in which the country is governed. Correspondingly, Transparency International's National Integrity System (NIS) assessment tool evaluates these actors in terms of their own integrity, transparency and accountability, and their contribution to the overall integrity of society.

When these institutions function properly, they compose a healthy and robust National Integrity System that is effective in combating corruption as part of the larger struggle against the abuse of power, malfeasance and misappropriation in all their forms. The assessment examines both the formal framework of each institution, as well as the actual institutional practice, highlighting discrepancies between the formal provisions and reality on the ground. This in-depth investigation of the relevant governance institutions is embedded in a concise context analysis of the overall political, socio-economic and socio-cultural conditions in which these governance institutions operate.

For the present study, an extensive review of laws and policies adopted since 2005 and an examination of the existing research studies done by the external experts constitute the main source for the assessment of the formal framework and for the context analysis. For information on the practice of the relevant institutions, TI Romania's research team undertook a number of key interviews with resource persons from the public sector, the business environment, civil society, academia and other sectors. Subsequently, TI Romania's research team compared the legal basis with the practice and assessed the standing of the NIS.

By pointing out specific weaknesses and highlighting the inter-connections in the performance of the different pillars of the NIS, the information generated by the assessment is consciously directed towards facilitating advocacy work and policy reform.

The quantitative scoring mechanism is meant to provide a basis for observing the dynamics of the pillars, their interaction, as well as the vulnerabilities of the NIS as whole, in relationship with the temporal dimension.

As for the priorities and recommendations formulated for the improvement of the assessed institutions and sectors, these are the outcome of the workshops that TI Romania has conducted with practitioners from each field of activity evaluated in the study. They include both the observations formulated by the participants and those that TI Romania, based on its previous experience, has formulated, as well as relevant models of good practice.

Based on a revised NIS assessment approach developed by Transparency International, the current edition of the Romanian NIS study was conducted in 2009 by a research team that involved not only Transparency International Romania, but also external contributors from the academic field and/or having strong expertise in the field under study. The external contributors endowed with the legal analysis of every NIS pillar, whereas Transparency International Romania was in charge of describing the institutional practice corresponding to each of the pillars.

Transparency International Romania expresses its gratitude towards all the contributors to the study, including the interviewed resource experts and practitioners.

METHODOLOGICAL NOTE

Overview

The Romanian NIS 2009 reviews the period elapsed since the last similar study, in 2005, and is the result of a mixed methodology, based on the general NIS conceptual framework provided by the International Secretariat of TI. Its mixed character is given by the fact that, initially, the study has been built upon an operational structure that was subsequently modified by TI Secretariat. While having partially adapted the research activities to the new methodology, the end result keeps elements from both approaches. Consequently, a comparison between this study and the future reports that will apply entirely the new methodology should be made carefully and in full respect of the methodological differences.

Main Stages of the Research Project

More specifically, the implementation of the current NIS assessment comprised a series of methodological steps:

1. Setting up of the project framework: its structure, activities, timetable, and the selection of the research team for both desk review and practice assessment activities. The desk review was externalized to relevant experts in the specific evaluated areas, while the practice assessment was conducted by TI Romania's research team.

2. Collecting and interpreting data. The external experts pursued exclusively a desk review on the legislative component of the study, while the field research team was responsible for the key interviews..

3. Editing the first draft report and submitting it for review to the lead researcher

4. Assigning scores to the key indicators by the field research team by confronting the legal provisions with the current practices.

5. Reviewing scores at the Advisory Group's consultative meeting. The advisors were the Board members of TI Romania. The five members come from different fields of expertise: they have legal, economical, and political science backgrounds.

6. Running pillar workshops with stakeholders on the draft report so as to identify priority actions and formulate recommendations

7. Updating the NIS Draft Report with the feedback from the workshops

8. Submitting the Final NIS Draft Report to TI Secretariat for technical review

9. Publishing and disseminating the Report.

10. Follow-up activities such as public policy positions, conferences and debates.

Particularities

1. Data collection

The most relevant particularities of the Romanian NIS methodology are to be found in the manner of collecting data and its structuring within the Report. At difference with the current TI Secretariat data collection method, the one used in this research project was based on a clear-cut distinction between the legislative and institutional practice types of information. While the new NIS methodology favours the holistic approach in gathering and comparing data, the other one tries to separate as much as possible the legal (reviewing) and the practice (description) so as to explicitly highlight the differences between them and to identify, through comparison, incongruence and/or deficiencies in the implementation.

In accordance with this approach, the data extracted from the official documents and the information gathered for the practice assessment were collected by different researchers and introduced separately in the Report. As a result, and at difference to the new TI-S methodology, each pillar is structured in two sections, "Legal Framework" and "Actual Institutional Practice" that cover, from the two distinct perspectives, the same research questions.

The research targets seven institutional dimensions that are grouped in three overarching categories: capacity, governance and role. The governance indicator cumulates four dimensions: accountability, integrity, transparency, complaints and enforcement mechanisms. The aim is to provide a clear depiction on whether the pillars enjoy the legal prerequisites that would ensure good internal governance and on whether they transpose them in the actual institutional behaviour.

When analyzing a pillar's capacity, the indicator observes two dimensions: the resources and structure of each institution or sector. The objective is to see if the pillars are armed with the necessary assets for pursuing their activities in appropriate conditions. As for the last category, namely, the role indicator, its background rationale is to acknowledge whether the pillars benefit from sufficient legal and real operational independence so as to meet their function within society and to contribute to a robust national integrity system.

It is to be mentioned that the legal description of the pillars covers the legislation and other official documents that were in force between 2005 and 2009. The correspondent institutional practice assessment used as source of information mainly key interviews with former and current practitioners that were conducted in full respect of the confidentiality principle. Secondary sources of information consisting in other independent studies and academic literature were used where relevant interview information lacked or was insufficient.

2. Review mechanisms

At difference with the new methodology of TI Secretariat, which involves an ongoing technical assistance throughout the entire process of study elaboration, the Romanian NIS Report has undergone three punctual reviews, at distinct stages of data processing.

A first review was operated by the lead researcher after a preliminary version of the Report has been drafted. It consisted in evaluating the coherence of the material, the relevance of the selected data and of its interpretation.

A second review was conducted by the multidisciplinary Advisory Group in a consultative workshop. Its purpose was to analyze, discuss and refine the assigned scores. Modifications and corrections were suggested where inconsistencies appeared between the data interpretation and their scoring.

A third review of the NIS Final Draft Report was done by TI Secretariat at the final stage of the research. Unlike the ongoing technical assistance procedure that usually applies to NIS Research Projects, in this case, TI-S contribution consisted in providing methodological observations and recommendations with regard to the form and structure of the final version of the Report.

EXECUTIVE SUMMARY

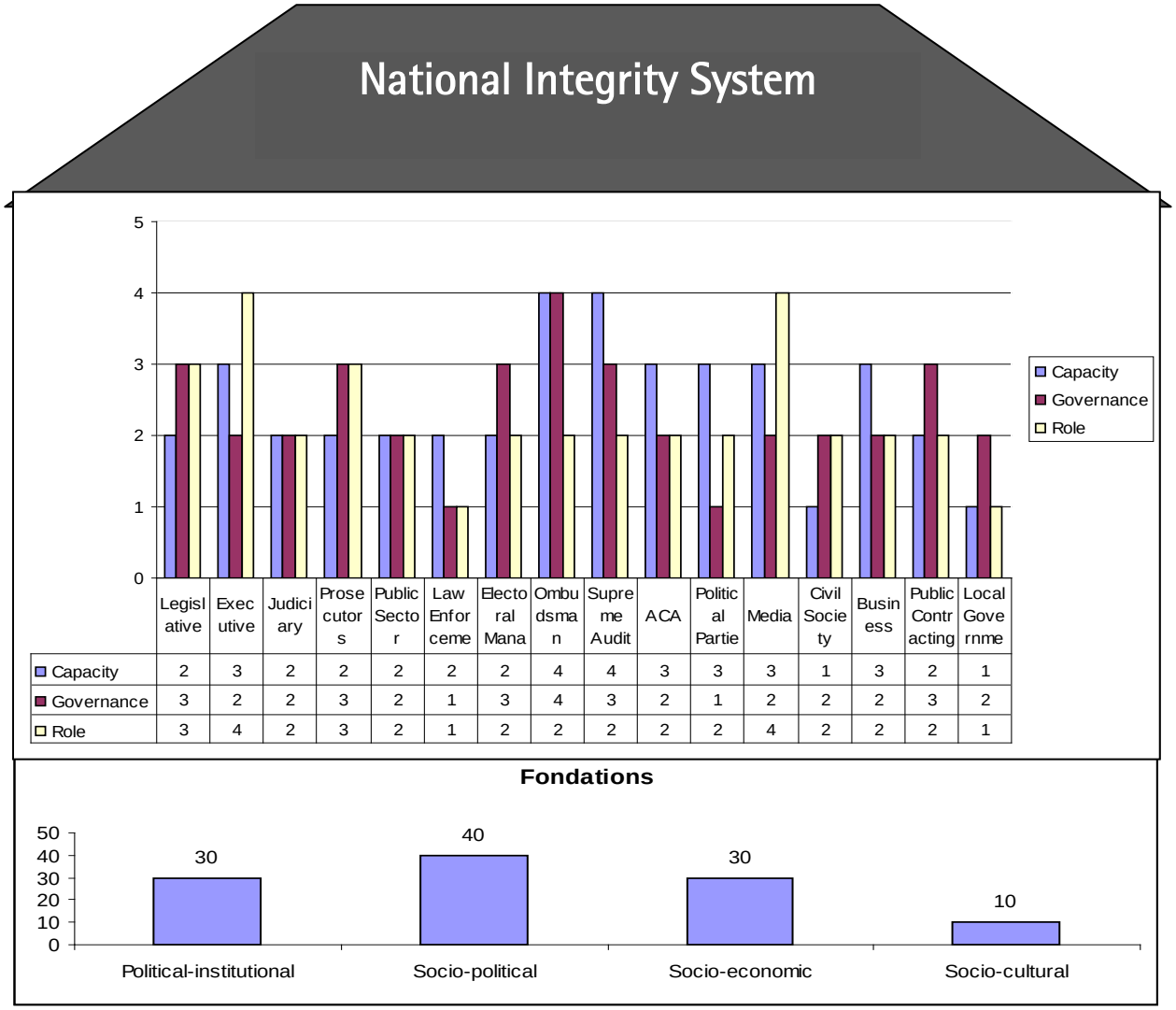
Since the last 2005 NIS study, Romania has been characterized by a weak National Integrity System. While the legal and institutional setting provides to a certain extent the premises for the fight against corruption, the practical arrangements do not allow an effective application of these institutional rules. The effects of legal improvements, adopted during the EU accession, were somewhat limited since laws have not been fully or well implemented.

Romania's National Integrity System is still weak. Pillars playing the most important role in issuing and enforcing anti-corruption measures have not kept the pace with the required development of their own capacity and governance.

The Executive has had an average performance, despite the fact that, theoretically, it enjoys a leading role in anticorruption activities. The judiciary has had an even weaker capacity and governance, which undermined its contribution to the public integrity. Similarly, the anticorruption agencies have lacked public commitment and institutional support for performing according to their objectives.

Instead, pillars with good capacity and internal governance as the Ombudsman and the Court of Accounts did not have a leading role in enforcing public integrity. However, there were pillars with balanced standing in the national integrity system due to the fact that they acquired similar and next to average scores in terms of role, capacity and governance: media, the electoral management agency, the public sector and the business environment. Finally, there have been pillars with overall weak performance. These were the local government, the police and the civil society.

The graphic illustrating the 15 pillars of the Romanian national integrity system shows a rather weak overall performance of the system. None of the pillars reaches the maximum theoretical score per pillar and the majority of the pillars scores below the theoretical average score. Looking at the scores across pillars, we can distinguish four groups: (1) Well-governed, but un-influential pillars; (2) influential, but rather poor governed pillars; (3) pillars with rather good capacity, but with unsatisfactory influence within the national integrity system; (4) overall underperforming pillars.



	Legislative	Executive	Judiciary	Prosecutors	Public Sector	Law Enforceme	Electoral Mana	Ombudsman	Supreme Audit	ACA	Political Partie	Media	Civil Society	Business	Public Contracting	Local Governme
Capacity	2	3	2	2	2	2	2	4	4	3	3	3	1	3	2	1
Governance	3	2	2	3	2	1	3	4	3	2	1	2	2	2	3	2
Role	3	4	2	3	2	1	2	2	2	2	2	4	2	2	2	1

(1) The first group shares a similar pattern: even though they have a smaller importance in the National Integrity System in comparison with the Executive or the judiciary, these pillars score best in terms of capacity and internal governance, but play a minor role within the overall NIS because they are isolated, i.e. they mostly lack important competences, sanctioning powers, or the necessary support of other institutions. This pattern is verified especially in the case of the Ombudsman, the Court of Accounts, or the electoral management body.

The Ombudsman enjoys independence. However, this institution has yet to fulfil its role to protect the rights of citizens since it lacks complaint power and any sanctioning competence. A similar situation can be noticed with respect to the Court of Accounts.

The electoral management body belongs partially to this category. Despite its rather good internal governance, it has yet to play an important role within the NIS, due to its feeble capacity in terms of human resources and to the control competences weakened by normative incongruences

This is also the case for the anticorruption agencies: their institutional design ensures an operational independence. Overall performance of these agencies has been mostly hampered by external political factors and by a weak judiciary system.

(2) Another group of pillars consists of those having the capacity to contribute to the NIS and playing an important role herein, but which register shortcomings in terms of internal governance. The Executive and the media play an important role in the fight against corruption and have the material base to do so. However, they score low in terms of internal governance. The Executive should play by virtue of its competences the most important role in advancing anti-corruption policies. However, the implementation process has yet to bring noteworthy results. Mainly due to incentives and pressures related to the EU accession process, the Executive used its constitutional powers to issue a number of emergency ordinances to advance anti-corruption regulations. Yet, at the same time, its abuse of the aforementioned competence reduced the competences of the Legislature to such an extent that it threatened the institutionalized checks-and-balances and created an unstable legal environment.

The media plays a major role in the fight against corruption, by detecting wrongdoings and making them public. The number of channels available to media and the size of the media market make the whole sector rather independent. However, non-transparent financial resources, minimal integrity standards, questionable linkages between businesses and political interests, as well as a decisive role of the owner on the journalistic content have prevented the Romanian media from becoming a decisive integrity pillar.

(3) The third group of pillars is represented by those institutions and sectors that in principle have the capacity to contribute to the NIS, but actually do not play an important role herein. The public contracting system, the business sector and the legislature fall under this category. Their institutional set-up and their resources are of nature to favour an important role within the NIS, a role that it is not though fulfilled for diverse reasons, including the impact of other pillars on their performance.

The Legislature's role as an integrity pillar and as an institutional check for the Executive's misconduct has long been undermined by through the inflation of emergency ordinances issued by the Government. The business sector has constantly been affected by heavy bureaucracy and long administrative procedures, as well as by legislative instability and incongruence. As for the public contracting system, both contracting authorities and bidders have had a negative impact on the performance of the public institutions that regulate different aspects of public procurement.

Political Parties are at the crossroads between the already mentioned categories of pillars with, in principle, a strong capacity to contribute to the NIS, but actually with no influence in strengthening it, and, as well with shortcomings in terms of internal governance. Almost all parties include anti-corruption as part of their political agenda and discourse. Notwithstanding their public commitment to fighting corruption, political parties have barely acted as an effective promoter of anti-corruption efforts. Their ambiguous relations with business and public authorities, their opacity concerning the number of party partisans/ members and their unclear financing system have affected their position on the integrity scale.

(4) The pillars included in the last category of overall weak pillars within the National Integrity System are the ones with no significant contribution to the NIS and with weak indicators in terms of

governance and capacity. The local government, the judiciary, and the law enforcement agencies are representative examples for this category.

For the police, the strict hierarchical structure and the authority discrepancies, as well as the heavy bureaucratic procedures and the unbalanced distribution of tasks were elements that prevented it from having an effective role within the NIS.

As for the local government, notwithstanding the relative improvements in terms of autonomy in decision-making and in resource administration, fairly accountable and non-discretionary local governing processes are still to be proved. Its weak capacity, as well as its governance is mainly due to high bureaucracy, low non-electoral accountability, and shortages in management expertise.

The capacity and internal governance of the Judiciary pillar have remained limited due to deficiencies in terms of independence and resources. Considering its utmost importance in fighting corruption, this pillar's dysfunctions and vulnerabilities continue to particularly undermine the national integrity system.

The Romanian civil society organizations are also included in this fourth category since they registered a twofold influence on the NIS. Civil society organisations are active either as (a) watchdogs criticizing public authorities, monitoring their activities and pressuring them to change, or as (b) collaborators of state agencies in their efforts to respond to local needs, and advocating for legal or behavioural change on diverse public issues. Notwithstanding their role in raising public awareness and pressuring authorities for being accountable, CSOs have not had an outstanding influence in strengthening public integrity mainly because of their weaknesses in terms of resources and organizational capacity.

Overall, the national integrity system is still weak. The pillars with utmost importance in implementing anticorruption measures and in enforcing public integrity have not sufficiently developed their capacity and internal governance, according to the standing that they enjoyed, in principle, within the national integrity system. Pillars with good internal governance have played a minor role within the system, and pillars with overall bad performance have continued to destabilize the national integrity climate as such.

COUNTRY PROFILE

The Foundations for the National Integrity System

The road to a consolidated democracy

Romania is a semi-presidential democracy. The path to its recognition as a democratic state, symbolized by its membership to the EU was a bumpy one. Democratic transition started in 1989 with a bloody replacement of the totalitarian regime of Ceausescu. After the replacement, Romania was still miles away from being a consolidated democracy. The fall of the former dictator himself was understood to be the awaited democratic revolution. Hence, the administrative staff remained the same and the governments were largely dominated by former communist elites . Of high importance for these faulty changes were, on the one hand, the nature of this transition path, where Romania did not replace its political and administrative elites, which are still influencing the everyday institutional practice; and, on the other hand, Romanian culture, especially the culture of informal ties and clientelism, which is undermining the country's efforts to achieve better governance standards.

Romania is a member of the European Union since 2007 and of the NATO since 2004. EU accession negotiations were closed in 2004 and a reform of the legal framework was initiated with the scope of fulfilling the requirements of the acquis communitaire. With the mechanisms of monitoring and verification in place, a rather tight oversight of the reform progress was put in place by the EU. After Romania joined the EU, some reforms were slowed down The EU benchmarking procedures to monitor Romania's progress proved not to have the expected effectiveness, measuring merely the adoption of laws. Even though the accurate implementation of adopted laws and the institutional backup for the changed legal framework was properly monitored, a wide reluctance to the reform process from the political class was detected and the reform process itself lost speed.

The foundations for the National Integrity System

Political-institutional context

The political institutions which are the most supportive to an effective national integrity system are external, notably the European institutions. Domestic institutions, however, are less supportive. Public administration is highly politicized, leading to an unstable bureaucratic framework. Local governance and the public administration in the rural area in particular depend strongly on electoral outcomes. Political influence on civil servants, via subjective recruiting and promotion is noticeable. Also, an insufficient institutional design leaves too much space for political bargaining, taking place on informal rather than proper institutionalized channels. Political decision-making, therefore, sometimes appears to be based on connections bypassing democratic procedures.

This phenomenon still poses a considerable influence on decision-making and has a negative impact on political competition. Political parties are poorly institutionalized: they appear to follow no

stringent political agenda, no major political alignments are visible and coalition building is mainly influenced by every day interests and necessities, the distribution of political power after elections and the branding of political leaders. The will to govern seems to be the most important driving-force behind all parties' activities. Additionally, the non-transparent financing system of political parties affects the general image of Romania's political parties.

Socio-political, socio-economic and socio-cultural context

The socio-political context is partially supportive of the national integrity system. No major social cleavages have produced political divisions within the Romanian society at large. This explains why the Romanian political arena is not polarised. On the contrary, the vast majority of the parties have a rather centrist approach, be it on the left side or the right side of the political axis.

Romania's socio-economic context is only to a limited extent supportive of a national integrity system. Even though Romania witnessed strong economic growth in the last years and a steady rise of FDI, the existence of a substantial grey economy, which increased significantly by 2006, and the strong role of the State in the economy hamper the development of a truly free market economy in Romania.

Furthermore, current regulation on monopolies is not sufficiently applied, leaving many business sectors under the control of a few, often state owned, companies. The business/ politics boundary is often not accurately delineated. Especially in the media sector, intermingling between political and business interests is common.

The socio-cultural context is the least supportive foundation of the National Integrity System. The notion of 'social capital' (i.e. social trust, civic norms and social networks) is highly underdeveloped. Romanian citizens do not volunteer much of their time, do not trust other citizens and authorities and have a low respect for public norms and laws. This makes communication among people less probable and the main reason for this is related to pre-democratic developments. The type of regime in pre-democratic Romania was a very special one compared to the communist states, as there was no concentrated party-dictatorship program, but a highly patrimonial system. The execution of power was strongly personalized and arbitrary, the system was very oppressive to independent groups and had a developed (and increasingly contradictory) political ideology and was close to the totalitarian type of mobilization. Therefore, there was only very little space for individual development due to the narrowing of personal freedom and the oppression of 'unauthorized activities'. Tracing back historical roots on a longer timescale, the Ottoman Empire appears to be partially responsible as well, for preventing the development of structures suitable for democratic values.

Romania's Corruption Profile

In Romania, the causes of corruption have yet to be subject to an extensive analysis; research on this phenomenon has had a descriptive approach rather than an analytical one. However, recent studies pioneered in the sociological investigation of corruption, focusing on the perception of this fact in different social groups, relevant in terms of incidence and impact, but not claiming to be representative, nor exhaustive: politics, law, police, media, civil society and economy .

Definition and Meaning of Corruption

Basically, in Romania, corruption is understood in two ways: as an illegal conduct or altered behaviour, and as a breach in basic social values (morality, honesty, integrity, ethics etc.). Bringing into discussion the first conventional meaning, the most frequently invoked form of corruption is bribery. The familiar connotation for this word, "spaga", is part of every day life. Another frequent phenomenon with strong bonds with this type of corruption is the reciprocal unlawful relationship between public officials and important citizens at the local level, figuratively called "local barons" and designating those persons enjoying important economic positions at the local level, having good relationships with people with political power and having, in this way, control over local resources. On the same token, kinship relations are also frequently related to illegitimate connections between public officials, or between public officials and citizens, and represent one the most habitual foundations of corrupt conducts.

From the moral side, corruption appears to be related to the use of "double standards" by those involved in this sort of behaviour, as well as by those responsible with its handling. In the same context, corruption is connected to "bargaining" between public officials over high level interests that bring private gain, and to what is called "interventions", meaning that people resort to connections in order to solve (faster or more efficiently) problems that involved public authorities.

Causes

In what may concern the causes of corruption, the structural factors have been more often used in research to explain behaviour than the individual ones. Among the systemic variables contributing to corruption, the economic one plays a leading role. The dual state-private structure of the economy, competed by an underground grey one and a large segment of non-formalised employment represent the grounds for corruption. As well, the legal and judicial aspects provide for other structural causes feeding corrupt behaviour. More exactly, legislative inflation and instability, along with a low capacity of the judicial system in enforcing law contribute to the persistence of this phenomenon.

The structure and functioning of the governance system is another factor contributing to the persistence of corruption. Political clientelism, the continuous reorganization in the management and administrative composition of the public institutions, as well as the pervasive instability of the political arena and the interference of the political sphere into the basic administrative activities trigger corruption.

The social capital plays its part in sustaining corruption, because of the low level of this threefold aggregate variable made out of trust in institutions, respect of norms and building illegitimate networks, as well as of the high degree of tolerance to corruption.

Speaking of the individual factors triggering corruption, rent seeking behaviour, along with a low civic engagement and a constant withdrawal to private sphere, as well as the appeal to informal methods in addressing problems instead of affirming legal rights, encourage corruption. Rent seeking behaviour stands for the predisposition of public officials to see their position as an opportunity for gain. The low civic engagement and the citizens' retirement from the social sphere are closely related to a perception of all-encompassing corruption characterising the public institutions.

Perception of corruption

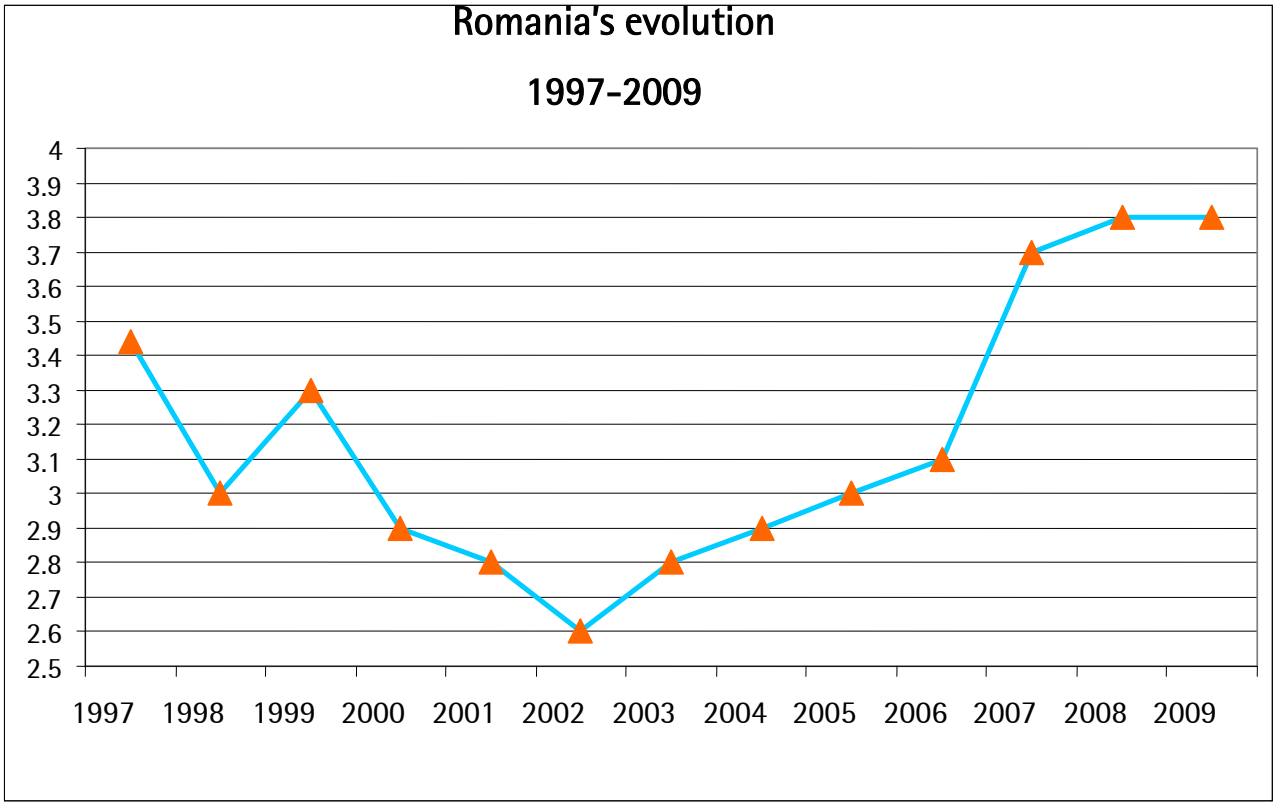
In 2005 Romania, the level of perceived corruption remained relatively unchanged compared to 2004. In 2004 grand and petty corruption were among the national society issues considered to pose the biggest problems . According to 2005 Global Corruption Barometer, corruption was still generally considered as an endemic problem affecting political life and the business environment, but also personal and family life, though in a lesser measure . Political parties and customs offices, the judiciary, the parliament, the police and medical services, and the business environment were still considered to be the most corrupt national institutions and sectors.

The 2006 Corruption Perception Index highlighted Romania's unconvincing performance in terms of corruption perception. In conformity with the GCB, the perceived impact of corruption on political life and business environment rested nearly unchanged. The most affected institutions and sectors were the political parties, the parliament, the business sector, the judiciary, the medical service and the police .

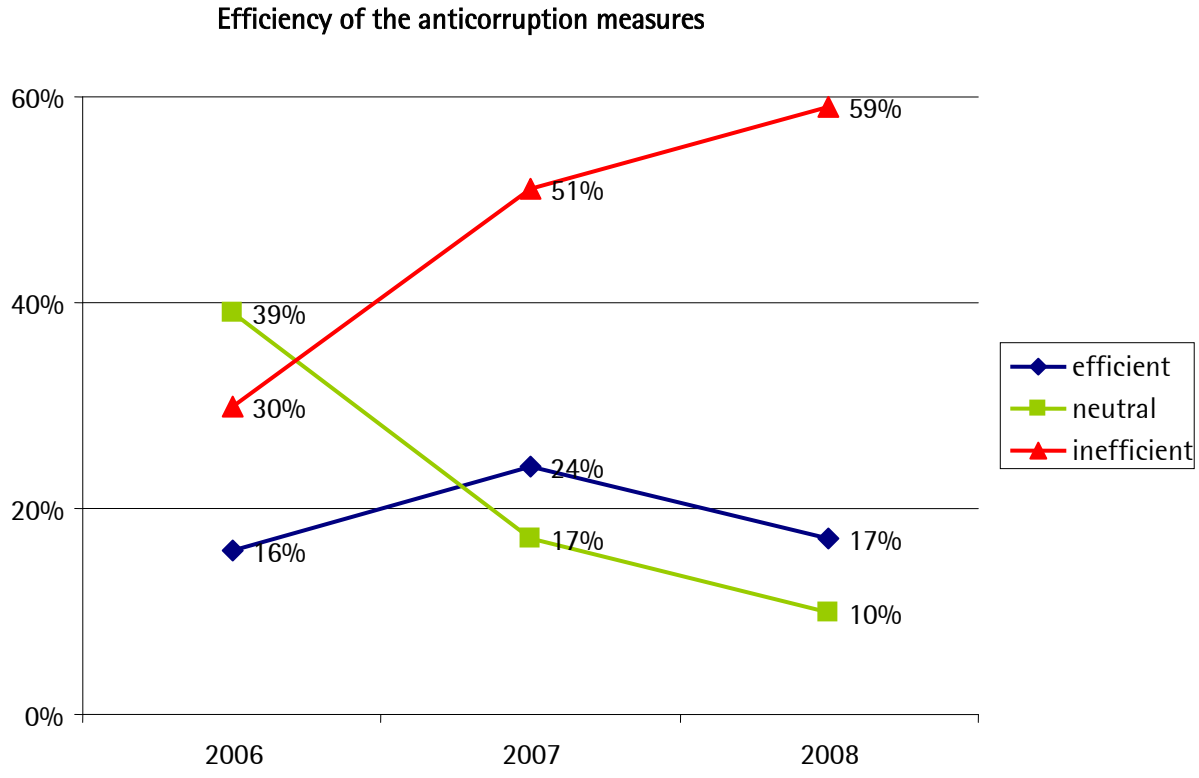
In the 2007 GCB, the government's efforts to fight corruption were mainly assessed as ineffective . Political parties and the parliament, the judiciary, medical services, the police and the business environment were still perceived as the most corrupt sectors of society. Regarding bribery, Romania appeared to be the first among the EU+ countries where respondents had to pay a bribe to obtain services .

The 2009 GCB is even more sombre. Romanians continue to perceive that the measures taken to fight corruption are ineffective. Moreover, the situation corresponds with the ascendant trend recorded by Romania in recent years: in 2009, the majority of the population considers that the anticorruption measures taken by authorities are inefficient. Along with the Corruption Perceptions Index that places Romania on the second to last position among the European countries, the 2009 Barometer underlines the serious issues that Romania faces in dealing with corruption. The political parties and Parliament continue to hold the top positions among the institutions affected by corruption, closely followed by the justice system on the third place, at a mere 0.1 difference.

Transparency International – Corruption Perception Index



Transparency International – Global Corruption Barometer



Anti-corruption Activities

Since 2005, the fight against corruption has become a national priority for the Romanian authorities especially during the European Integration process. In this context, the Community incentives are acknowledged as one of the major driving forces of anticorruption efforts. However, until now, the anti-corruption strategies outcomes point out a merely façade fight against corruption and a weak political will rather than real commitments.

The actors that take part in the fight against corruption are, apart the public institutions with responsibilities in the field, civil society organizations both national and international and the European Union. From 2007 onwards, throughout the institutionalization and the implementation of the Mechanism for Cooperation and Verification, the European Commission has provided institutional incentives for change and improvement in the anti-corruption field in terms of expertise, recommendations and the prospects of activating the safeguard clause in case of non-fulfilment of the four benchmarks established for Romania before the accession. As for the non-governmental organizations, they have proven to play another major role in assisting policy-making, criticising current regulations, exerting pressures towards policy makers and providing expertise in various fields for countering corruption. They also concentrated on actions of information, awareness raising and training addressed both to ordinary citizens and to public officials from local administrations.

The government-driven strategies against corruption incorporate, to a great extent, the measures and tools elaborated by international organizations in the field, as Transparency International, World Bank, or Freedom House. These strategies address corruption either in a systemic way, thus establishing actions that target the conditions which contribute to the flourishing of the phenomenon, either in a specific way, concentrating, hence, on measures that would tackle particular illegal conducts.

The National Anti-Corruption Strategy (SNA) 2005-2007, adopted by Government Decision no. 231/2005, has focused on highlighting prevention policies, enforcement of laws, and monitoring and evaluation of these policies. General measures were taken regarding different public sectors deemed to be the most vulnerable to corruption and new institutions specialized on anti-corruption were set up as well. It is to be mentioned that Transparency International Romania has advanced structural observations and recommendations that have been successfully included in the strategy.

The National Integrity Agency (ANI) was established in this context. According to Law 144 / 2007, ANI is an independent body, with legal personality, operating nationally as a unique structure. In this context, during the years 2004, 2005, 2006 and 2007, Transparency International Romania has provided technical assistance to the Ministry of Justice, organized public debates and critical assessments on the ANI law, with impact on the design of this law.

A second important development regarded the legal framework on public procurement, which was harmonized according to the acquis communautaire. In this context, the National Council on Claims Settlement was established as an administrative jurisdictional body to operatively resolve disputes in matters of public procurement. Furthermore, the legal framework on public procurement was amended by the set up of the National Authority for Regulation and Monitoring of Public Procurement (ANRMAP).

Thirdly, the law on grant funding from public funds allocated for non-profit activities of public interest (Law nr.350/2005) was adopted. It was drafted by the Ministry of Justice, benefiting from the expertise of Transparency International Romania.

Regulations on the allocation of public funds for advertising were also introduced in the law on public procurement. These regulations included provisions on transparency and introduced a system of penalties in cases of legal infringements (Emergency Ordinance no. 34/2006 from 19/04/2006 concerning the award of procurement contracts for public works concession contracts and services concession, consolidated on 12/03/2009).

The law on the financing of political parties (Law. 334/2006) was also revised. Some of the amendments were brought by civil society organizations such as Pro Democracy Association, and the Institute for Public Policies. Also, the implementation of the law on transparency in decision-making within public administration and of the law on free access to information of public interest was monitored. The assessment reports for the years 2005, 2006 and 2007 were published on the Internet page of the Agency for Governmental Strategies.

Furthermore, the legislative package on the preparation and approval of amending and supplementing the draft of the three laws on the justice reform was approved. This package covered provisions on the incompatibility between membership in the Superior Council of Magistrates and management functions in courts and prosecutors' offices; on the transparency of the process of evaluating judges and prosecutors, and of the change in the composition of the College Board. It also contained stipulations regarding the composition of the sections and of the panels of judges according to the principles of specialization and of ensuring continuity. Last but not least, the legislation eliminating the prosecution immunity for public notaries, bailiffs and attorneys was adopted.

Sectoral measures comprising of anti-corruption plans and strategies were taken for those institutions that have been constantly perceived as among the most corrupt, as for instance, the National Customs Authority, the Financial Guard, the General Inspectorate of the Romanian Police and the General Inspectorate of Border Police, but also the National Agency of Tax Administration.

Within the Business Sector, the steps that have been taken for countering corruption were mainly normative: the legislation on bankruptcy has been revised, meaning that the Law no. 85/2006 on insolvency proceedings repealed the legal provisions regarding the granting of facilities and exemptions from payment of outstanding budgetary obligations. The law on preventing and combating tax evasion was adopted, assigning criminal penalties for tax evasion. Furthermore, the Law on preventing and combating money laundering was amended. It eventually aligned the Romanian legislation to the EU acquis and to the Financial Action Task Force recommendations.

A general assessment of the anti-corruption activities from the 2005 onwards supposes, consequently, two types of major actors and two types of activity. On the one hand, the European Union and civil society organizations have been the driving forces having exerted pressure on the governmental actors in order to enhance the fight against corruption. On the other hand, in what may concern the organized civil society with specific profile on the field of good governance, they have pursued great part of their anti-corruption activities separately from the state institutions.

THE LEGISLATIVE

Capacity	Governance	Role
2 (small extent)	3 (moderate)	3 (moderate)

The Parliament has played its role in enacting anti-corruption legislation, especially due to EU accession pressure and despite the political reluctance within all parties. Still, it has not played the function of legislation initiator, but that of instance of approval.

Notwithstanding the noticeable legislative improvements with regard to accountability, transparency and integrity instruments, the lack of a mandatory Code of Conduct for MPs and the absence of clear complaint mechanisms have acted as serious shortcomings.

The functioning of the institutionalized checks-and-balances has been hampered by the large amount of Government ordinances and by the Parliament's consented dependence on the Government's Agenda. The control function, hence, has been visibly limited.

A. Legal Framework

Simina TĂNĂSESCU

1. Role

The Parliament, in addition to the Presidency, is one of the two central representative authorities in Romania. It is made up of two Chambers whose members are elected on the basis of a mixed system (according to its founders, a mix between uninominal vote and proportional representation), which allows for little differentiation in the way they acquire their legitimacy.

The legitimacy of the two Chambers is quasi-identical and the operation of the Romanian Parliament duly deserves the consideration as an accurate illustration of "perfect bicameralism", even after the amendment of the 2003 Constitution and the introduction of what was considered at that time a functional differentiation between the two Chambers. Therefore, the tasks of the two Chambers of Parliament, in particular regarding their normative and control activities in addition to their individual autonomy, are strikingly similar, almost identical. In spite of the attempt to establish original legislative procedures after amending the 2003 Constitution by creating the concepts of first instance

Chamber and decisional Chamber[1], the substantive similarities in the tasks of the two Chambers remain in place. On the contrary, by putting in place stringent restrictions on legislative procedure, in particular regarding the debates on legislative proposals within the first instance Chamber, the new legislative procedure has diminished the democratic and participatory character of the decision making process of the two Chamber. Instead, the amendments brought about a new way of functioning in the Parliament which takes on the disadvantages of single chamber parliamentary systems without allowing for the possibility of capitalising on the inherent advantages of such a system. Furthermore, the incoherence of the newly-instated legislative procedure has contributed to the current normative instability, including the fact that the laws subjected to the review of the Constitutional Court have been frequently repealed on formal procedural grounds (the review authority of the Constitutional Court is considered an extrinsic right which relieves it of the necessity to provide a substantive justification and a real reasoning behind its decisions regarding contradictions between the specific law and the Constitution).

The Constitution stipulates that the Parliament is the "sole legislative authority in the country". In spite of this constitutional stipulation, the Parliament actually shares this role with the Government which, owing to an increasingly widespread use (and abuse) of its legislative delegation, has taken on a much larger role than the Parliament in the normative activity of the state. In spite of the fact that the majority of legislative proposals discussed in Parliament originate from the Government – a common fact to many democracies that have been functioning for longer than the Romanian one – many of these proposals are ordinances or emergency ordinances, meaning normative acts that are already coming into effect at the time of the parliamentary debate and only require a subsequent approval from the Parliament. The Parliament seldom rejects the governmental ordinances which are presented to it. In most cases, the ordinances are approved swiftly, usually with amendments leading to a rapid turnover of legislation that undermines legislative stability and, thus, the concept of human predictability which should be at the basis of any legitimate state. Vivid examples for the de facto limitation of the Parliament's legislative role are situations when the adopted laws are repealed by the Government by way of legislative derogation which are later reconfirmed by the Parliament and repealed afterwards again by the Government. From among the numerous examples of this kind, the most relevant ones for this report are:

- Law no. 7/2006 regarding the status of the Parliament's civil servants, adopted by the Parliament on November 8th, 2006, repealed by the Government through the Emergency Ordinance no. 2/2006 "until December 31st, 2006" apparently for budgetary reasons, and later reconfirmed by the express will of the Parliament, only to be later amended three times in 2007;

- The stipulations of art.33 (para. 5 – 10[7]) of the Law on the status of magistrates no. 303/2004 regarding the way former magistrates can go back to practicing their profession without an examination but by direct nomination if they have fulfilled this position for a minimum of 10 years and ended their activity for justified unimpeachable reasons were repealed by Emergency Ordinance no. 100/2007 and later reinstated by the law approving this Emergency Ordinance. The re-entry into force should have come into effect starting June 1st, 2008 but only two days later the Government passed Emergency Ordinance no. 46/2008 which expressly

[1] Article 75 of the Constitution

repealed again the same stipulations. During the parliamentary debates regarding the law approving Emergency Ordinance 46/2008 which took place in February-March 2009, the same original stipulations of Law no. 303/2004 were reinstated;

- The stipulations regarding wage increases in the education system which were negotiated at the beginning of 2008 during a prolonged strike of all education syndicates and covered in the Government Ordinance no. 15/2008 foresaw a modest gradual salary increase which should have been given in instalments by the end of 2008. The Law approving the ordinance no. 221/2008 specified a larger wage increase than the original one in spite of the fact that the Government had announced its budgetary limitations and, consequently, opposed the changes that the Parliament brought to the text of the ordinance. The following day, Emergency Ordinance no. 136/2008 was passed after the Parliament had adopted the law repealing its stipulations until a new government would be able to find other budgetary sources to cover the newly created additional costs. Emergency Ordinance 1/2009 regarding measures on the salary of personnel in the public sector of the new Government covered specifically the wage increases stipulated in Emergency Ordinance no. 15/2008.

In addition to its legislative function, the Parliament has a control function over the Executive but also over all state affairs which should be carried out according to the norms that the Parliament sets. Consequently, parliamentary control extends over the entire state activity but is carried out differently depending on the nature of the controlled activity and the type of authority that is targeted thus allowing the Parliament to dispose of many types of control mechanisms. It is worth mentioning the impact that the diversity of control mechanisms has on their overall efficiency; some can determine significant and immediate changes in the case of detecting possible deficiencies, while others are no more than general warnings or simple information tools for the parliamentarians.

Therefore, the control over the Executive is regulated in great detail in the Constitution which stipulates not only the possibility of parliamentarians to address questions and interpellations to members of Government or to pass motions regarding certain issues but also the different forms of political accountability that the Government itself has to the representatives of the people (either in the form of motions of censure or votes of confidence). If the questions and interpellations are rather information tools for parliamentarians, the motions are true warning mechanisms without altering the structure of the Government (e.g. in 2007 the Constitutional Court had to clarify to some opposition parliamentarians that adopting a motion does not automatically bring about the elimination or replacement of a member of Government). However, motions of censure can lead to the dismissal of the entire Government and a vote of no confidence, when he Government assume responsibility before the Chamber of Deputies and the Senate, in joint sitting, can determine the passing of a law or of an entire legislative package without any parliamentary debate on the technical aspects of the legislation but solely on the basis of political trust that parliamentarians have in the Executive's team. Since the amendments of the 2003 Constitution which state that a vote of no confidence to the Government no longer leads to the automatic adoption of the piece of legislation (either a single act or, more frequently, an extremely complex compilation of random laws put together in legislative packages) presented to the Executive, but requires instead (according to art. 114) rounds of negotiations with members of Parliament.

Many other state authorities have the obligation to present thematic or annual reports on the activities they carry out to the Parliament in plenum or to one the two Chambers. Some of these authorities are: the Permanent Electoral Authority, the National Integrity Agency, the Ombudsman, the Court of Auditors, the Economic and Social Council, the National Audiovisual Council, the Romanian Information Service, etc. In this case as well, the degree of control efficiency is variable, depending on the type of the authority that is controlled, but also the political rapport that is established between the Parliament and the specific authority. Therefore, the presentation of the annual or thematic reports of the Ombudsman has rarely managed to gather a large number of parliamentarians and has hardly ever brought about debates or concrete political decisions. Conversely, parliamentary debates over the annual reports of the Romanian Information Service sparks heated debates while the rejection of the 2008 annual report of the National Audiovisual Council led to the dismissal of its leadership.

Other parliamentary control mechanisms which are rarely used in spite of their potential are investigation or special committees whose reports are discussed in the plenum of the Parliament without leading to spectacular tangible results.

Lastly, members of Parliament have the possibility to obtain from the "Government and other public administration bodies" (according to article 111 of the Constitution) any type of documents or information that would be useful to their activity.

Furthermore, petitions, requests, notifications or complaints submitted by citizens from specific districts to their representing deputies or senators can become an effective way to verify the activities of state authorities even though they are not a real control mechanism to the parliamentarians but rather a means of information about local issues. Often times, such petitions and notifications make members of Parliament take initiative and impose more effective control mechanisms.

In this context it is worth mentioning the fact that the Parliament has organisational, regulatory and budgetary autonomy which means that it establishes its own organization and operation rules, adopts its own internal regulations and sets its own budget and the Government must include it in the annual state budget proposal. In fact, the state budget, in the vein of the state insurance budget, is debated in Parliament and adopted by law.

2. Resources and structure

Within the Parliament, the Secretary General of each Chamber is responsible for the management of the budget and the hiring of specialized personnel (contractual or civil servants). The two Secretary Generals are credit release authorities. They are appointed by the Plenum of the two Chambers at the recommendation of the Permanent Cabinets.

Parliament civil servants have (theoretically from 2006 but practically starting from 2007) their own status, different from that of regular civil servants. However, in spite of this peculiarity, in the vein as the status of deputies and senators, Law no. 7/2006 regarding the status of the Parliament civil servant only rehashed the general provisions on the status of civil servants adding, where necessary and possible, patrimonial privileges.

3. Accountability

The Parliament contributes to increase transparency in state activities and to influence the fight against corruption in Romania in two ways essentially: on the one hand, in its rapports with other state authorities and with the citizens (external affairs) and on the other hand in its own activity (internal affairs) by having a clear contribution to a transparent public service and a heightened citizen trust in state authorities. If rapports with other state authorities have been briefly presented in the first part, the following sections will tackle the rapports with citizens in order to highlight the strides that the Parliament has accomplished in increasing transparency.

As representative authority, the Parliament is solely responsible to the citizens – not just the ones who are eligible to vote or have voted in the past, but to all citizens of the state. In order to achieve greater accountability from the parliamentarians and a stronger link between the electorate and elected public officials, the electoral system was modified, rather hastily, in 2008. Proportional representation based on a ballot with set lists, in which the redistribution of the remaining seats is carried out at the national level, has been replaced by what was demagogically called a uninominal ballot. In reality, the uninominal ballot is a mixed electoral system where citizens can express their electoral options based on a uninominal vote within electoral colleges (created within the old electoral districts) and the elected officials are determined based on a representation scheme and sometimes, based on political horse-trading within the district. Since the electoral districts remained the same as the ones established by the previous electoral law, meaning they continue to coincide with the administrative-territorial units, the cutting up of electoral colleges gave way to many controversies. The alleged uninominal formula forced the political competitors to a new type of dialogue with the electorate in the district where they ran which raised a lot of questions regarding the type of elections that were carried out. In order to meet the real expectations of the potential voters, the candidates and their parties tried to 'contextualize' their electoral campaigns and ran on platforms focused on local issues which are in fact mostly inconsistent with the parliamentary agenda. This fact weakens the link between the voter and the elected official, does not allow for greater accountability from the parliamentarians, hampers real debate from taking place on the promises that elected officials made during national elections and weakens the commitments taken by the elected officials in the context in which the Parliament hosts completely different debates and adopts different types of decisions. Furthermore, parliamentary elections in 2008 were the first ones in which the political spectrum was no longer reduced to just two political forces which fight each other in the decorative presence of several 'pocket' political parties. For the first time, three major competitors (and an interventionist 'player' president) emerged as winners but neither one had the majority vote. In fact, the way in which the results of the vote were tied to the mandates that were distributed proves the extremely lax link between the concept of political accountability as it is practiced in mature political systems and the way it is understood on the banks of river Dambovita. Furthermore, another novel aspect in these elections was the fact that one of the three parties (PSD) obtained the relative majority of the votes[2] but lost the elections, because when the mandates were distributed the party on second place (PD-L) managed to get one mandate extra to the Chamber of Deputies and two to the Senate.

[2] According to the centralised data of the Central Electoral Bureau, for the Chamber of Deputies, the PSD+PC Alliance scored 33,09% of the votes, PD-L – 32,36%, PNL – 18,57%, UDMR – 6.17%; for the Senate, the PSD+PC Alliance scored 34,16% of the votes, PD-L – 33,57%, PNL – 18,74%, UDMR – 6,39%.

Therefore, the structure of the government that would come about was impossible to predict from the time of the campaign which contributed to a real but inefficient battle between candidates who made electoral promises meant to attract voters at all costs even though at times it was evident that they would never be able to keep them. Under such conditions, the political accountability of members of Parliament towards their voters in 2008 is at best illusory.

4. Integrity

The current electoral situation allowed for integrity mechanism for members of Parliament to be watered down as well. Legal accountability for members of Parliament was extended when the 2003 Constitution was amended. If the incompatibilities of public office for members of Parliament remained the same[3], parliamentary immunity has been altered to protect deputies and senators only in matters of potential criminal offences without including any longer protection from disciplinary responsibility as it had been the case until 2003. Given the fact that parliamentary immunity is only a procedural protection which does not prevent the prosecution of parliamentarians who commit a criminal offence but only requires stricter due process procedures, in 2005 an attempt to interpret more loosely this constitutional provision by saying that "the criminal investigation and prosecution can be carried out only by the Prosecutor's office to the High Court of Cassation and Justice" was deemed unconstitutional by the Constitutional Court. Specifically, a Government Emergency Ordinance tried to ascribe the tasks of investigating and prosecuting senators and deputies for acts of corruption to the National Anticorruption Prosecutor's Office, an independent body assimilated to the High Court of Cassation and Justice but independent at the time of the Prosecutor General. The Constitutional Court showed that the nature of parliamentary immunity cannot be changed by the delegated legislature and only a constitutional law assembly can make such a legal change.

Law no. 96/2006 regarding the statute on deputies and senators came to complete an alleged legislative gap, in the context in which the majority of parliamentarians' rights and obligations, including those related to accountability, integrity and transparency were already covered by constitutional provisions or legal stipulations in Law no. 161/2003. The statute on deputies and senators covers most of these regulations and adds more privileges, especially those of patrimonial nature. This law was the object of many heated public debates which culminated with the calling of the Constitutional Court on this matter by the President of Romania. Noticing that the law tends to restrain the sphere of protection offered by parliamentary immunity solely to the "duration of the mandate", which contradicted the constitutional provision that stipulates that immunity covers "political opinions expressed during the term of the mandate", the Constitutional Court invalidated only this provision and considered all the other calls for unconstitutionality legally unfounded, even though, according to the Constitutional Court, some of them should have been subjected to an opportunity control.

From the perspective of integrity mechanisms, the law only mentions the requirement that all senators and deputies submit annual wealth (article 4) and interest (article 19) statements and further

[3] "any public authority with the exception of members of Government", as article 71 of the Constitution stipulates, further detailed by Title IV provisions on "Conflicts of interest and the regime of incompatibilities in public office" of Law no. 116/2003 regarding measure for ensuring transparency in public office and in the business sector, preventing and penalizing corruption

stipulates the obligation of parliamentarians to carry out their activity abiding by the principle of transparency (article 111), without modifying too much the current legal structure under Law no. 161/2003.

Public institutions that monitor the application of these requirements have suffered from constant political attacks which resulted in an overhaul of their legal structure. Therefore, following decision no. 453/2008 of the Constitutional Court, the National Integrity Agency (ANI) was established with great efforts in spite of severe opposition and later, in 2008, reorganised owing to a notification submitted by a group of parliamentarians. The National Integrity Agency, one of the latest achievements of the Romanian Parliament in the field of transparency and integrity, in spite of a weakening of the Agency's organisational laws, was weakened when the political initiative of 71 parliamentarians was invalidated.

The National Council for the Study of the Secret Police Archives, an institution which is also responsible for the review of interest statements, has been completely reorganised owing to a decision by the Constitutional Court (decision no. 51/2008) which declared the organisational and operational law of the Council unconstitutional. The decision that was reached following a notification by a parliamentarian regarding specific aspects of internal regulation in the Council was much more extensive than the original warning specified. Similarly, the National Council for the Fight against Discrimination was declared unconstitutional as well in the decisions 818-821/2008.

5. Transparency

The rules regarding the transparency of parliamentary activity are the same as all the other public institutions and are stipulated in Law no. 544/2001.

The regulations of the two Chambers stipulate the publicity of debates, acts and votes of the MPs, on the websites of the respective Chamber. The Chamber of the Deputies distinguishes itself by this point of view allowing the ex officio publicity of a large amount of debate records and acts.

6. Complaints and Enforcement Mechanisms

According to the article 69 of the Romanian Constitution, republished, during the exercise of their mandate, deputies and senators are in the service of the entire nation, meaning that they have a representative mandate and not an imperative one, which is formally interdicted by the same article. Accordingly, the only sanction mechanism at the citizens' disposal is their vote. Any other complaints with respect with the MPs' conduct, including those of a penal nature enter under the incidence of the parliamentary immunity provisions.

The applicable sanctions regarding the behaviour of deputies and senators exclusively within the Parliament's hemicycle are regulated in the in the internal regulations on the organization and functioning of the two Chambers. They can go from mere warnings to the interdiction of speech in the Senate or the exclusion from the Low Chamber's meetings.

7. Relationship to other pillars

At the time when this report was drafted, the Parliament continued to have a weak role in the National Integrity System in spite of its potential. The laws that have been passed which focused on increasing the transparency and accountability of public authorities or on fighting corruption by either setting new standards or creating new institutions that monitor and control the activities of other institutions, have been declared unconstitutional shortly after they were passed or nullified by not being applied. The Parliament continues to contributed significantly to the current normative inflation and legislative instability (in collaboration or against the Government), proving itself incapable of fulfilling its control function.

B. Actual Institutional Practice

1. Role

In the last legislature, the anti-corruption legislative proposals (approved, postponed and rejected) were said to be regarded as priority on the Parliament's Agenda, mostly because they were considered to be a part of the EU integration process. They were given high importance on the written agenda (the draft agenda) by virtue of their stake in the integration process. Nevertheless, many of this kind of projects were postponed, re-examined several times and sent back for re-examination mostly for political reluctance reasons.

In all the political parties, there were supporters and detractors to this kind of projects. The major involved parliamentary committees were the legal affairs committees, but the actor advancing the anticorruption legislation was the Government. The Justice Minister of that time had been very active, but also showed rigidity in their dealings with the Parliament, which slowed down the adoption of that legislation. Still, the adoption of a major part of the anticorruption legislative proposals has shown that, eventually, the Parliament if not supported, at least agreed with it.

2. Resources and Structure

During the last legislature, each Chamber's budget was regularly drafted by the staff of each Chamber, and then approved by vote and sent to the Government, which had to include it in the state budget proposal, which had to be accepted, at his turn, by the Parliament. From then on, the Secretary General (civil servant) administered the spending of the institution (payments, salaries, wages, and investments).

Regarding the human resources, there were two categories of personnel. At one hand, the parliamentary civil servants were under the authority of the Secretary General. On the other hand, political staffs were allotted to parliamentary groups, leaders of the parties and the members of the permanent boards. This staff have been appointed and evaluated by the political leaders themselves for the duration of their mandate.

Both the political and the administrative staff of the Parliament were paid in the same way and were in the direct subordination of the Secretary General of the Chamber of Deputies and of the Senate. There was no difference from the point of view of the pay between the persons that worked for

politicians or parliamentary groups and the civil servants working directly for an administrative structure in the Parliament. Informally, the political staffs were considered to have been working for the Chancelleries of the two Chambers, for the cabinets of the members of the Permanent Bureaus and for the staff of the political groups. The political staff was exempted from certain interdictions and incompatibilities that regularly apply to the parliamentary civil servants (according to the art. 9, (4) *Interdictions and Incompatibilities from the Law 7/2006*). For instance, the political staff could attend political meetings in the working time.

As for internal control and audits, the Court of Accounts has made its yearly audits and no significant problems were publicly claimed. Nevertheless, there were some suspicions on the manner in which the renovation works for the Parliaments' building have been handled. Apparently, many of these works were done without a public tenure, by simply signing a continuation of work with the same companies. Still, nothing has been proved on this matter.

3. Accountability

The Parliament has been claimed not to be supervised in its legislative activity by any other entity by reason of its popular legitimacy. However, the Constitutional Court has played a major role since 2004 until now in this respect. This stems from the fact that it has been asked to intervene on every major controversial political subject and has been involved in many important decisions during this period as, for instance, the impeachment of the president of Romania in 2007 or the electoral law that established the vote in single member colleges for MPs.

As for the accountability of the staff, the human resources department has dealt with trainings and the evaluations of the parliamentary civil servants. In case of negative results, they were susceptible of suffering a cut of the wage, of not being promoted, or even of dismissal, but that was quite difficult due the high level of protection that the civil servants enjoy by law. Still, the human resources department was rather giving the advice, and the hierarchical superior usually made the evaluation and the decision, accordingly.

4. Integrity

Until now, the Parliament failed to have an ethics code. The major legal documents containing provisions on this topic and allegedly guiding the MPs' behaviour were the Law on the statute of the MPs and the Regulations of the two Chambers. Still, there was no unitary document acting as a code of ethics.

It is worth mentioning, though, that within the 2003/2006 PHARE Program there has been set up a deontological code project for the Chamber of Deputies. The final text, submitted to the Regulation Commission within the Chamber, is expected to be annexed to the future Regulations of the Chamber (under the Commission's debate until 2008 since 2010).

For all the issues related to conflict of interest, gifts and hospitality, except the post-employment, legislation has been claimed to be appropriate and quite effective, due especially to its tightness, compared to other European legislations. As for post-employment, rules were not clear, particularly for MPs. However press analyse will reveal great suspicions on the actually implementation of the

legislation concerning this issues, manly because the prosecution inability to prove the suspicions and secondary because of the necessity of a vote of fellow MPs for some investigations on Deputies or Senators.

5. Transparency

The Legislature has taken noticeable steps towards improving transparency in its activity, especially by the means of the Internet. The official web page of the Chamber of Deputies provides currently free access to the stenographs of the public debates within the Chamber, as well as to the results of MPs' electronic votes on different acts under deliberation. Furthermore, the official site gives to citizens the opportunity of keeping up with the legislative process and that of scrutinizing the activity of the deputies. As well, the interested persons can follow the parliamentarian control as the questions, the interpellations and their correspondent responses are available online.

6. Complaints and enforcement mechanisms

In spite of civil society warnings related to unsatisfactory participation to parliamentary work of the MPs in both Chambers, although there are sanctions mentioned in the Regulations of each Chamber and the Statue of deputies and Senators, there were no important measures took against any MP, because of its lack of participation in all kind of parliamentary work. Instead of the official parliamentary enforcement mechanisms, MPs are subject of party discipline mechanisms.[4]

Upon the order of the Secretary General, two public servants were invested with the registration of the interests and wealth declarations and with the responsibility of implementing the legal provisions applying to parliamentary public servants and to the persons in decision positions within the Services of the Chambers. The registration was supposed to be made in special registers, for each category. The investigations have been usually carried out, accordingly, by the Juridical, Discipline and Immunities Commission or by the National Integrity Agency.

As for the internal complaints, if any, they had to be dealt by the chief of the respective department, the Secretary General, or the Discipline Commission. Instead, external complaints that came from the citizens were dealt by the Juridical Service.

7. Relationship to other pillars

In the last legislature, the Parliament was alleged to have interacted mostly with the Government, and in a lesser measure, with the President, the Constitutional Court and the Legislative Council.

The relationship with the President was claimed to be weak, due to the fact that, institutionally, the attributions of the two bodies do not overlap or intermingle. The President was supposed to sign the laws and send them for publication. If not, the President could send them back to re-examination. The Parliament acted together with the legislative Council, which is, de jure, its technical advisor. As for the Constitutional Court, it hasn't impeded much of the legislative activity of the Parliament

[4] The issue is analyzed in the Political parties dedicated chapter.

throughout its control of constitutionality, yet some important acts of the Parliament were examined by the Constitutional Court, to which the Parliament have no reply mechanism.

On the contrary, the relationship with the Government proved to be the strongest. The Government was claimed to have taken a lot of the Parliament's responsibilities on his making full use of its legislative competences stated in the Constitution. As the Government could issue emergency ordinances, that had the power of a law, most of the regulation during the last legislature was done in this way. Most of the invoked arguments favouring this kind of enactments have been the need for reform and the need for accelerating the European integration process. Another invoked argument was resource-related: the Government was purported to have much stronger technical staff being employed in drafting legislation.

A sensible role in the Parliament-Government relationship was claimed to have been played by the minister for parliamentary affairs, whose main responsibility was to pass the governmental legislation through the Parliament. This position meant to represent a connection between the Parliament and the Government. In the last legislature, for instance, besides some anticorruption laws, the minister for parliamentary affairs promoted in the Parliament governmental policies regarding the property system, the modification of fiscal system subsequent to the implementation of the unique quotation, or regarding the privatization of the Romanian Commercial Bank.

Yet, the Parliament has assumed to potentially cover a full control over the Government's activity, by making use of procedures like asking questions, interpellations, simple motions and motions of censure, setting up investigation committees for examining governmental activities. Still, the control of the Parliament has not been fully used thanks to the support that the Parliament gave to the Government in office.

It is worth mentioning, in this context, the position of ministry for parliamentary affairs. This function was supposed to have two major components, an administrative part and a political part. The administrative part included aspects like maintaining the bureaucratic connection between the Government and the Parliament, managing the flow of information between the two institutions. Politically speaking, the person occupying this function had the role to promote the legislative initiatives of the Government in the Parliament and to ensure, however, that the Parliament maintained its role of legislative power.

Regarding the activity of the Parliament since 2005, two states of affairs impeded on the Parliament's effectiveness. On one hand, the abusive use of the emergency ordinances has made the Government the main agent of the legislative process. On the other hand, and somehow paradoxically, the so called "legislative inflation", namely the submission by the MP's of a large volume of legislative proposals to the Parliament's debate, has induced a certain legislative instability, have reduced the usual time and quality of the debates and, consequently, the quality of the laws. Still, the most recent changes within the electoral system have brought on a relative raise of the MP's interest for the local communities, at least during the 2008 electoral campaign, which witnessed a change in the content of the parliamentary candidates' political programs, which have focused mostly on specific issues arising from their respective constituencies.

8. Past developments and future prospects

Since 2005, the Parliament has passed the bulk of the anticorruption legislation which is currently in force. Noticeable improvements were made with regard to the regime of conflicts of interests, gifts and hospitality, and the regime of incompatibilities, given that most of the legislation related to these issues has been passed in 2005 and 2006. Ever since, MPs and any other employee in the Parliament had to make public more detailed statements for wealth and interest[5], which were the object of verification and control of the National Integrity Agency. Gifts and hospitality were also included in the wealth papers.

The modification of the Election law for the Chamber of Deputies and the Senate[6] in the sense that MPs be elected in uninominal colleges, by uninominal ballot, according to the principle of proportional representation, has induced changes in the electoral behavior for both candidates and electors; for instance, the electoral campaigns were unsurprisingly more personalized than the previous ones. Still, the results didn't show a spectacular improvement in the Parliament's composition. Studies[7] reveal that although the first uninominal elections renewed numerically the current composition of the Parliament, they failed to lead to a genuine change at the level of the decisional power. More specifically, the self-styled process of political class renewal did not produce significant changes in the managing structures of the two Chambers (in the Permanent Bureaus or in the parliamentary groups' leadership).

Speaking of the improvements that should be done with regard to the Parliament's activity, the main steps would be the diminution of the number of emergency ordinances and, accordingly, the restitution of the Parliament's legislative power, the enhancement of the role of the legislative Council, and the reduction of the legislative thematic in the sense of containing the tendency of excessive enactment.

9. Stakeholders' recommendations

In this context, increasing the standing of the Parliament within the national integrity system should mean not only rethinking some of the normative provisions that apply to MPs during and after their mandate, but also reconsidering the way in which they are translated into practice. More specifically, the following recommendations need to be taken into consideration:

- Improving the legislative process and reviewing the mechanism of legislative delegation
- Reviewing the legal framework concerning the parliamentary immunity and prosecutors investigations
- Reconsidering the secret vote within the Parliament and making the committee meetings public

[5] O.U. nr.14 / 3 March 2005 (published in M.Of. no. 200 / 9 March 2005.) Forms for amending statement of assets and statement of interest, was approved by Law 158/2005, published in M. Of . no. 449/26 May 2005.

[6] Election law for the Chamber of Deputies and the Senate and amending and supplementing Law no. 67/2004 for the election of local government authorities, the local government Act no. 215/2001 and Law no. 393/2004 on the Statute local elected officials, law no. 35/2008

[7] http://www.ipp.ro/pagini/pe-cine-am-ales-uninominal-profil-p-1.php

- Improving parliamentary control over the Executive, particularly when it comes to the process of issuing normative acts
- Adopting an Ethics Code of the Parliament

THE EXECUTIVE

Capacity	Governance	Role
3 (moderate)	2 (small extent)	4 (great extent)

Overall, the Executive has held a balanced position within the national integrity system.

On one side, the Government has played, by virtue of its constitutional competences, the major role in tackling systemically the anticorruption issue; still, it has yet to prove its correspondent effectiveness.

On the other side, the President has made full use of the afferent prerogatives on this field, but more often despite the Government, than along with it.

The rivalry between the two heads of the Executive during 2004-2008 legislature has been caused both by a constitutional, structural ambiguity and by circumstantial factors, as the high personalization of the Romanian political arena. The consequent unstable institutional and political environment hampered the assumed rhythm of reform in terms of anticorruption. The current Government, in contrasts, has enjoyed the presidential support, as the two heads of the current Executives shared the same political views.

A. Legal Framework

Dana TOFAN

Introduction

The Romanian Constitution of 1991 assigned a *two-headed executive* or a *dual one* represented by the President and the Government, lead by a prime-minister. The Revision Law no. 429/2003 did not change anything under this specific aspect. Nevertheless, it can be said that this Revision Law has given more strength to *parliamentarianism,* by establishing a particular interdiction on the President's power to revoke of the prime-minister[8]. Even if this interdiction could not be found in the former version of the Constitution, its existence could have been argued by the fact that the regulation of the Government's political accountability resided solely with the Parliament.[9] Furthermore, it was specifically stipulated that, in cases of changes in the structure or political composition of the

[8] Art.107 alin.(2) and alin.(3) in the Constitution
[9] Art.109 alin.(1) in the Constitution

Government, the President of Romania is entitled to revoke and name, at the prime-minister's proposal, some of the members of Government, only with the acceptance of the Parliament.[10]

Consequently, closer to a *parliamentary regime* than to a *semi-presidential* one, the Romanian constitutional regime has been regarded sometimes as *a semi-presidential with a strong Parliament regime* or, other times, as a *mixed regime*, between semi-presidentialism and parliamentarianism.

1. Role

The Romanian Constitution regulates at the beginning of each chapter dedicated to public authorities entitled to exercise the classical functions of the state *the role and structure* of the collegial bodies, the Parliament and the Government, and, respectively, the *role* of the President, as part of the executive power.

The President represents the Romanian state, being the guarantee of national independence and of territorial unity and integrity. Moreover, he/she is entitled to ensure the respect of the Constitution and the good functioning of public authorities, by exercising a mediation function between the powers of the state, or between state and society.[11]

According to the administrative doctrine, the *President of Romania* is characterised by a triple hypostasis: *Head of the State*, *Head of the Executive together with the prime-minister* and *the guarantor of the Constitution* and *mediator between the powers of the state*. The last function cannot be interpreted in its juridical sense, because that would lead to the unacceptable conclusion that the President would be situated above the three powers, like a meta-state authority. This leads to the necessity that the President is *neutral and equidistant to the political parties* and the Constitution states precisely the interdiction to be member of any political party after being elected to this high-official position[12].

The debates in the Constituent Assembly regarding the institution of the head of state resulted into the constitutional position of *President of the Republic, elected through universal suffrage,* nevertheless with more limited tasks than those corresponding to a president of a semi-presidential republic, being conditioned by the intervention of other public authorities. The constitution regulates most of the president's tasks, without further clarifications through other laws.

The Government has a double function as well, *political and administrative:* ensuring the internal and external policies of the country and exercising the general leadership of public administration.[13] The constitutional regulation concerning the Government is further expounded on in an organic law, which qualifies it as being a *public authority belonging to the executive power, a public administration body with material competences* that exercises the following functions: *strategy, regulation and administration of state property, representation and authority in the state*[14]. As regulated by this law, the Government holds certain types of relations, as follows: *hierarchical*

[10] Art.85 alin.(3) in the Constitution
[11] Art.80 in the Constitution
[12] Art.84 alin.(1).
[13] Art.102 alin.(1) in the Constitution
[14] Law no. 90/2001 concerning the structure and functioning of the Romanian Government and of Ministries, with the further modifications

superiority to ministries and prefectures, *collaboration* with public administrative autonomous authorities etc., *administrative guardianship*, meaning *the control of legality exercised by the perfect* (in what may concern the local public administration).

2. Resources and Structure

The President exercises his/her prerogatives through *Presidential Administration* which includes public services as stipulated in a special law.[15] The specialised technical apparatus consists of 11 departments, one counsellor office and 2 compartments. The specific leading positions within the Presidential Administration are the following: *presidential counsellor*, having the rank of minister, and *state counsellor*, having the rank of state secretary. The appointment and dismissal of presidential counsellors is done by the President.

The Presidential Administration personnel include appointed members, at the disposal of the President of Romania, as well as persons occupying specific positions in the Presidential Administration. According to the modifications brought to the legislation in 2001, the personnel of the Presidential Administration can be appointed only on the basis on the confidence they receive from the President of Romania and only after signing a commitment of loyalty, as stipulated in the Regulation Concerning the Structure and Functioning of the Presidential Administration Document. The withdrawal of confidence is in effect a revocation of the appointment, respectively a dismissal through the annulment of the work contract. These provisions are applied as well to the security personnel of the Presidential Administration. The dispositions introduced in 2001 are extremely clear regarding the *political* feature of the appointments at the level of the Presidential Administration. Furthermore, the law includes details on the *collaboration relationship* between the Presidential Administration and the other public authorities.

As written in the Constitution, *The Government* has the following structure: a prime-minister, ministers and other members, as regulated in the corresponding organic law.[16] Accordingly, the Government has *no hierarchical internal structure*, but instead it has a *simple* one. In this way, the juridical relations between all the members of Government are established as equal.

The Constitution does not refer to the number of members the Government should have or, respectively, to that of the ministers and "other members". Neither the Constitution nor the Law no. 90/ 2001 regulates the number and the name of the ministries. Accordingly, the number of members in the Government is established through a parliamentary decision, i.e. through the decision of granting confidence to the Government or through the approval of the modifications in the structure or political components in case of governmental reshuffling.

Regarding the members of Government, economic reasons can impose substantial modifications at the level of ministerial administration, regardless of the time of the mandate. These aspects are closely related to the way in which the Government manages to carry out its functions, the prime-minister having the possibility to try a different governmental formula in order to find the right one.

[15] Law no. 47/1994 concerning the services under the authority of the President of Romania, republished in 2001
[16] Art.102 alin.(3) in the Constitution.

The analysis of art. 102 alin. (3) in the Constitution shows that the formula of state *minister* maintained in all the cabinets between 1990 and 2000 has not been in accordance with the Constitution adopted on December 8th, 1991 (this formula was introduced by the former law of the Government no. 37/1990). The cabinet appointed in December 2000 did not keep this regulation, but was reintroduced by the cabinet that started its mandate in March 2004, having the same prime-minister.[17]

As a result of maintaining the regulations referring to the position of minister of state and in the absence of any constitutional disposition, the Government appointed in December 2004 had 25 members, as follows: the prime-minister, 3 *ministers of state*, 15 ministers and 6 delegated-ministers. After the Governmental reshuffle made at the last parliamentary vote of confidence in April 2007, the new Government included: the prime-minister (the same), 1 minister of state (that resigned afterwards, without being replaced until the end of the mandate, December 22nd 2008 – it most obviously shows the uselessness of the position), 15 ministers and a delegated-minister for relations with the Parliament.

Shortly presented, the evolution of the activity of the cabinets that had in their structure *ministers of state* demonstrate that the sole purpose of having such a position was, in fact, to show juridical commitment to political alliances in the Government, without having a concrete and necessary function in the mechanism of governing, but only securing political agreements.

The appointment of the Government in 2008 brought the establishment of the vice-prime-minister position, through G.E.O no. 221/2008, art.3 in Law no. 90/2001, but in contradiction with the Constitution. Accordingly, the regulation took the following form: "(2) The Government can include a vice-prime-minister, ministers of state and delegated-ministers, with special assignments, stipulated in the Government List presented in front of the Parliament in order to be given a vote of confidence".

Subsequently, as the result of the successive resignations to the mandate of Minister of Administration and Interior by two persons appointed on political criteria (in a very small amount of time: the first, after 22 days, the second after 15 days), a "repositioning" of the vice-prime-minister function was established. The person occupying this position was appointed minister of administration and interior, by overlapping functions and with a vote of parliamentary confidence.

By G.E.O no. 17/2009, the Chancellery of the prime-minister, a structure which had juridical personality within the Government's apparatus, was abolished. The personnel have been transferred to the General Secretariat of the Government and to the prime-minister's specific apparatus, according to their professional skills.

Concerning the financial resources of the two authorities, the Presidential Administration and the Government have their budget established though the Draft Legislation concerning the state budget, submitted by the Government in order to be adopted in the Parliament.

[17] As the consequence of the modification in the Law no. 90/2001, amended through Law no. 23/2004

3. Accountability

In what may concern the President's responsibility, the Constitution in its initial form dedicated two different texts to this institution[18], a technical solution which determined a series of consequences under the aspect of the *nature of the regime* and under the aspect of *applicable juridical regime,* both of them covering different types of responsibilities. The deficiencies noted in the initial regime dedicated to presidential responsibility have been corrected through the revision law (more exactly through the repositioning of art. No. 84 alin. (3) concerning the impeachment of the president after the text concerning the suspension from office).

Art. no. 95 in the Romanian Constitution establishes *the suspension from office* as a form of political responsibility, followed by the sanction of dismissal through referendum, as a form of administrative-disciplinary responsibility. The recently introduced Art. 96 in the Constitution establishes that the president can be put under the accusation of high treason by the Parliament, while the Supreme Court is entitled to judge and give a final decision on the case.

Regarding the administrative papers, the president can be held responsible by administrative-patrimonial means, like any other public authority, based on art. No 21 (free access to justice) and art. no. 52 (the right of the person that has been wronged by a public authority) in the Constitution, according to Law no. 554/2004 concerning administrative procedure, with the later modifications and amendments.

Governmental responsibility is regulated in the Constitution as follows: the obligation to inform the Parliament, to answer questions and interpellations addressed by deputies and senators, motions adopted either in the Inferior Chamber or in the Superior Chamber and, most severe, the motion for a vote of no confidence with parliamentary majority for the dismissal of the Government. Even though after the amendment of the Constitution it was tried several times to dismiss the Government by means of a motion of no confidence, the procedure never worked, thus confirming the belief in the European doctrine according that the purpose of such a motion is to draw attention on the Government's errors in applying the Governmental Programme rather than to actually dismiss the Government.

The Constitution stipulates furthermore the criminal liability of the members of the Government for their actions during their time in office; The Inferior Chamber, the Superior Chamber or the President of Romania have the possibility to ask for the initiation of criminal prosecution for any members of Government. Moreover, the President of Romania can dispose the dismissal of a member of the Government in the case of a criminal prosecution[19]. Prosecution leads automatically to dismissal. The Constitution indicates explicitly the regulations concerning ministerial responsibility and the applicable punishments in a law that was adopted 8 years after the Constitution. Until its adoption, this specific constitutional article was considered inapplicable.

The content of art. 109 alin. (2) has been criticised by experts for two reasons: a) the word "may" suggests that it is up to the subjects mentioned in the constitutional text to decide whether or not they should ask for the prosecution of members of Government for their actions during their time in office; b) the word "solely" excludes the possibility that other subjects can refer and or even self-refer

[18] Art. 84 alin. (3) and art. 95
[19] Art.109 alin.(2) and (3) in the Constitution

to the prosecution bodies. Under both these aspects, the regulations go against the principles mentioned in art. 16 alin. (2) in the Constitution: "No person is above the law".

In order to enforce the constitutional dispositions, the Law of Ministerial Responsibility no. 115/1999, republished, modified and completed afterwards by several acts and republished again, was adopted. This law regulated the *political responsibility* and furthermore, the legal responsibility of the Government's members. The majority of dispositions established by this law refer to the *criminal liability of the Government's members.*

A member of the Government shall be prosecuted in cases of: a) crimes mentioned in the special law concerning this matter, b) for other crimes mentioned in the Criminal Code or in other special criminal laws, committed while in office; c) for crimes committed while *not* in service. In the last two cases, the members of the Government shall be held accountable according to common law.

They are considered crimes and therefore, punished with prison from 2 to 12 years the following crimes committed by the members of the Government while in service: a) infringements by threat, violence or other fraudulent means into citizens' rights and their exercise in good faith, b) presenting in bad faith inexact data to the Parliament or to the President of Romania regarding the Government's activity or that of a minister's, in order to hide the perpetration of acts that could endanger state interests.[20] *With regard to these two types of crimes, several criticisms is brought, as follows: the first is not achievable, since it is very hard to imagine that a minister would infringe using violence, threat or other fraudulent means the exercise in good faith of citizen's rights.* In what may concern the second crime, there is no specification in the Constitution regarding the obligation of a minister to present reports, neither if asked by the President of Romania, nor by default. Accordingly, this specification is unconstitutional, as it adds to the constitutional dispositions. Even the cases of presenting inexact data in bad faith in order to hide the perpetration of acts endangering the interests of the state can be regarded as adding to the dispositions of art. 111 alin. (1) in the Constitution. This article states that it is mandatory for the Government to give information and data to the Inferior and Superior Chambers or to parliamentary commissions through their presidents without any further specifications regarding their importance. It is assumed that in cases of inexact information, be it in good or bad faith, this problem should fall under judicial jurisdiction. Furthermore, it was established that the crimes committed by former ministers while in office, other than those specified in art. 7-11, shall be prosecuted according to the regulations of the Criminal Procedure Code of Common Law and that the provisions concerning the procedure do not apply to former members of the Government, under any circumstance. These provisions have been declared unconstitutional[21]

In case the member of the Government has the quality of being a deputy of a senator, the debate on initiating prosecution takes place in the Inferior Chamber or in the Superior Chamber, on the basis of a report elaborated by *a permanent commission* that investigated the activity of the Government or of the ministry or that of a special commission of investigation, built up for this specific purpose. The commission's report is enlisted as a priority in the daily order of the respective Parliamentary Chamber, as stipulated in the Regulation of the two Chambers.

[20] Art.8 alin.(1) in Law no.115/1999.
[21] Decision no.665/2007 of the Constitutional Court, published in the Official Monitor no.547/2007.

The two Regulations of the Chambers were contradicting themselves regarding an essential problem: art. 155 alin. (3) of the Regulation of the Deputy Chamber stipulated that the permanent commission's report or that of the investigation commission shall be adopted with qualified majority of the total number of deputies, and, according to art. 149 alin. (3) in the Regulation of the Senate, it was required an absolute majority. The Constitutional Court has stated, in two decisions, the unconstitutionality of these provisions contrasted with art. 76 alin. (2) in the Romanian Constitution according to which "ordinary laws and decisions shall be adopted with the vote of the majority of the present member in each Chamber"[22]

Prosecution request of a member of Government and the request to withdraw parliamentary immunity are debated in the presence of the majority of members of the Inferior and the Superior Chambers and the decision shall be adopted with the majority vote of the present members. The vote is secret and is expresses by putting balls in the urns. The presence in the parliamentary debate of the member of Government is mandatory, but an unjustified absence does not prevent the parliamentary debate from taking place. Given the case of the objective impossibility that the member of the Government be present, the Chambers shall set a new schedule for the debates. The concerned member of the Government has the right to present his/her point of view regarding the action that represents the object of the prosecution request and of the withdrawal of parliamentary immunity.

The law introduces the necessity of having, at the level of the Presidential Institution, a *Special Commission established in order to analyze the complaint with regard to a member of Government committing a crime* while in office. Thus, the President of Romania can request prosecution only if it had previously been proposed to this permanent commission that included 5 members, appointed for a 3 year term that cannot be renewed. Its structure is established though a presidential decree, at the proposal of the ministers of justice and of the interior.

Referred by the Ombudsman regarding a certain disposition of Law no. 115/1999, but also to G.E.O no. 95/2007 for the modification of the law, that intended to form a commission including 5 judges, the Constitutional Court established through Decision no. 1133/2007 that the appointment of the judges in the special commission is unconstitutional and that this unconstitutionality would infringe on the right of the President of Romania to request prosecution of members of the Government for crimes committed while in office. [23]

Further on, another decision of the Constitutional Court[24] stated that the President is to allow the criminal prosecution for ministers and former ministers, the Chamber of Deputies for ministers and former ministers who are also deputies and the Senate for ministers and former ministers who are also senators. (n.a.)

In case the member of the Government for which the President of Romania requested prosecution is also a deputy, a senator or minister of justice, the prime-minister shall request the competent Chamber to start the procedure to debate for the request of prosecution and of withdrawal of parliamentary immunity.

[22] Decision no.989/2008 and Decision no.990/2008
[23] Decision no.1133/2007 publishe in the Official Monitor 851/2007
24 Decision no. 270/2008

The *patrimonial responsibility of a member of Government* results from the general principles of law or as a consequence of civil action within the criminal process framework or as a consequence of an administrative court of law. Hence, any member of the Government can be held responsible in patrimonial manner according to the common administrative contentious law, in case he/she committed a fault by enacting an illegal administrative paper or by the unjustified refusal to solve a request. The Government, as a public authority, can be held responsible as well by an administrative court of law, according to art. 53, art. 126 alin. (6) in the Romanian Constitution and to the administrative procedure law.

It is also worth mentioning that the administrative contentious law allows for the action to be directed against the "guilty" civil servant, a phrasing that should be regarded in a more general sense. The idea of the *"guilty civil servant"* is similar to that of *"guilty person with no legal status",* which, in the case of the Government, can be the prime-minister or other members of the Government.

4. Integrity

According to Law no. 144/2007 concerning the establishment, organization and functioning of the National Integrity Agency, a specialized structure has been established having the purpose of verifying the assets obtained while in public office, conflicts of interests and incompatibilities.[25] The Agency exercises the verification function by default or, if the case, by referral from any person, whether legal person or not, according to the procedure established by the legislator. During the verifications, the Agency can request the institutions or any public authority involved, as well as legal public or private persons, necessary data and information in order to put together the report.

The law enumerates the categories of persons that have the obligation to declare their assets and interests, including the President, the prime-minister, the members of the Cabinet, the state secretaries and most of the personnel of the Presidential Administration and from the Cabinet's administrative staff.

In what may concern the incompatibilities of the ministerial position, in addition to the ones already regulated by art. 105 in the Romanian Constitution[26], others were later added by the Law no. 161/2003 concerning some measures for guaranteeing transparency in public, authority and business positions, preventing and sanctioning corruption. These dispositions can be found also in Vol. I, Title V of Law no.161/2003. Furthermore, the law exceptionally stipulates that the Government should have the possibility of having some of its members (including the prime-minister) assist as representatives of the states in the general assembly of shareholders or as members in administrative councils of autonomous companies, of national companies, of public institutions or of commercial companies, including banks or other credit institutions, insurance and financial companies, if *strategic interests* or *public interests* demand it. It is clear, thus, that there is a certain *grey* area that allows fpr the violation of the regulations imposed by the legislator.

[25] Published in the Official Monitor no. 359/2007
[26] Art. 105 in the Constitution stipulate that any public authority position, except the positions of deputy and of senator, or respectively, the position of professional representation paid within commercial organizations.

According to art. 87 alin. (2) in Law no. 161/2003, these incompatibilities are also valid in the case of other high officials, even though they are not members of the Government, the stipulation concerning specifically state secretaries, undersecretaries and the personnel ascribed to them.

The only functions that can be exercised by members of the Government or by other high officials in central public administration are related to the education field, scientific research or literary and artistic creation.

The principles that constitute the basis for preventing conflicts of interests in public offices and functions are the following: impartiality, integrity, transparency in decision-making and supremacy of public interest. In order to respect these imperatives, the members of Government must not enact any administrative or legal document, must not be part of any sort of public decision-making process that would produce any material benefits for themselves or for their spouse of first grade relatives. It is clear that these obligations do not concern also the enactment of regulation acts.

The sanction applied to the regulation document enacted by violating these legal obligations is *total annulment*. In cases of conflicts of interests, the prime-minister can be referred to by any citizen, or this can be done by default.

Members of Government must declare, from the date of taking the oath that they are not in a case of incompatibility previously exposed.

When the situation of incompatibility is stated by the prime-minister, he/she will dispose of the necessary measures for its termination, according to Law no. 90/2001. In order to do this, the prime-minister will recommend to the President of Romania to declare vacant that position of that specific member of Government.

The legislation presents deficiencies in what may concern the prime-minister's state of incompatibility, as it is not clearly specified which is the procedure that shall be applied in this situation and who is to take act of this incompatibility status as described in Law no. 161/2003.

5. Transparency

Regulations concerning the declaration of assets and, respectively, the declaration of interests have been evolving in Romania, so that the formulation could be considered satisfactory. Nevertheless, it is debatable to what extent these declarations are verified according to the legal framework. It is clear that the autonomous administrative authority established for this specific purpose cannot exercise its function properly given the fact that the number of these declarations is extremely high. However, it can be said that the situation of total lack of transparency that was characterizing Romania 10 years ago has been significantly improved. The declarations of assets and of interests must be filled in by candidates to any elections, as it was the case, for instance, of the European Parliamentary Elections that took place on 7th June 2009.

The transparency of the governing process characterized mainly by the enactment and adoption of legal documents was initially regulated by the Constitution, that stipulates the obligation of publishing Presidential decrees, Governmental acts, decisions and ordinances (except the decision regarding military issues that are transmitted solely to the concerned institutions) under the sanction

of inexistence.[27] Furthermore, the decisions of the prime-minister are published in the Official Monitor under the sanction of inexistence, according to Law no. 90/2001.

Moreover, the Law no. 24/2000 republished in 2004 concerning the regulations of the legislative technique for the elaboration of acts stipulates the obligation to publish all the administrative acts enacted by the public administration authority in the Official Monitor and in the official monitors of counties, depending on the level where the authority functions.

There are already many regulations with regard to transparency in *public administration's activity,* such as Law no. 544/2001 concerning free access to information of public interest[28], G.E.O no. 27/2002 concerning the activity of solving petitions[29], ratified with further modification brought by Law no. 233/2002[30], Law no. 52/2003 concerning transparency in decision-making processes in public administration[31] and G.E.O. no 27/2003, concerning the procedure of tacit approval, ratified with further modification brought by Law no. 486/2003.[32]

Violations of laws concerning transparency shall be judged by an administrative contentious court, according to Law no. 554/2004, with its further modifications.

A great improvement would be realized by adopting the *Administrative Procedure Code,* which is currently, as a project, at the Ministry of Interior and Administration and whose initial thesis has been already elaborated.[33]

6. Complaints and enforcement mechanisms

The current administrative procedure law, enforced starting with 2005[34] and substantially modified in 2007, has greatly enlarged the sphere of action of the administrative judge, increasing the number of possibilities of compliant for administrative contentious courts. Briefly, the improvements brought by this law are the following: it gave the victim the possibility to address to a court, according to art.52 alin. (1) in the Constitution, it enlarged the possibility of action for administrative acts, assimilating administrative contracts to them, so as to give the administrative contentious court the possibility of censorship. Equally, it enlarged the sphere of action for public authority that can enact documents that can be censored by the courts, including here the legal private persons authorized to provide public services; it specifically established the possibility to address to administrative contentious courts for papers that concern a third beneficiary; it defined the excess of power; it established, by annulling the specific act, the possibility of addressing courts for correlative administrative normative acts with the obligation of publishing in the Official Monitor, first part, or in county official monitors, final court decisions. It was stipulated that the victim can address the court for compensations for damages produced by ordinances or governmental dispositions declared unconstitutional.

[27] Art.108 alin. (4) in the Constitution
[28] M.Of.nr.663/2001
[29] Of.M no. 84/2002
[30] Of.M no. 296/2002
[31] Of.M no. 70/2003
[32] Of.M no. 827/2003

[33] H.G.no.1360/2008 published in Of. M no. 734/2008.
[34] Law no.554/2004 published in Of.M.no.1154/2004.

The current regulations stipulate also the rule of *initial procedure* (administrative complaint) to be addressed to the issuing authority or to the superior authority, having specified some exceptions, thus giving the public authority the possibility to readjust the damages produced.

7. The Relation with other pillars

The President and the Government, public authorities constitutionally consecrated that form the executive body have different relations with the other public authorities, (mainly regarding the Parliament) the Romanian Constitution succeeding in creating a balance between these three authorities, none of them dominating the others in a conspicuous way.

It can be said that very few constitutional texts concern individual public authorities; most of them regulate the relation between the classic public authorities: the legislative, the executive and the judiciary branches.
This analysis of the executive is meant to reflect the relations between this public authority and the others.

B. Actual Institutional Practice

THE PRESIDENCY

1. Role

Regarding this authority position and the fight against corruption, the President acted in two ways. First, the President made public statements on the need for reform in the justice system and for strengthening the fight against corruption. Indeed, the messages addressed in the Parliament or in speeches on the occasion of the presentation of the annual reports of the Public Ministry and the National Anticorruption Direction, the President highlighted the importance of the anticorruption issue. Secondly, the President intervened in the legislative process regarding anticorruption regulations by formulating re-examination requests or by referring the Court on grounds of unconstitutionality of some of these laws sent to ratification.

2. Resources and Structure

Under the mandate of the current President, the budget of the institution has been administered by a state councillor authorised by the President himself as main credit release authority. This state councillor has also been the coordinator of the Resource Management Department.

The personnel of this institution have been regularly employed based on the trust of the President, following the signing of a loyalty commitment and on the recommendations previously submitted by the state councillors that were department coordinators. These state councillors had the authority to decide on dismissals of the staff under their coordination.

As for the presidential councillors and state councillors, they were appointed by the President, by Presidential Decree and, respectively, by Presidential Decision. It is in the competence of the President to dismiss them.

Within the Department of Resource Management, the Compartment of Internal Audit has regularly done evaluations and made recommendations on the activities within all the departments and compartments of the presidential administration.

3. Accountability

Under the Romanian Constitution, the President of Romania enjoys immunity. But in case of committing serious crimes that violate the Constitution, the President of Romania may be suspended from office by the Parliament. As well, the Parliament may impeach the President for high treason, the President having to be dismissed after the final decision of conviction given by the High Court of Cassation and Justice.

In this sense, it is worth mentioning that in 2007, the Parliament began the procedure of suspension from office of the President for "committing serious acts of violating the provisions of the Constitution", appointing, on the basis of a favourable majority vote (258 votes of 322), an investigation commission on this matter. The conclusions of the Commission were also approved by 184 MPs, but the Constitutional Court formulated a negative opinion on the suspension from office of the President.

The President was suspended, but after the referendum that was organized on this subject and that contradicted the Parliament's decision, he regained his office.

4. Integrity

Regarding the Presidential Administration employees, civil servants, officials and people having management offices, in the event of conflicts of interests, the provisions of the Rules of Procedure of the Presidential Administration are applied, along with the stipulations from Title IV of Law on no. 161/2003 regarding some measures for ensuring transparency in the exercise of public dignities, public functions and business, the prevention and punishment of corruption.

In this context, all presidential advisers, advisers and officials of the Presidential Administration submit a statement of income and interest, published on the website of the presidential institution. Evidence of interest statements was recorded in a special register called the Register of Interests statements, at the Domestic Orders Compartment, in the case of the President and the dignitaries, and at the Human Resources Department of Resources Management, for public officials and persons holding a management function.

5. Transparency

According to Law no. 115/1996 for the declaration and control of the assets of officials, magistrates, some people in positions of leadership and control and public officials, law no. 144/2007 on the

establishment, organization and operation of the National Integrity Agency and the Rules of Procedure of the Presidential Administration, the President of Romania, dignitaries, officials and persons holding positions of leadership were required to declare their assets and interests through declarations of assets and of interests that were published on the website of the institution.[35] The National Integrity Agency had the competence to verify the statements of assets and interests and whether they had been submitted before the deadline. No mentions were put forward with regard to the Presidential Administration's personnel.

The institution's budget was made public on the site of the Presidential Administration. The responsibility for checking up its accuracy belonged to the economic director of the institution.

6. Complaints and enforcement mechanisms

According the Romanian Constitution, only deputies and senators, and the President of Romania enjoy immunity in the exercise of their office, so that there are no other legal provisions in force to establish new categories of beneficiaries of immunity. In this sense, the administrative presidential staff does not enjoy a special legal regime on civil or criminal liability, which is why they are subject to the provisions of common law, under the constitutional principle of equal rights.

Accordingly, in the previous and current presidential mandate, it was claimed that no allegation of corruption, related to any person from the presidential institution has been reported.

7. Relationship to other pillars

Given the constitutional powers of the President of Romania, the Presidential Administration is assumed to cooperate mainly with the representative powers of the state, with the Government, ministries, Constitutional Court, the Superior Council of Magistracy, the National Bank of Romania, and with institutions and international organizations.

Under the constitutional principle of separation of powers, between the President and the Government of Romania, on one hand, and between the Presidential Administration and Government on the other hand, there is supposed to be an ongoing collaborative relationship, materializing in the:

- Participation of the President at Government meetings dedicated to issues of national foreign policy, the country's defence, public order or, at the request of the Prime Minister, in other situations.
- Appointment of the Government by the President, on the vote of confidence in Parliament
- Consultation of the President with the Government on matters of urgent importance
- Countersigning by the Prime Minister of certain categories of decrees issued by the President.

Nevertheless, the institutional reality looked differently, especially during the 2004-2008 administration. Apparently, this period was characterized by an institutional conflict between the President and the Prime Minister. Given that the constitutional regime had been designed on the assumed basis of cooperative relations between the two poles of the executive, the lack of this

[35] These provisions were subject to the Constitutional Court's Decision in early May 2010 and are to be consequently amended through a new law on this matter.

collaboration, that last until the November 2008 elections brought forth a new Cabinet, has repeatedly created conflict situations, the Constitutional Court was often called upon "to resolve legal conflicts of a constitutional nature between public authorities at the request of the President of Romania, of one of the presidents of the two Chambers, of the Prime Minister or of the President of the Superior Council of Magistracy"[36]

The Indisputable discrepancy between the strong popular legitimacy that the President enjoys, due to direct popular election and the fairly restricted powers that he can wield, most of which are subject to interference from other public authorities such as the Parliament or Government/ Prime Minister, or the Superior Council of Magistracy, etc., is likely to have been one of the causes of disturbance in the evolution of state practice especially in the period 2005-2008.

THE GOVERNMENT

1. Role

Generally, the Government proved to have abused of its constitutionally guaranteed legislative competence by means of Emergency Ordinances. Despite that, the Fundamental Law states that the Government may issue this kind of acts in case of *extraordinary situations* only[37], both the past and current Governments have bypassed, more often than not, the bargaining capacity of the Parliament in the legislative process through this procedural instrument. Claimed as an efficient way to give rapid solutions to stringent problems, the Governments in office from 2005 onwards have caused legislative inflation and, consequently, legislative instability, with the tacit support of the Parliament.

Regarding anticorruption efforts, during 2005-2008, the implementation of anticorruption policies intensified, following the commitments assumed by the Government of that time before the European Commission as well as following those formulated in the Government's program agreed upon at the beginning of its mandate.

2. Resources and Structure

Regarding the institution's budget, the Secretary General of the Government, being the main credit release authority, was responsible for its allocation and administration. Allocation of funds was done with the support of the Economic Directorate of the General Secretariat of Government.

Appointments, promotion and dismissal were said to have been dealt according to the procedures stipulated by law. All of them were assumed, upon signature, by the head of the institution.

Regarding internal controls and audits, they were claimed to have been done regularly by the Audit Section under the General Secretariat according to the annual audit plan.

[36] Art.146 (1), e., of the Constitution republished
[37] Art. 115 (4) of the Constitution republished.

3. Accountability

Executive members were required, under the law, to motivate their decisions that were related to their field of activity and that materialized in draft legislation. Thus, the ministers assumed, upon signature, the motivation and the preliminary impact assessment of their project initiatives.

The activity of the governmental agencies was claimed to have been monitored by the agencies under whose supervision they were placed.

4. Integrity

According to the interviewed experts, there were allegedly no problems with regard to situations of conflict of interest, gifts and post-employment in the last term.

5. Transparency

Income and interests declarations were completed both at the beginning and at the end of the activity of each person working within the governmental apparatus. Additionally, income and interest statements were made available on the website of the Government and of the other institutions under its authority, and were said to be generally reliable.

Budget and budget execution documents, both for the current year and for the past eight years, were displayed on the website of the General Secretariat of the Government.

6. Complaints and enforcement mechanisms

After the entry into force of the actual Constitution, the parties from Parliament used several times the procedure of motion, as a way to complain about the Government's activity, but, up to date, no Cabinet has been removed in this way. This is to suggest that, at a first glance, this procedure was used to raise the Government's attention to the sideslips from the assumed program, rather than to determine its resignation. A second possible explanation would assumingly be coalition instability within the two Chambers of the Parliament and, implicitly, the fluctuation in the parliamentarian support of the Government.

7. Relationship to other pillars

By the nature of its duties related to policy implementation, the Government interacted, in particular, with the agencies of the central public administration, with the public institutions under its subordination.

At the same time, at the level of the legislative process, the Government interacted with the Parliament. Submitting Emergency Ordinances and assuming responsibility on different legislative projects were the main stanzas describing the relationship between the Government and the Parliament.

8. Past developments and future prospects

Since 2005, the Executive, in its double format, has played noticeable roles in what may concern the anticorruption issue.

First, the Government has been the main agent in drafting and advancing anticorruption legislation on the Parliament's Agenda. *The National Anticorruption Strategy 2005-2007*, its main strategic paper on anticorruption and self-styled as the foundation work the subsequent policy papers on the topic, had to act on a systemic approach in the fight against corruption mainly within the public institutions. However, the *Report on the Fulfilment of the 2005-2008 Governance Program*, containing, among others, a description of the main achievements of the strategy implementation, failed to be a real assessment tool of the Government's activity on the fight against corruption. Although significant, the measures implemented so far have yet to produce noteworthy perception changes with respect to the incidence of corruption in the public institutions targeted as being vulnerable to this kind of behaviour. On the contrary, surveys show[38] that the general corruption perception has increased in 2008, compared to the previous two years: the majority of the citizens appreciated the broad-spectrum level of corruption as higher and considered the efficiency of the anticorruption agencies as unchanged.

Second, the Presidency has played a significant indirect role regarding the anticorruption issue. Making full use of its legal prerogative of addressing messages to public institutions by virtue of their constitutional mediating role, the President pressured public authorities such as the Parliament and governmental bodies to enhance anticorruption measures. This could explain why the Presidency has been perceived as the second least corrupt institution, following the Ombudsman, according to the above mentioned survey.

Speaking of the improvements that should be done towards strengthening the Executive's place in the national integrity system, two major challenges are at stake. Firstly, the need of a constitutional reform aiming at clearly differentiating between the roles of the two heads of the Executive. Secondly, the need to readjust the role of the Government in the sense of restraining its lawmaking capacity back to its constitutional limits.

9. Stakeholders' recommendations

In the above mentioned context, the first measures to be taken towards improving the role and capacity of the Executive branches within the national integrity system should include not only regulatory actions, but also following examples of good practice. More specifically, the following recommendations need to be taken into consideration:

- Rethinking the legal framework in what may concern formulating and adopting emergency ordinances
- Improving the quality of public policy formulation, implementation and assessment

[38] The Association for Implementing Democracy presented on the 8th of November 2008 the results obtained from a research commissioned by INSOMAR on Romanians' perception of corruption and on transparency and integrity in the justice system in Romania. The research was part of the "Transparency and Integrity in the Justice System" program implemented by AID Romania in partnership with the Ministry of Justice and supported by the British Embassy in Bucharest.

- Introducing need assessment analysis for the substantiation of normative acts issued by the Government and its subordinated structures
- Improving the functioning and the standing of public policy units within the Government and ministries
- Enhancing the operational capacity of the governmental structures with attributions of monitoring, control, verification both in the public and private sector.

THE JUDICIARY

	Capacity	Governance	Role
Judges	2 (small extent)	2 (small extent)	1 (not at all)
Prosecutors	2 (small extent)	3 (moderate extent)	3 (moderate extent)

The judiciary has appeared to be a weak pillar of integrity.

Its institutional structure shows a partial independence, especially in terms of financial competences and human resources management.

Besides, the salutary institutional existence of an administrative body, set up to deal with the magistrates' career in terms of accountability and integrity, has been insufficient to guarantee an institutional behaviour based on the above mentioned principles.

Furthermore, the increased transparency of the judiciary's daily activity has failed to counterbalance the shortage in the resolution of complaints and enforcement mechanisms relevant to this pillar and to build trust among the majority of the Romanian citizens.

The institutional independence of the prosecutors in deciding upon the cases has had a stronger referent in practice in the last legislature.

However, organizational problems related not only to complex and centralizing bureaucratic procedures, but also to the weak balance between competences and accountability with regard to prosecution managers, have hampered the daily activity of prosecutors and the rhythm of change.

Similarly, the imbalanced task assignment among prosecutors of different hierarchic levels and the lack of effective verification mechanisms with regard to their activity, weakened furthermore the prosecution's position in the national integrity system.

A. Legal framework

Iulia COŞPĂNARU

1. Role

According to the Constitution, the Romanian judiciary is made up of the courts of justice, the prosecutor's offices and the Superior Council of Magistracy.

The last 5 years have seen a continuous reform and transformation process within the judiciary. In 2004 a set of laws targeting the entire judicial system was passed and, afterward, numerous

amendments to the three laws were adopted. One of the main recurrent problems that the judiciary faces is the guarantee of a quality public service. This issue is intrinsically linked and in fact represents the end result of all the other dysfunctions that are affecting the judiciary.

In order to talk about a quality public judicial service, the judiciary must abide by the following principles: efficiency, efficacy, cost-effectiveness, independence, impartiality and integrity. In reality, neither one of the six principles is fully fulfilled. The first three principles are affected mainly by the sheer number of case files and the insufficient number of personnel to solve them. Regarding the other three principles, the main criticism stems from the pressure of political influences and interest groups on the magistrates, as well as the public's pressure as a result of its loss of faith in a fair and efficient justice system.

Currently, the judiciary is still undergoing a sluggish and late reform process, which is further accentuated by the present legislative instability. In addition, the public's mistrust and perception that the system is overwhelmingly affected by corruption has worsened the reform process. The Global Corruption Barometer shows that in Romania, the perception regarding the judiciary has not improved significantly in the last years and the country has maintained a leading spot in the poll.

2. Resources and Structure

The activity of courts of justice and the prosecutor's offices is entirely state funded. The High Court of Cassation and Justice has its own budget, and the budget of courts of appeals, tribunals, specialized tribunals and chanceries is managed by the Ministry of Justice.

The present regulation stipulates that the transfer of budgeting authority for courts of appeals, tribunals, specialized tribunals and chanceries from the Ministry of Justice to the High Court of Cassation and Justice would begin on January 1st, 2010, which never happened.

The Public Ministry has its own budget which is managed by the general prosecutor as the main credit release authority. The budget for the prosecutor's offices of appeals courts, tribunals, specialized tribunals and chanceries is managed by the Prosecutor's Office of the High Court of Cassation and Justice. The Prosecutor's Office of the High Court of Cassation and Justice and the National Anticorruption Prosecutor's Office draft their own budget proposals each year. The budget for the Prosecutor's Office of the High Court of Cassation and Justice also includes the budgets of all the other prosecutor's offices of all courts of justice.

The chairmen of the courts of justice and the prosecutor's offices can delegate the position of main credit release authority to the financial managers.

In the case of military courts and prosecutor's offices, their budget is managed by the Ministry of National Defence.

Budget proposals are submitted for review to the Superior Council of Magistracy.

The Superior Council of the Magistracy has its own budget and its chairman holds the position of main credit release authority which he/she can delegate to the secretary general.

a. The Courts of Justice

According to art. 126 of the Romanian Constitution, justice is carried out through the High Court of Cassation and Justice and the other courts of justice. The courts of justice achieve justice in order to protect and fulfil the fundamental rights and freedoms of citizens, as well as the other rights and legitimate interests that pertain to justice. The courts hear all civil, commercial, labour, family, administration, criminal and other types of legal cases for which the law does not designate a different authority.

In fact, the courts of justice have four hierarchical steps even though only a three-step-type and in some cases a two-step-type jurisdiction is acknowledged. Therefore, on the first step there are the chanceries – public institutions with no legal personality – which are set up in the cities and the sectors of Bucharest Municipality. The cities that are part of the chanceries' districts in each county are determined by governmental decree, at the recommendation of the minister of justice, with the approval of the Superior Council of the Magistracy. The chanceries usually hear cases of minor offences, while in the case of criminal trials the chanceries have the authority to hear only less dangerous offences. Within chanceries special panels and sections can be organized in matters of family and juvenile cases; depending on the nature and number of cases, panels and sections on other matters can be set up within chanceries.

At the next level are the tribunals, which have a judicial authority and are set up within each county including Bucharest Municipality. The tribunals try as first instance courts more complex cases and more severe offences, including homicide cases, and as second instance courts they hear appeals regarding inferior judges' decisions.

Courts of appeal have the authority to resolve as first instance courts particularly complex or severe cases, or cases in which the parties have a special quality or hold an important government office. Within the appeals courts' districts operate other tribunals and specialized tribunals.

Within courts of appeals and tribunals operate sections or specialized panels specifically for civil, criminal, commercial, family and juvenile, administrative, labour and insurance cases and, depending on the nature and number of cases, sections for maritime and fluvial sections can be set up.

Depending on the size of the activity, the nature and complexity of the cases brought to court, secondary branches operating permanently can be set up for courts of appeal, tribunals and chanceries in cities or Bucharest Municipality.

On the last step there is the High Court of Cassation and Justice whose main role is to interpret and ensure the uniform application of the law by other courts of justice. Also, the High Court solves as first instance court cases in which one of the parties holds an important government office and the only way to appeal its decision is through a hearing by a panel of 9 judges and, afterward, by the Joint Sections.

The High Court of Cassation and Justice is organized into four sections – Civil and intellectual property section, Criminal section, Commercial section, Administrative section, the Panel of 9 judges and the Joint Sections.

The judging is carried out by panels made up of 1, 2 or 3 judges, or more in the case of the Panel of 9 Judges and the Joint Section of the High Court of Justice which are constituted within the specialized sections.

In Romania, there are currently 188 chanceries, 11 of which are not operating, 40 tribunals, while the 41st – the Ilfov Tribunal is not operating, 15 courts of appeal and one Supreme Court – the High Court of Cassation and Justice.

Alongside the civil courts, there are the military courts for the armed forces personnel: the Military Court of Appeal, the Military Territorial Tribunal and 3 military tribunals.

Courts of justice are led by a chairman who is assisted, depending on the case, by several vice-chairmen. The chairman is the main credit release authority with the exception of the chancery chairman, and is the leading authority on domestic and international relations.

Alongside the chairman and the vice-chairmen operates the steering committee made up of the chairman, the vice-chairman and a number of judges elected on a three-year term in the general assembly of the judges. When economic, financial and administrative issues are discussed during the assembly, the financial manager of the High Court of Cassation and Justice is present as well and has an advisory vote. During the meetings of the steering committee, section chairmen can participate as well. The committee exercises administrative functions that are related to internal regulations, the proposal to set up a new section, the staffing of the sections and many more.

Judges' general assemblies are made up of all the standing judges of the court including interning judges, delegated or assigned judges of other courts. These judges meet annually to discuss the court's activity, select members for the Superior Council of the Magistracy as well as selecting the members of the steering committee.

Within the courts of justice and the prosecutor's offices and alongside executive bodies there are the expert auxiliary departments made up of the registrar, the archives, the information and public relations bureau, the library and the economic, financial and administrative department, all which contribute to the smooth operation of the court activities and aid in the justice process.

When we talk about the operation of the court system, one essential element is the independence of the courts which should be ensured by the fact that justice is not subordinated to the executive and legislative branches. The autonomy of courts of justice stems from the administrative autonomy which requires a demarcation of the functions of state authorities. According to Law no. 304/2004 the judiciary is separate from the other powers of the state.

In fact, this independence of the courts is curtailed because the judicial system is financially dependant on the executive who manages the budget of the judiciary through the Ministry of Justice, with the exception of the ICCJ. On the other hand, the courts are dependant on the legislative as long as judges are responsible with the application of the laws passed in Parliament. An inadequate law or a law that has been altered repeatedly cannot ensure the necessary precondition for the courts and magistrates to exercise independence.

This so-called independence does not exclude the intervention of the judicial control bodies which can occur after all the appeals methods have been exhausted.

At the same time one must notice that fact that neither the control carried out by the Superior Council of the Magistracy nor the leadership of the courts affects the independence. This control does not target the judging activity, but only administrative (managerial) aspects.

b. The Public Ministry

The Public Ministry represents, within the judicial system, the general interests of society and defends law and order, as well as the rights and liberties of citizens. The Ministry exercises its function through the prosecutors constituted in prosecutor's offices which operate alongside the courts of justice and is subordinated to the Ministry of Justice.

Accordingly, in Romania, the number of prosecutor's office is equal to that of courts of justice and there are prosecutor's offices alongside chanceries, tribunals, courts of appeals and the Prosecutor's Office of the High Court of Cassation and Justice. Alongside the prosecutor's office operates the National Anticorruption Directorate which is subordinated to the Prosecutor General and functions as a specialized prosecutor's office in the investigation of corruption and other related offences.

The prosecutor's office of chanceries and tribunals are led by a first prosecutor and the prosecutor's offices of courts of appeals are led by prosecutor generals. These prosecutors are in charge of the administration of the prosecutor's office where they work as well as that of district prosecutor's offices when necessary. Within these prosecutor's offices sections, services and bureaus can be set up and led by chief prosecutors.

The General Prosecutor's Office coordinates the activity of the subordinated prosecutor's offices and carries out criminal investigations for serious offences or for those that have been committed by people with high-ranking positions in the government.

The prosecutor's office of the ICCJ is led by the Prosecutor General of Romania who is assisted by a first deputy and another deputy. The Prosecutor General represents the Public Ministry in relation to other public national and international institutions, as well as oversees all other prosecutor's offices.

Within its organization there are sections run by the chief prosecutors, assisted by deputies. Within the Prosecutor's Office the two most important structures are the Directorate for the Investigation of Organized Crime and Terrorist Crime and the National Anticorruption Directorate. The function, tasks, structure, organization, and operation of the two directorates is determined by special law.

In a similar fashion to the courts of justice and having the same function, steering committees, and general assemblies of prosecutors are set up within the prosecutor's offices.

Regarding the administrative set up, prosecutor's offices also create expert auxiliary departments made up of the registrar, the archives, the information and public relations bureau, the library and the economic, financial and administrative department, which aid the criminal investigation carried out by the prosecutors.

Knowing that the prosecutor's offices are part of the judicial branch, they should benefit first and foremost from the main characteristic of the system: independence. If the courts have budget constraints, the situation with the prosecutor's offices is more complicated because they are subordinated to the Ministry of Justice which is part of the executive branch. Therefore, we cannot talk about real independence for the prosecutors – even though it is frequently stated that prosecutors are independent in the solutions that they offer – since they are subordinated hierarchically.

However, from a budgeting perspective, the prosecutor's offices have a higher degree of freedom than the courts because their budget is managed by the Public Ministry.

Alongside the military courts, military prosecutor's offices operate similarly to the civil prosecutor's offices.

c. The Superior Council of Magistracy

The Superior Council of Magistracy (CSM) guarantees judicial independence, is independent, subject only to law and made up of 19 members. Fourteen of the members are elected by the general assemblies of the magistrates, 9 judges and 5 prosecutors. Of the remaining 5, 3 are permanent members – president of ICCJ, prosecutor general and the minister of justice – and 2 are civil society representatives.

The Superior Council of Magistracy defends judges and prosecutors against any and all acts that might infringe or raise questions about their independence or impartiality, as well as protect their professional reputation. At the same time, CSM is responsible for the careers of magistrates by organizing the Magistracy entrance exams, nominating or revoking officials, promoting magistrates to leadership positions, as well as solving disciplinary actions against the magistrates.

The Council is led by a chairman and a vice-chairman who are elected for a one-year term from among the elected members, each one representing one of the two professional bodies – judges and prosecutors. Their main tasks are to represent the Council in its interactions with third parties, coordinate its activities, preside over meetings of the plenary and departmental assemblies, as well as inform the Constitutional Court regarding constitutional conflicts between public authorities. The Plenum and the Council Departments release resolutions and the chairman and vice-chairman release decisions. The chairman presides over Council meetings without any voting rights. This measure, although it could have come about for reasons of protocol, represents an intrusion of the executive branch in the affairs of the judiciary and, although it does not lead to any concrete judicial results, it could still influence the way in which certain members with voting rights cast their decisions.

CSM works as a permanent body, with a unique structure and no territorial representation. This institution coordinates the National Magistracy Institute and the National Clerk School.

CSM departments coordinate the delegation and reassignment of judges and prosecutors, appoint judges and prosecutors, solve contestations submitted against the marks given by the evaluation committees each year on the professional activities of judges and prosecutors, strive to solve petitions received from litigants or other persons regarding inappropriate conduct on behalf of judges and prosecutors; the departments also dismiss judges and prosecutors; approve the creation and dismissal of courts and prosecutor's offices; approve search, detainment and arrest warrants for judges and prosecutors and fulfil the role of court of justice for disciplinary offences done by judges and prosecutors for acts stipulated in Law no. 303/2004, republished.

The Plenum recommends to the Romanian president the nomination or dismissal of judges and prosecutors, appoints intern judges and intern prosecutors, promotes judges and prosecutors, coordinates the general assemblies of judges and prosecutors, reviews draft legislation regarding the activities of the judiciary and solve the contestations submitted by judges and prosecutors against CSM departmental resolutions, except those that relate to disciplinary measures.

In addition to the three structures created by the elected magistrates, within CSM operates a unit led by a secretary general who is appointed and dismissed by the plenum; the cabinets of dignitaries set up around the president, the vice-president and elected Council members are part of the unit together with the human resources directorate, the economic and administrative directorate, the legal, research and contentious directorate, the European affairs, international relations and projects directorate, the

synthesis and working papers service for CSM, the public relations, registrar, secretariat and archives service, the protocol bureau, the IT bureau, the internal public audit bureau, the public information and mass-media relations bureau and the classified documents bureau, with all of their subordinated services and bureaus.

Alongside the Plenum operates the judicial inspectorate which carries out analysis, verification, and control tasks and is led by a chief-inspector. Within this inspectorate operates the Judicial Inspection Service for Judges and the Judicial Inspection Service for Prosecutors, each led by a chief service.

Even though it has such complex responsibilities guaranteeing the independence of the judiciary, the CSM does not always succeed to fulfil this task. The Council has been repeatedly accused that it acts as a professional entity, its actions overwhelmingly leaning towards the protection of the magistrates, thus losing its role as a disciplinary court. Even though the legislation that regulates CSM's activity stipulates clearly that such deviations can be indicated by anyone, the majority of these notifications have been classified because CSM cannot reach a decision regarding the cause of complaint, even though the notifications are mostly related to the professional deontology of magistrates.

Within the judiciary, the bulk of the activity is carried out by the magistrates who are helped by clerks, judicial police, civil servants and the contractual personnel constituted in the auxiliary personnel.

The national legislation defines the Magistracy as the judicial activity carried out by judges in order to promote justice and by prosecutors in order to defend the general interests of society, rule of law and the rights and freedoms of citizens. At present date, in Romania there are 5860 magistrates, of whom 4104 judges and assistant magistrates and 1756 prosecutors.

The acceptance of judges and prosecutors in Magistracy is done through an examination organized by the National Institute of Magistracy which operates under the leadership of the Superior Council of Magistracy. The people who pass the exam become justice auditors for a period of time in which they attend formative classes pending their appointment as judges and intern prosecutors. People who have a legal background and have been working for at least 5 years in the field can be appointed in the ranks of the Magistracy. They can be directly appointed as judges or prosecutors without having to go through the formative stage.

Another admission strategy which was in place until June 2008 was the acceptance in the Magistracy without an examination of people who were judges, prosecutors, assistant magistrate or attorney for at least 10 years and ceased their professional activity for legitimate and unimpeachable reasons. Admission was done through an interview with the admission's officers of the Superior Council of Magistracy. This measure was adopted in order to make up for the acute need for personnel in the judiciary but has then proven inefficient due to the poor quality of preparation of the recruited personnel and the integrity of the selection process.

Constant training for judges and prosecutors guarantees their independence and impartiality in their line of duty. They have to participate at least once every 3 years in professional training courses organized by the National Institute of Magistracy, universities from across the country and abroad or other professional training sources.

In order to verify the fulfilment of the professional competence and performance criteria, every 3 years judges and prosecutors are subject to evaluations on the efficiency, quality of activity and integrity, the obligation to engage in continuous professional training and completing specialized courses, while high-ranking judges and prosecutors are evaluated on their managerial skills as well.

These evaluations are carried out by committees constituted by a resolution of the Superior Council of Magistracy. The evaluation of the professional activity of judges and prosecutors is carried out according to the Regulation adopted through CSM Resolution no. 676/4.10.2007.

Even though according to the current legislation, magistrates are made up of two professional corps – judges and prosecutors, they do not benefit from the same legal treatment which raises serious questions regarding the upholding of high quality standards for prosecutors.

The promotion of judges and prosecutors at tribunals, courts of appeal or prosecutor's offices is carried out through a nation-wide examination. The appointment of the chairman and vice-chairman at chanceries, tribunals, specialized tribunals and courts of appeal is done by means of a competition or examination organized by the Superior Council of Magistracy through the National Magistracy Institute.

The appointment of the prosecutor general for the prosecutor's office in a court of appeals, the chief prosecutor of the prosecutor's office in a tribunal, the chief prosecutor of the prosecutor's office in a family and juvenile tribunal or the chief prosecutor of the prosecutor's office in a chancery and of their assistants is done by means of a competition or examination organized by the Superior Council of Magistracy through the National Magistracy Institute.

The promotion to the position of judge to the High Court of Cassation and Justice is done by the Superior Council of Magistracy from a pool of applicants who have been judges in the past two years at tribunals or courts of appeals, have obtained the "very good" mark in their last evaluation, have never received a disciplinary penalty, have distinguished themselves professionally and have seniority as judges or prosecutors for at least 12 years. The chairman, the vice-chairman and the departmental chairmen of the High Court of Cassation and Justice are appointed by the President of Romania at the recommendation of the Superior Council of the Magistracy from among the judges of the High Court of Cassation and Justice who have been active in this institution for at least 2 years.

The prosecutor general of the prosecutor's office in the High Court of Cassation and Justice, the first deputy and his/her deputy, the prosecutor general of the National Anticorruption Prosecutor's Office, their deputies, the chief prosecutors of sections within these prosecutor's offices, as well as the chief prosecutor for the Directorate for the Investigation of Organized Crime and Terrorist Crime and their deputies are appointed by the President of Romania, at the recommendation of the minister of justice, with the agreement of the Superior Council of Magistracy from among the prosecutors who have seniority of minimum 10 years in the position of judge or prosecutor for at least 3 years, with the possibility to be reinstated once more.

The appointment to other leadership position in the Prosecutor's office of the High Court of Cassation and Justice and of the National Anticorruption Prosecutor's Office is done for a period of 3 years, with the possibility of reinstatement once more by the Superior Council of Magistracy, at the recommendation of the prosecutor general of the Prosecutor's office of the High Court of Cassation and Justice or of the prosecutor general of the National Anticorruption Prosecutor's Office.

The dismissal procedure is initiated for judges and prosecutors when they are under criminal investigation; when they suffer from a mental disorder which prevents them from exercising their job in an appropriate manner. The Superior Council of Magistracy is responsible for the dismissal of judges and prosecutors.

The dismissal of judges and prosecutors is done by presidential decree at the recommendation of the CSM when judges and prosecutors have resigned, retired, transferred to another position, or are in a situation that prevents them from fulfilling their tasks; the dismissal is also a disciplinary penalty or when judges and prosecutors have been sentenced for a crime; when judges and prosecutors have violated the rule regarding the prohibition to be workers or collaborators of secret service; or the breach of rules regarding the attainment of their status as magistrates.

a. Judges

Judges are magistrates who are appointed by the President of Romania, at the recommendation of the Superior Council of Magistracy, who benefit from independence and permanence (immovable), abide by the law and must be impartial.

Immovable judges can be transferred, delegated or promoted only with their consent and can be dismissed under the conditions stipulated by the law.

By virtue of their activity, judges must ensure the pre-eminence of the law, respect the rights and liberties of individuals as well as their equality in front of the law and ensure a fair judicial treatment to all litigants, irrespective of their nature, respect the deontological Code for judges and prosecutors and engage in constant professional training.

Judges cannot refuse to judge for reasons that are not stipulated by the law or if there is ambiguity or incompleteness.

The independence of judges is mentioned in art. 124 para. 2 in the Romanian Constitution, which stipulates that judges are independent and are subject only to the law. Their independence is necessary to ensure the quality and impartiality of their decisions, to infuse trust in the litigants in the courts and to increase the prestige of the justice system.

This entails that no governmental body, including the judicial units and no judge from a higher institution have the rights to force of give suggestions to a judge when he/she has to reach a decision on a specific matter, regarding the way it should be resolved. Gauging the facts as well as applying the law to the facts is the task of the judge who must be protected from any outside interference.

b. Prosecutors

Prosecutors are appointed by the President of Romania at the recommendation of the Superior Council of Magistracy and, according to law, benefit from a great deal of stability and independence. Prosecutors can be transferred, delegated or promoted only with their approval.

The current status of the prosecutor in Romania is twofold: he/she is both magistrate and executive agent at the same time. This status stems from constitutional bylaws and was further reinforced by the subsequent legislation. The two different natures of the prosecutor cannot be reconciled. The consequences that emerge out of this dichotomy are mainly linked to contradictory and ambiguous interpretations.

Article 132 of the Constitution stipulates that prosecutors carry out their activity according to the principles of legality, impartiality and hierarchical control under the authority of the minister of justice. The same bylaws are retaken by art. 62(2) of Law no. 304/2004.

Hierarchical control assumes that the prosecutors received written compulsory directives from the higher ranking prosecutor. The prosecutors of each prosecutor's office are subordinated to the leaders of that office and the leader of a prosecutor's office is subordinated to the higher ranking leader of the prosecutor's office from the same district.

Another aspect that pertains to hierarchical control is the activity of prosecutors under the authority of the minister of justice – rightful member of government and thus of the executive power. The minister of justice exerts a lot of influence over the prosecutors by verifying their managerial efficiency, the way in which the prosecutors carry out their duties and the way in which the prosecutors interact with other members of the judiciary and the people that are involved in the work of a prosecutor's office. The control cannot target the decisions made by the prosecutor during the criminal investigation nor the solutions that were adopted.

Even though the law stipulates that "the prosecutor is independent in the solutions that he/she adopts," the same article declares that the solutions adopted by the prosecutor can be refuted by the higher ranking prosecutor when they care deemed unlawful.

Another problem that stems from hierarchical control is related to the division of projects and the possibility to be reassigned to a different prosecutor. At present this can occur when a prosecutor has been dismissed or has resigned; if the prosecutor is missing, if there are objective reasons that justify the urgency and prevent his/her recalling; or when the case has been unjustifiably neglected for more than 30 days.

On the other hand, it is undeniable that hierarchical subordination hinders the principle of impartiality as long as the evaluation of the prosecutor depends on the good will of the higher ranking official.

c. Members of the Superior Council of Magistracy

The elected members of the Superior Council of Magistracy are magistrates, elected by the general assembly of the judges and prosecutors. Their term is 6 years without the possibility of re-election. The members of the Superior Council of Magistracy have the status of dignitaries.

The status of member of the Superior Council of Magistracy ends when the term expires, when the magistrate resigns or is dismissed, if the state of incompatibility is not resolved within 15 days from being elected as member of CSM, if the magistrate cannot fulfill his/her duties for a period longer than 3 months, or if he/she dies. Membership to the Superior Council of Magistracy is revoked for the same reason as that for judges and prosecutors.

The elected member of the Superior Council of Magistracy can also be dismissed at the request of the general assembly of the courts and prosecutor's offices that he/she represents in the case in which he/she has not fulfilled or has performed poorly on the assigned tasks that come with membership at the CSM.

3. Accountability

According to art. 97 of Law no. 303/2004, any individual can inform the Superior Council of Magistracy, directly or through court or prosecutor's offices' leaders regarding the activity or the inappropriate conduct of judges or prosecutors, the breach of professional obligations in interactions

with members of the judiciary or the perpetration of disciplinary violations as well as any deeds that affect the prestige of the judiciary. These notices cannot question the decisions of judges which are subject only to specific appeals measures. The Superior Council of Magistracy can self-notify itself about such situations and can initiate investigations to ascertain if the magistrates should be given a disciplinary penalty.

Disciplinary accountability can be called upon for breaches in regulations related to income statements, interest statements, incompatibilities and interdictions, corrupt acts that are not criminal in nature, carrying out public political activities; disobeying the rule of secrecy and the rule of confidentiality when passing judgment or working on cases; delaying cases; refusing unjustifiably to attach to the case file documents submitted by the parties; not fulfilling one's duties either willingly or unwillingly including the breach in procedure rules, as long as the act does not constitute an infraction; undignified conduct in the line of duty; breaching the rule of arbitrariness in the handing out of cases; direct participation or through proxies in pyramid schemes, gambling or investment schemes where there is no transparency in finance.

Disciplinary penalties are applied gradually, proportionally to the severity of the breach and go from a simple warning to the removal from the Magistracy.

The penalties are applied by the Sections of the Superior Council of Magistracy which fulfil the role of courts of justice in the field of disciplinary accountability.

Disciplinary action is carried out by the disciplinary committees of the Superior Council of Magistracy which are made up of 3 inspectors of the Judicial Inspection Service for judges and 3 inspectors of the Judicial Inspection Service for prosecutors.

Before the initiation of the disciplinary action, compulsory preliminary investigations must be carried out by the inspectors of the Judicial Inspection Service. The magistrate that is under investigation can be represented by another judge or prosecutor or may be assisted or represented by an attorney. In the case in which the disciplinary committee deems unjustified the disciplinary action, the case is classified.

Decisions given by the Sections of the Superior Council of Magistracy on disciplinary matters can be appealed within 15 days of release. He appeal is heard by the Panel of 9 judges from the High Court of Cassation and Justice where none of the voting members of the Superior Council of Magistracy or the investigated judge can be a part of. The verdict is irrevocable.

4. Integrity

The conduct of magistrates which pertains to their deontology is regulated by two distinct normative acts. The first is Law no. 303/2004 regarding the status of judges and prosecutors and the second is the Deontological Code of Judges and Prosecutors.

Judges and prosecutors are compelled to defend the independence of justice. They have to exercise their job with objectivity and impartiality, abiding solely by the law without giving in to any outside pressures or influences.

Judges and prosecutors can address the Superior Council of Magistracy regarding anything that may affect their independence, impartiality or professional reputation.

Judges and prosecutors must abstain from any acts or deeds that may compromise their professional and personal dignity and must not be influenced by political doctrine. Their relationship to the work place and society is based on respect and good-will.

The underlying principles of the activity carried out by magistrates are: independence, justice, the supremacy of the law, the impartiality of judges and prosecutors, the correct and able execution of one's professional duties, the respect of one's administrative duties as established by the law through rules and orders, and the guarantee of the respect of dignity and professional reputation.

Furthermore, the magistrates must complete their projects within deadline and resolve cases within a reasonable time frame, depending on their complexity, and respect professional secrecy. The judge must keep the secret of the deliberations and voting that he/she has been a part of, including after the termination of his/her duties.

When discussing conflicts of interest, incompatibilities and interdictions, these three elements stem from four different legislative documents. The first is the Constitution of Romania which stipulates in art. 125 and 132 that the roles of judge and prosecutor are incompatible with any other public or private functions, except for teaching functions in universities.

This complete incompatibility is reiterated by art. 5 of Law no. 303/2004 to which a series of other interdictions are added and enumerated in the subsequent articles. By the same token, the Code of Conduct for judges and prosecutors restates for a third time the same issues and adds even more interdictions.

Last but not least, there are articles in the procedural civil and criminal codes that regulate the incompatibilities of judges and prosecutors, which can determine the abstention from or recusation of a case. In reality, these articles represent potential conflicts of interest that should be avoided.

In the following part we will tackle the three aspects together in order to avoid their repetition as we discuss other normative acts.

Judges and prosecutors must, according to law, abstain from any activity that is related to the act of justice in cases which present a situation of conflict between their interest and the public interest in carrying out justice or defending the general interests of society.

In order to avoid conflicts of interest, judges and prosecutors must submit each year an affidavit in which they mention whether their spouses or relatives fourth times removed exercise a function or carry out judicial activities or criminal investigative activities, as well as their place of work.

Magistrates are forbidden from carrying out commercial activities, directly or through proxies; carry out arbitrage activities in civil, commercial or other types of cases; be an associate or member of leadership, administrative or control bodies in firms or associations, including banks or credit lending institutions, insurance or financial companies, national companies except in the situation where they are associates owing to the law of mass privatization; and cannot be a member of an economic group either.

Judges and prosecutors cannot be part of political parties or political associations and cannot carry out or participate in political-type activities. They cannot express publicly their opinions regarding the trials that are underway or cases for which the prosecutor's office has been notified.

Judges and prosecutors cannot give written or oral consultations in legal matters, even if those cases are tried in other courts or prosecutor's offices than those where they carry out their work and cannot fulfil any other activity that, according to law, is done by an attorney.

Judges and prosecutors are allowed to plead, under the conditions stipulated by the law, only in cases that affect themselves personally, their ascendants, their descendants, their spouses, as well as those of the people that are under their tutelage or trusteeship. Even in these situations, judges and prosecutors are not allowed to use their position to influence the ruling of the court or of the prosecutor's office and must avoid creating the appearance that they could influence the decision in any way.

Magistrates may participate in the creation of publications, write articles and specialized research, literary or scientific works and may participate in radio or television shows, except those with a political theme. They can be member of examination committees or the drafting committees for draft legislations or domestic and international documents. Also, they can be members of scientific or academic societies, as well as of any private legal entities that are not for profit.

Magistrates are forbidden from participating in the ruling of a case, as either judge or prosecutor if they are married or related to (four times removed) the parties or if the spouses and relatives four times removed have an interest in the case. These rules apply to the participating magistrate, as either judge or prosecutor, in appeals cases when the spouse or relative four times removed are parties to the case. The judge who becomes an attorney cannot submit cases to the court where he/she has worked 2 years since the end of his/her role as judge. The prosecutor who becomes an attorney cannot provide legal assistance to investigative bodies in the city where he/she has worked 2 years since the end of his/her role as prosecutor.

The incompatibilities of the Civil Procedure Code and the Criminal Procedure Code are: judges cannot be part of the panel with their spouse or close relative, may not participate in the hearing of a case at a higher court or at the judging of a case after the overruling of a decision, if they took part in the initial judging or if they have expressed an opinion regarding the solution which could be given to the case. Also, judges cannot hear a case if they have initiated the criminal proceedings, have sent the case to court, have released the arrest warrant, have represented or defended either party, have been arbiters, experts or witnesses or have had situations that show their interest or that of their spouse or close relative in the case.

For prosecutors, the same type of interdictions applies related to the impossibility to become part of a court if they are the spouses, or close relatives of magistrates, assistants, or clerks. Prosecutors cannot participate in the hearing of a case if they have been the representatives or defendants of either party, have been experts or witnesses, have had situations which show their interest, or that of their spouse or close relative in the case; if they have participated as judges in hearing the case at first instance, cannot submit conclusions at the appeals level; cannot undo or correct the criminal investigation, when it has already been submitted to court, if they carried out the criminal investigation.

The status as member of civil society representative to the Superior Court of Magistracy is incompatible with the status of parliamentarian, local representative, and civil servant, acting judge or prosecutor, public notary, attorney, legal counselor or acting judicial enforcer. Also, within CSM there cannot be spouses of relatives four times removed within the same term.

5. Transparency

The following people must submit income and interest statements: member of the Superior Council of Magistracy; judges, prosecutors, assistant magistrates, as well as paralegals; the auxiliary specialized personnel within courts and prosecutor's offices and judges of the Constitutional Court.

The statements are written, public affidavits. The statements are published on the webpage of the institution or in their own notice board within 30 days from receipt. Income and interest statements are kept on the webpage for at least 5 years since publication and are afterwards sent to archives. The statements are also published on the webpage of the National Integrity Agency.

Interest statements refer to functions and activities which are carried out by magistrates, with the exception of those related to their public duties.

The aforementioned persons, who do not fulfil other functions or carry out other activities than those related to their term or role, submit an interest statement.

Members of the Superior Council of Magistracy, judges, prosecutors, paralegals and assistant magistrates submit their income and interest statements to the person designated by the secretary general of the Superior Council of the Magistracy.

6. Complaints and enforcement mechanisms

Judges and prosecutors are civilly, disciplinarily, and criminally accountable to the law. Judges, prosecutors and assistant magistrates can be searched, seized or arrested only with the approval of the sections of the Superior Council of Magistracy, with the exception of severe crimes when the CSM is informed as soon as possible by the body which has carried out the search and seizure.

Regarding criminal liability for acts of corruption, the magistrate can participate in all acts of corruption stipulated by the law, both as an active or passive party – meaning he/she can be both the person carrying out the act as well as the person benefiting from it. Therefore, he/she can be responsible for giving or receiving a bribe or undue benefits, use or purchase of influence, as well as abuse of power, under all three forms. Even though it is not stipulated in the law as such, conflicts of interest are a corruption-type infraction which can be perpetrated by a magistrate.

Knowing that the magistrate is a civil servant with a special status, the regulation regarding aggravating circumstances are applied to the magistrate's position.

7. Relationship with other NIS pillars

The judiciary is called upon to censure the actions of all government branches when they become illegal and breach the official norms. When this system becomes dependent on the other branches, it can no longer fulfil its task appropriately which inherently leads to a vicious cycle of unlawfulness.

The entire judiciary is called upon to enforce the anticorruption policy and with its help, discourage further acts of corruption or prevent this phenomenon from happening altogether. If the judicial system applies only small penalties or calls for the abeyance of a verdict, as the European Commission Report relays, this reasoning no longer works and further encourages corruption knowing that there are practically no negative consequences for the culprits.

The judiciary should rather work together with other public institutions in order to carry out justice. In order to accomplish this feat, one must understand the relationship between the judiciary and the police, which is the main institution that carries out the investigation in infractions cases. The other institutions can contribute to the fulfilment of justice by replying promptly and accurately to the requests of the judiciary: addresses, reports, expert research, etc.

Last but not least, the judiciary could work together with civil society in order to improve its image in front of litigants and to take advantage of the expertise that the latter has in order to create draft legislation and action plans.

Regarding the relationship between the judiciary and the political pillar, one of the main issues is related to the pressure and influence that they exercise in order to accomplish specific interests, thus deterring the judiciary from fulfilling its purpose.

The judiciary is the bedrock of any society; all pillars must contribute to its well-running and they all depend on its well-running because any deficiency would cause a chain reaction in the whole system.

B. Actual Institutional Practice

1. Role

a. Judges

The mechanisms aiming at ensuring the independence of the judiciary have been only partially effective. There are still, at least at the court level, enough levers that can affect the activity of the judge. One of them is an administrative lever, materialized in a certain way of perceiving professional relations within the court, creating mostly traditional, hierarchical relationships.

Another contributing factor is the media pressure that the judges perceive as inhibiting their activity. Also comments from politicians to ongoing trials are perceived by judges as an exertion of influence. By the same token, there is a feeling of insecurity claimed by the judges, with regard to the social environment, in general. They feel insecure in their environment, simply because of the public's reaction in the courtroom.

Moreover, one major disturbing factor is the financial dependence of the Courts on the Ministry of Justice, which is their main credit release authority. Unlike the Public Ministry, which is financially independent, and despite the constitutional provision on the judiciary's independence, the Courts rely financially on a politically managed entity.

The setting up of the Superior Council of Magistracy as an administrative body dealing strictly with the professional career of both judges and prosecutors was considered to be a step forward to guaranteeing and enforcing the independence of the judiciary. Many of the possible interferences or interpretations were, in this way, contained. However, the financial problem remains: even if the Council has expressed the will to take over the law courts' financial management in order to remove suspicions about the independence of the judiciary, the budget allocation and administration of the courts is still handled by the Ministry of Justice.

Strictly speaking of the judiciary's role in fighting corruption, there are some observations to be mentioned. Theoretically, the sanctions for this kind of illegal acts are discouraging: they include, besides imprisonment, collateral sanctions, such as property confiscation, which potentially acts as a

deterrent for corrupt behavior. Practically, besides the fact that collateral punishments are not frequently used, there are, in general, two extreme trends regarding the application of law in similar corruption cases: one of them is applying overly large sanctions generally in highly media covered causes just to avoid any speculations; the other one is giving moderate or low sanctions in cases that don't come to the attention of the press. Generally, the number of top-level corruption trials remains low.

b. Prosecutors

The Public Ministry is theoretically independent from all the other public authorities. More precisely, prosecutors are independent in their daily activities both from the other institutions and from the hierarchic superiors, who can lawfully intervene in specific situations. For instance, they can refute the solution pronounced by a prosecutor when they establish its fallacy, but only on reasons of validity. In addition, prosecutors cannot be deprived from the files that they work on for reasons other than lack of activity on the concerned case and they notify the Superior Council of Magistracy every time they are facing pressure.

In practical terms, since 2006 onwards, prosecutors have become more aware of their independence. Accordingly, investigating corruption and organized crime have been pursued on safer grounds. On the one hand, during this period, persons holding or having hold important positions in the state, such as ministers, deputies, senators, were allegedly prosecuted. On the other, there have been several cases of prosecutors having notified the Council on grounds of having faced pressures from hierarchical superiors or from outside of their institution. More often than not, the Council has taken act of their claims and publicly approved them. Yet, any other measures against those having intervened in the prosecutors' activity were never taken, since the law did not provide any sanctions on this issue.

2. Resources and Structure

a. Judges

As mentioned above, the Ministry of Justice is responsible for the allocation and the administration of the Courts' budgets. Subsequent to this institution, the Courts of Appeal and tribunals act as second and, respectively, third credits release authorities. As such, they depend on the Ministry for the budget distribution, which means that they do not enjoy financial certainty, being thus subject to possible budgetary rectifications. The CSM, on the contrary, has the status of main credit release authority, managing independently its budget allocated by special law.

Within the Courts themselves, the managers have the responsibility of administering the allotted budgets. Still, they have the possibility of delegating this attribution to the economic directors of the concerned institutions and they generally do so, in practice.

With regard to the human resources of the Courts, the three institutions involved in the process of appointing, promoting, and dismissing share decision-making power. The CSM, the Ministry of Justice and the employing Court intervene in different stages of the judges' and prosecutors' and personnel's careers and, for this reason, there is a high potential of coordination failure between them.

Strictly speaking of the magistrates, the final decision on their appointment, promotion and dismissal belongs to the CSM, acting as a collegial body composed of the 14 elected members by and from

among the magistrates, the 2 members of civil society (appointed by the Senate) and the 3 members by right, namely the President of the High Court of Cassation and Justice, the Minister of Justice and General Prosecutor of Romania.

As for the Courts' staff, the responsibility of their appointments, promotions and dismissals is not assigned to a unique institution, but is a matter of bureaucratic dialogue between the three institutions already mentioned, which makes the process of decision-making complicated and time-consuming. According to some of the expressed opinions, deferring this task solely at the Court level would induce an alleviation of this process, and, accordingly, a better resource management.

The activity of the magistrates' and of the related staff is claimed to be internally audited. Still, for lack of personnel, those working in departments other than the ones specialized on audit bring together this task with theirs, despite the fact that they are mutually exclusive. In this context, the outputs of the audit activities are generally questionable precisely because the controlled become at times controllers. External audits are usually done by the hierarchically superior courts.

Some of the interviewed experts stated that the regular magistrates' evaluation, made by the CSM is doubtful as well. The outstanding results of most of the magistrates' assessments raise at least a question mark on whether they reflect the reality on the ground.

b. Prosecutors

In what may concern the budget, the General Prosecutor, as main credit release authority, administers the funds of the Public Ministry. Still, all the payment orders have been countersigned by a financial control officer and a person in charge from the Ministry's juridical department. In recent years, there has been a growth of expenditures within the Ministry, due primarily to an enlargement in the prosecutors' competences and, accordingly, in the amount and complexity of their activities. However, the provided sums have always been claimed to be insufficient, as the Ministry of Finances has always provided a budged inferior to the proposals submitted by the Public Ministry.

In what may concern the Public Ministry's human resources management, this position has been shared between the Superior Council of Magistracy, the Ministry of Justice and the President of the state. More concretely, the General Prosecutors, their deputies, the heads of department and the heads of directorates and their deputies were appointed by the President of Romania, at the recommendation of the Ministry of Justice, and following the Council's opinion. Regarding the other management positions, respectively the General Prosecutors of the Courts of Appeals, the main prosecutors in the county offices and the main prosecutors in local offices, they were occupied following a contest organized by the Council. As for the heads of services and offices of the Prosecutor's Office of the Superior Court of Cassation and Justice and of the territorial services of the National Anticorruption Directorate and the Directorate for Investigation of Organized Crime Offences and Terrorism, they were all recommended by the General Prosecutor of the Public Ministry and appointed by the Council.

According to expert opinions of several practitioners within the system, the main problem in this respect has been the lack of balance between competences and responsibility concerning the management positions within the Public Ministry. More precisely, those responsible for the activity of the subordinates didn't enjoy enough levers for supervising their respective activities. For instance, the General Prosecutor, the main authority for the overall activity within the Public Ministry, was not apt

to promote, transfer, evaluate, or sanction the prosecutors that were under their direct authority. Similarly, any other head of local prosecutor's offices faced the same problem of not having enough authority to efficiently organize the activity of the subordinated prosecutors and to be able to handle any other problems related to personnel in terms of appointments, promotions and dismissals.

The same experts stated that there were also problems at the level of evaluating the prosecutors' activity and of sanctioning their misconducts. More specifically, prosecution managers were only able to notify the Council if they detected unlawful activities of the prosecutors. As for the Council itself, it was accused of not giving enough sanctions to the magistrates. The incredibly low number of applied sanctions often raised the question of their efficiency and brought forward the idea of a structural inconsistency: the method of selecting the members of the Council, by direct vote from the other magistrates, has allegedly impeded the Council from applying sanctions among the magistrates themselves, i.e. on those on whom the members of the Council depended for re-election.

Another vulnerable point within the Public Ministry has proved to be the organizational one. The centralized way of distributing posts and competences among the prosecutor's offices influenced negatively the prosecutor's overall activity. Besides, the lack of flexibility of the Public Ministry in organizing the activity of prosecutors according to their amount of work has once again affected the quality of investigations and decisions. The long bureaucratic procedures of reorganization, comprising of prior accords from both the Ministry of Justice and the Council, have generally acted as an inhibiting and delaying factor for the structural reform of the Public Ministry.

A further weakness has been claimed to be the inefficiency of the Council's judicial inspection. Until currently, the inspectors, as well as the Council's members, were recruited among the judges and prosecutors and mainly among those coming for the most part from Bucharest, which was against the principle of representation. Moreover, their recruitment was based on an interview in front of the Council. This selection method raised objections in terms of its relevance and impartiality.

With regard to promotions and to the given roles on this field, the prosecutor managers claimed to not be able to determine by themselves the composition of their managerial teams so as to put into practice their respective management projects because they lacked authority. Accordingly, more often than not, managerial projects failed to be implemented by reason of lack of coordination and cooperation between the managers and their assigned teams.

In terms of audit and control within the Public Ministry, two observations ought to be made. First, officers from the Ministry of Finances have usually made financial controls on payments orders, for instance, which have been internally verified as well by those responsible with the internal audit. Second, the Court of Accounts has verified annually the way in which the spending was done. Apparently, no major problems were encountered as there were no situations of budget discharge refusals.

3. Accountability

a. Judges

As seen above, the activity of the magistrates is overseen by the Council. The magistrates are disciplinarily accountable in front of this collegial body, but for any other transgression they are liable in front of the prosecution.

Disciplinary accountability is generally claimed to be of a formal nature. The overall impression both within and outside the judicial system is that the oversight of the CSM fails to be effective in practice.

One of the invoked reasons is the unbalanced composition of the CSM and, by the same token, that of the evaluation commissions. They are asserted to determine, on reasons of professional solidarity, rather soft evaluations and to fake accountability.

b. Prosecutors

In general terms, the prosecutors in managing positions have been responsible for distributing the files to the other prosecutors and they were also supposed to verify the way in which the prosecutors handled the assigned cases. Every time the main prosecutors discovered illegal acts, they had to refute them and in the case of detecting disciplinary misconducts, they had to notify the Council, which had the task of evaluating, investigating and sanctioning them. In this particular situation, it has been noticed that the Council's preliminary investigations following the notifications on disciplinary misbehaviour lasted incredibly long (even ten times more than what is legally prescribed) and, accordingly, held back the application of sanctions. Furthermore, the decisions of the Council couldn't be attacked in any way, so that the complainant prosecutor had no possibility of contestation.

In what may concern the prosecutors' decisions, they couldn't be contested in the absence of a complaint coming from the defendant. No other prosecutor had the legal possibility to challenge the solution if they considered it unfair.

4. Integrity

a. Judges

Conflicts of interest, gifts and hospitality are a matter of concern especially within those parts of the judiciary engaging in regular interaction with the public.

Generally, conflicts of interest are claimed to be resolved in the Court, upon notification. As for gifts and hospitalities, they are said to be a frequent practice and they do not usually appear as such in wealth statements.

Many of the interviewed magistrates showed that even though they are public, made available on the website of the CSM, interest and wealth statements are generally believed to be incomplete simply because all the gifts and hospitalities received by the magistrates and the staff by virtue of their position are not included in those statements and because in reality they show to have different economic statuses than what the statements present.

b. Prosecutors

Related to issues of integrity, there were cases of prosecutors being criminally investigated and arrested for having requested money in order to fulfill their incumbent duties. But, more often than not, conflicts of interest have been prevented or tackled by abstention or challenge.

5. Transparency

a. Judges

The transparency of the current judicial systems is related to the degree to which the IT strategy for the Reform of the Judiciary 2005-2009 has been implemented so far by the Ministry of Justice. Adopted along with the National Anticorruption Strategy, the IT policy was designed to increase the efficiency of the judiciary, its transparency, to secure personal data and secret information, to fight corruption and to guarantee an efficient management of human, financial and material resources.

According to the implementation schedule, up to date, the following tasks related to the transparency of the judicial activity should have been fulfilled or almost completed: endowing all the institutions of the judicial system with IT and software; making operational an IT network interconnecting all the judicial institutions; the extension of the IT ECRIS system nationwide; making available public interest information about the activity of the Courts and prosecution offices on a centralizing portal (http://portal.just.ro/); making operational the IT „Registry" system, as an integrated system; making available citizen info-stands within courts.

b. Prosecutors

As for the wealth and interest statements, they have been claimed to be complex and well regulated. For instance, all the names of prosecutors' relatives, up to four times removes and working in the judicial system, had to be included.

6. Complaints and enforcement mechanisms

a. Judges

Generally speaking of internal complaints, there are no effective mechanisms for investigating the complaints regarding the magistrates or to the court clerks inside the courts. It is claimed as well that certain complaints of this sort be not registered.

One of the main reasons is the lack of human resources for checking and control. Generally, judges check their colleagues and the clerks theirs. It's a time-consuming, but an artificial and formal activity, leading to a low degree of error detection within the functioning of the judicial system

Outside the Courts, the CSM's judiciary inspection, competent to handle complaints transmitted from the Courts to the CSM concerning the magistrates, is claimed to be largely outnumbered by the volume of cases. However, this investigation body isn't competent in treating administrative complaints from the courts; they are due to be handled by the Ministry of Justice.

Other than that, the National Integrity Agency is claimed to have checking competences with regard to wealth and interest statements, but it lacks personnel.

As for external complaints, they are generally submitted to the offices of public relations related to the courts and handled internally. The citizen's complaints concern particularly the courts' staff. Generally, the litigants have complained about errors in the registry, about delayed pending cases or files in the archives, or misconducts of the auxiliary employees.

There are cases of judges accused and prosecuted for corruption. They were generally detected through immediate or subsequent denunciations, sent to court and suspended from office. Unlike the general perception that they enjoy a privileged prosecution regime, it was said that they were more severely treated than other citizens. On the contrary, the prosecutors benefited from preferential treatment during the investigation, as there are no preventive measures in such cases.

b. Prosecutors

Everything related to corruption of magistrates has been under the competence of the National Anticorruption Directorate, an institution claimed to be both structurally and functionally independent, and being reputed as efficient among the civil servants within the judicial system.

There were cases of prosecutors being investigated and arrested by the anticorruption prosecutors (for instance, in 2008 there were seven prosecutors) and, generally, being dismissed at the moment of the preventive arrest. The main problems were related to the difficulty of bringing evidences in the respective files.

7. Relationship to other pillars

a. Judges

The judicial system is claimed to be mainly a closed one. In the interior, the interactions are basically institutional. The Courts communicate with the Ministry of Justice when it comes to financial issues, with the Prosecutors, the Police and the Penitentiaries in their daily activity, and with the CSM when it comes mainly to the professional career of the magistrates and to disciplinary issues.

Communication with the local authorities was claimed to be poor and with civil society even poorer. Still, professional associations of magistrates had a proactive behaviour, managing to give their legislative inputs, even though their point is not always considered.

Regarding the activity assessment within the judicial system, the main weaknesses came from the lack of correlation of insufficient staffing to the assigned volume of work. Under the current conditions, it has become practically impossible to respect deadlines and, at the same time, to carry out high quality activities. The assumption of vulnerability to judicial errors was confirmed, despite the fact that the disposal index was low compared to the amount of issued court decisions.

There were also criticism regarding the balance between payments and the incumbent responsibilities and risks of the personnel working in the judicial system.

b. Prosecutors

In general terms, prosecutors interact constantly with the Ministry of Justice, mostly on administrative matters, and with the Council, on matters related to magistrates' carriers. Their relations with these institutions were claimed to be balanced. More often than not, they also interacted with the Ministry of Administration and Interior, particularly with the police.

Speaking of the police officers dispatched to the judicial police, they have been working under the authority of the prosecutors, who had the competence of sanctioning or request their revocation to

the General Prosecutor in case of their misconduct. However and despite that the policemen had to comply only with the orders of their prosecutors and not to obey any other instructions from their hierarchic superiors, practice proved that this wasn't the case.

Another sensitive issue affecting the relation between the judicial police and the prosecutors was claimed to be the particularly Superior number of files assigned to each prosecutor and the insufficient number of police officers working on them. This has been a sensitive issue especially at the local level.

For instance, each prosecutor from local prosecutor's offices had to handle up to 1500 files yearly and coordinated the activity of only 25 policemen. On the contrary, the prosecutors from the Courts of Appeal, claimed to have superior competencies on this field, handling annually approximately 30 files. This discrepancy in what concerned the work volume between prosecutors impeded the overall efficiency of the prosecutors' activity. Although attempts were made in the sense of redistributing posts from the general prosecution office and from the Courts of Appeal to the local prosecution offices in order to determine a fairer sharing of files, the Council rejected them because they were considered to impede on the magistrates right to promotion.

8. Past developments and future prospects

a. Judges

From 2005 onwards, structural transformations regarding the enforcement of the judiciary's independence have been acknowledged.

Regarding the internal organization of the courts, there have been noticed visible improvements, mainly in terms of computer infrastructure. Still, radical changes in the behaviour of the judiciary's insiders have yet to be visible. For instance, the magistrates' way of approaching their independence in absolute terms induced not only a non-unitary practice, but an overall feeling of arbitrariness in court decision-making. The implementation of the Superior Council of Magistracy was a remarkable step forward in the reform of the judiciary, but it did not foster any serious improvements until recently.

Issues to be tackled in the future are related to court management claimed to be financially centralized and bureaucratized. The institutional organization, especially the one concerning the relationship between the courts and the Ministry of Justice, claimed to be one of the sensitive points affecting the independence of the judiciary, has to be improved by delineating the authority between territory and centre, based on the principle of decentralization.

b. Prosecutors

Since 2005 onwards, there have been positive changes, particularly with regard to the prosecutors' independence, but also concerning the litigants' legal possibilities of contesting their solutions. For instance, before 2004, complaints to the prosecutors' solutions could not be submitted to the judges. From then on, the judges have had the capacity of refuting solutions subsequent to complaints. Similarly, they have earned the legal capacity of invalidating preventive arrests and inquisitions following complaints.

In what may concern the further steps to improve the prosecution activity, two main actions should be taken. First, managers of prosecution offices should be given more leverage in organizing the

activity in their jurisdiction. They should enjoy the authority of forming their own managerial teams and be collectively responsible.

Measures regarding the increase in efficiency of the judicial inspection could be another necessary step.

9. Stakeholders' recommendations

a. Judges

In this context, the first steps to be taken towards the increase of the capacity, governance and role of the Judiciary within the national integrity system refer not only to normative action, but also to institutional practice improvements. More specifically, the following recommendations need to be taken into account:

- Improving the legislative framework
- Improving court management
- Promoting and consolidating the application of anticorruption measures
- Enhancing the unification of the judiciary practice
- Improving the application of integrity and ethics standards concerning magistrates and the affiliated professionals
- Assuring transparent and correct selection processes for leading positions in Courts
- Assuring a more adequate recruiting system for the magistrates
- Improving the access of the citizens to free judicial assistance
- Reducing delays of the judicial processes and the correspondent costs
- Improving inter-institutional cooperation between the authorities assimilated to the justice system
- Enhancing the capacity of the system to absorb available human resources and to determine vacancy reduction.

b. Prosecutors

- In this context, the first measures towards enhancing the standing of the Prosecution within the national integrity system go hand in hand with the reform of the Judiciary and regard mostly activity and resources management. More concretely, the following recommendations need to be taken into account:
- Simplifying procedures and decentralizing activity
- Improving the balance between the attributions and responsibilities of the chief prosecutors and their legal and institutional capacity to accomplish them
- Improving the work load sharing between different echelons of prosecution offices
- Assuring and strengthening the statute of magistrate of the prosecutor

PUBLIC ADMINISTRATION

Capacity	Governance	Role
2 (small extent)	2 (small extent)	2 (small extent)

Public administration[39] *has continued to play a weak role in the national integrity system.*

Notwithstanding the recent changes towards decentralization by transfer of authority to inferior levels of administration, accountability has remained limited.

The relative stability of civil servants in their offices, along with ineffective and mainly formal enforcement mechanisms favoured the persistence of an unprofessional and non-transparent public administration, especially in the territorial and local levels.

A. Legal framework

Ion POPESCU

1. Role

The Romanian Constitution of 1991, republished , refers in Title III to public authorities. The title refers to the following institutions as public authorities:- Parliament (Chapter 1);- The President of Romania (Chapter 2);- Government (Chapter 3);- Public administration authorities (Chapter 5) – Judicial authority (Chapter 6) – Courts of Law, The Public Ministry, Superior Council of Magistracy.

For each branch of power there are authorities which fulfil its responsibilities. The attributes of the Executive are the responsibility of the President and of the Government, the latter exercising the general management of public administration.

The authorities of the public administration are classified in:

a) authorities of the specialized central public administration – ministries, other specialized entities under the subordination of the Government, and autonomous administrative authorities ;

b) deconcentrated public services of ministries and other bodies of the central public administration within territorial-administrative units, these authorities forming the territorial public administration;

c) authorities of local public administration – local councils, county councils, mayors and the prefect.

According to art. 1 of Law no. 90/2001 on the organization and functioning of the Romanian Government and ministries , the Cabinet is the public authority of the executive branch, which functions in the basis of the vote of confidence of Parliament and which ensures the realisation of the domestic and foreign policy of the country and exercises the general management of public administration.

[39] Within the graphics in the study, Public Administration may also be tagged as *Public Sector*

The Cabinet is organized and functions on the basis of the constitutional provisions and of the Governance Programme as accepted by the Parliament. According to the provisions of art. 11 of Law no. 90/2001, the responsibilities of the Government are, among others, to manage and control the activity of ministries and of other specialized central agencies in its subordination and to guarantee the rule of law, public order and citizen's safety, as well as citizens' rights and freedoms, under the conditions set by legislation.

According to art. 34 of Law no. 90/2001, ministries are specialized bodies of central public administration which implement the governmental policy in their specific activity areas. They have the main role within the specialized central public administration, being considered its pillars. Ministries are organized and function only in subordination to the Government, according to the provisions of the Constitution and of Law no. 90/2001. Ministries manage and coordinate public administration in their specific areas and activities, having important responsibilities relevant for their role as integrity pillars, such as the management, guidance and control of the civil servants and of the entities in which they perform their duties, as well as in the subordinated structures.

Besides the Cabinet, ministries and other specialized central agencies in subordination to the Government or ministries, according to art. 117 paragraph 3 of the Constitution, autonomous administrative authorities can be established through organic law. These autonomous authorities of central public administration may exercise, just like the other specialized agencies of ministerial administration, an executive activity. The activity may cover the execution of the law, ensuring the functioning of some public services, or the exercise of some administrative-juridical competences.

The autonomous administrative authorities are different from ministries and other specialized agencies in subordination to the Government or ministries because they exercise their responsibilities under the control of Parliament's Chambers or of some of their permanent commissions. Their managers are not members of the Government and their acts are not under Government's control.

Out of these authorities, when taking into account their role as integrity pillars, of particular interest are the Advocate of the People, the Court of Audit, the Superior Council of Magistracy, or the National Integrity Agency. Also, according to art. 43 of Law no. 90/2001, ministries may have under their subordination deconcentrated public services, which function in the territorial-administrative units. Therefore, there are ministries which have deconcentrated public services at the county level, such as: county school inspectorates in the case of the Ministry of Education, Research and Innovation; county offices for agriculture and rural development and agencies of payment and intervention for agriculture in the case of the Ministry of Agriculture, Forestry and Rural Development; county retirement offices, territorial labour inspectorates, national agencies for employment in the case of the Ministry of Labour, Family and Social Protection; agencies for environment protection in the case of the Ministry of Environment; offices for culture, cults and national-cultural patrimony in the case of the Ministry of Culture, Cults and National Patrimony; sports offices in the case of the Ministry of Youth and Sports; offices for land registration in the case of the Ministry of Administration and Interior and so on.

Some ministries have deconcentrated public services not only at county level, but also at municipality, town and sectors level, even in communes, such as the Ministry of Administration and Interior and the Ministry of Public Finance.

Deconcentrated public services may be constituted by other central specialized bodies, according to art. 123 of Constitution. The deconcentrated public services are territorial structures through which, as

a general rule, ministries and other central specialized bodies carry out their competence on the whole territory of the state, concretely executing the responsibilities conferred by law in their activity domains.

Deconcentration refers to a redistribution of administrative competences, within the same system of the state's administration, while decentralization refers to a transfer of administrative competences between two different systems, from the central one to the local autonomous one.

Deconcentrated public services which operate in the territorial-administrative units are coordinated by the prefect, according to art. 122, paragraph 2 of Constitution. He/She is the representative of the Government at local level . In The prefect administers all the deconcentrated services of ministries and the other specialized central bodies He is also responsible to appeal to the administrative court the acts of the local authorities, which he considers unlawful. The prefect has to take the actions needed to prevent crime and to protect the citizens' rights and safety, through the appropriate legally established body.

Specialized bodies function within the Government, within what is called ministerial administration. They do not have the statute of ministries, but they are similar to ministries, in what territorial competence is concerned (agencies and commissions). In the former governance there were functioning 21 such specialized bodies of central public administration. As a general rule, the responsibilities, the organization and functioning of these specialized bodies of central administration in subordination to the Government and to the Prime Minister.

Among specialized central administrative bodies within Government which have an important role as integrity pillars the National Authority for the Regulation and Monitoring of Public Acquisitions , and the National Office for the Prevention and Combat of Money Laundering may be considered. Also, the Agency for Governmental Strategies which has been reorganized and functions as a specialized body of central public administration, with juridical personality, in subordination to the Government and in coordination with the Prime Minister for coordinating the General Secretariat of Government, financed from the state budget, through the budget of the General Secretariat of Government.

Concerning the autonomous administrative authorities, some of them were created through the Constitution: the Ombudsman, The Legislative Council , The Court of Accounts , The Supreme Council of National Defence , the Romanian Intelligence Service and the Superior Council of Magistracy and others were created by organic laws .

Regarding the creation or removal of deconcentrated public services of ministries, as well as those of other central bodies, from the territorial-administrative units, the responsibilities, organizational structure, the number and arrangement of personnel, the criteria for compartmentalization and their management functions are approved by disposition of the minister or of the manager of the specialized body under whose subordination these services function.

Some ministries have a special role in the national integrity system because their organizational structure has especially created departments to promote integrity, transparency, responsibility or fight against corruption.

Thus, the Ministry of Administration and Interior has structures such as the General Directorate against Corruption, the Central Unit for Public Administration Reform, compartments within the central structure and subordinated structures like the National Agency of Public Servants. Such structures with the mentioned objectives can also belong to the Ministry of Public Finance, for

example The National Agency of Fiscal Administration, the Fiscal Control Directorate, the Antifraud Fiscal Directorate, the National Customs Authority, the Financial Guard.

Within the Ministry of Administration and Interior we refer to the General Anti-corruption Directorate created by Law no. 161/2005 regarding the establishment of some measures for the prevention and combat of corruption within the Ministry of Administration and Interior, as a specialized structure for preventing and combating corruption within their own personnel, directly subordinated to the Minister. This institution will be analyzed in the "Anti-corruption Agents" chapter.

Within the same ministry, The National Agency of Civil Servants was created by Law no. 188/1999 regarding the Statute of Civil Servants. The aim for creating it was to develop a body of professional civil servants, stable and impartial, as a specialized body of central public administration.

The National Agency of Civil Servants is financed from the state budget and it has the following principal responsibilities, according to stipulations in art. 22 of the law: elaborate the policies and strategies concerning the management of civil service and civil servants; verify the way the law is applied regarding civil service and the civil servants within the public authorities and institutions; set down the criteria for the evaluation of the civil servants' activity; approve the participation conditions and the organization procedure for the recruitment and promotion in public office within a contest; monitor the recruitment and promotion for other public functions, according to the law; provide specialized assistance and coordinate the human resources departments from a methodological point of view within the authorities and institutions of the central and local public administration; make up the annual report concerning the management of civil services and civil servants and hand it to the government; take notice of offences and apply sanctions, according to the law.

The National Agency of Civil Servants may appeal to the appropriate administrative court regarding:

a) acts through which public authorities or institutions do not respect the legislation regarding civil service and civil servants, following a proper control activity;

b) refusal of public authorities and institutions to apply the legal dispositions in civil service and civil servants domain.

The contested act shall be suspended de jure. The president of National Agency of Civil Servants may address the prefect also in connection to illegal acts elaborated by local public authorities or institutions.

The National Agency of Fiscal Administration is an agency of the Ministry of Public Finance is It functions as a specialized body of central public administration, a public institution with juridical personality, financed from the state budget and its own income.

2. Resources and Structure

The organization and functioning of the Government's structures is established by Government Decision, in the limit of the approved budget (art. 12 of Law. No. 90/2001).

The organizational structure and the number of positions of ministries are established according to the importance, volume, complexity of each ministry work and it is approved by Government Decision. Within each ministry the minister's cabinet is organized, with its own staff, to which legal stipulations regarding the statute of civil servants do not apply (art. 40 of Law no. 90/2001).

The dispositions mentioned above, regulating the organization and work of the Government and ministries, apply, also, to other specialized central bodies under the Government; excepting some institutions of public interest whose organization and functioning are regulated by special laws (art. 60 of Law no. 90/2001).

Regarding deconcentrated public services, as well as the ones of other institutions representing central bodies in territorial-administrative units, the responsibilities, organizational structure, number and staff position, the constitution criteria for compartments and their leading functions are approved by order of the minister or manager of the specialized body under whose subordination these services develop their activity (art. 44 of Law no. 90/2001).

Regarding the budget, according to art. 65 of the Constitution, the Parliament approves the state and the social security budget, following the Government's draft. The budget proposal is elaborated by the Government according to the proposals of each of the ministries

The secretary general of Government is the main credit lending authority for the Government's working structure. The General Secretariat of the Government has the legislative initiative in domains under its responsibilities and the responsibility of institutions under its subordination. As a general rule, the budget of state public administration authorities is part of the state budget.

3. Accountability

Law no. 52/2003 on decisional transparency in public administration establishes minimum procedural rules to ensure transparent decision-making within the central and local public administration authorities, elected or appointed, and other public institutions using public funds (art. 1). The Law aims, according to art. 2, to increase accountability of public administration in relation to the citizen, as beneficiary of the administrative decision, to stimulate the active participation of citizens in making administrative decisions and in making laws, to increase transparency throughout the public administration. Based on art. 6 of law, within the procedures for drawing up draft legislation the public administration authority is obliged to publish a notice of this action on its own website, to show it to their own constituencies, in an area accessible to the public, and transmit it to the central or local media as appropriate. Public administration authority will send the draft normative acts to all persons who have submitted a request to receive this information.

Notification of the elaboration of draft legislation will be brought to the public under the conditions of paragraph 1, at least 30 days before submission for review, approval and adoption by public authorities. The notice will include a background note, a statement of reasons or, where appropriate, a report on the need for adoption of the proposed legislation, the full text of the draft act and the deadline, place and manner in which those interested can send in writing proposals, suggestions, opinions making in effect recommendations on the draft normative act.

In all cases where public debates are held, they must take place no later than 10 days after the publication of the time and place to be organized. The concerned public authority must consider all the recommendations on the draft normative act in question. As for the procedure for adopting acts, it must comply with the provisions of Law no. 24/2000 on the rules of legislative technique for developing laws ,.

Individuals may appeal to services of central and territorial public administration authorities by requests and audiences and may address infringements of citizens' rights and freedoms. There is also

the legal possibility for the authors of petitions who are unsatisfied with the actions of the staff within state public administration authorities to formulate an action in court, according to Law no. 554/2004 on administrative litigation.

4. Integrity

In developing the dispositions of Law no. 188/1999 regarding civil servants' respect for regulations of professional and civic conduct, Law no. 7/2004 was adopted. This regards the Civil servants' Code of Conduct, which applies to all persons holding an office within public authorities and institutions of central and local public administration.

According to art. 2 of the Code of Conduct, through its objectives, it aims to assure increased civil service quality, a good administration in realizing the public interest, as well as to contribute to eliminating bureaucracy and corruption in public administration. Among the principles that govern the professional conduct of civil servants there are also the ones stipulated in art. 3 in the Code of Conduct:

> a) moral integrity, a principle according to which it is forbidden for civil servants to ask or receive, directly or indirectly, for themselves or for others, any advantages or benefits, considering the public position they hold or abuse in any way this position;
>
> b) honesty and fairness, principles according to which civil servants must be of good-faith when exercising their public function and executing their responsibilities.

Art. 14 of the Code stipulates that civil servants are not allowed to ask or accept presents, services, favours, invitations or any other benefit for themselves or their family, parents, friends or persons with whom they had business or political relationships, which can influence their impartiality in exercising their public functions or may represent a reward in relation to these functions.

Provisions of art. 19 of the Code are also important. According to them, any civil servant may buy a good in the private property of the state or of the territorial-administrative units, open to sale according to law, except in the following cases:

> a) when he/she knew, during the development of his/her duties or after accomplishing them, about the value or quality of goods which were to be sold;
>
> b) when he/she participated, in exercising his/her responsibilities, to the organization of selling the good;
>
> c) when he/she can influence the selling operations or when he/she obtained information to which the persons interested in buying the good had no access.

These stipulations are also applied in the case of granting or renting a good in the state or territorial-administrative units' private or public property. Civil servants are not allowed to give information about goods in the public or private property of the state or the territorial-administrative units, with the object of selling, granting or renting actions, in other conditions than the ones established by law.

In order to trace the implementation and respect within public authorities and institutions of the stipulations of the Code of Conduct, it was specified that the National Agency of Civil Servants has the role of coordinating, monitoring and controlling the implementation of conduct regulations and public authorities and institutions' managers have to appoint a civil servant, usually from the human

resource department, for ethical conciliation and monitoring of conduct regulations. Such conduct regulations are also present in Law no. 477/2004 regarding the Code of Conduct of the contractual staff in public authorities and institutions .

Conduct regulations for different categories of civil servants from some authorities and institutions of public administration are present in the Code of Ethics and Conduct of Police Officers , the Code of Conduct of the staff within the penitentiary administration system , the Code of Conduct of juridical councillors , the Code of Ethics of the delegated inspector , the Code regarding the ethical conduct of the intern auditor etc.

For civil servants within the ministries and other authorities of public administration, the situations of conflicts of interest are stipulated in the Law no. 161/2003. Incompatibilities regarding the position of Government member and other dignity positions in central and local public administration are stipulated in art. 84 and 85 of law, and for civil servants in ministries and other public administration authorities are stipulated in art. 94 and 95.

According to art. 49 of Law no. 188/1999, civil servants have the obligation to respect the juridical regime of conflicts of interests and of incompatibilities, according to the law.

When being appointed in a public function, as well as at the end of work relationship, civil servants are obliged to present, according to law, to the manager of the public authority or institution, the statement of assets. The statement of assets is annually updated, according to law.

According to art. 94 of Law no. 161/2003, civil servants who, in exercising their public office, developed activities of monitoring and control in/for companies or other units of profit within the public or private sector cannot carry on their activity and cannot give specialized advice to these companies for 3 years after leaving the civil servants corps.

Law no. 115/1996 stipulates in art. 3 that the statement of assets shall be a written declaration which includes one's own assets, common property and the ones owned in joint possession, and those of the children in their care, according to the model in the law's Annex.

According to art. 10 of the Law, if the person whose property is subject to control is married, the control extends over assets and income acquired by the spouse as well. Also subject to control are the assets owned by interposed people or transmitted by deed to ascendants, descendants, brothers, sisters and relatives of same degree, as well as those sent by free title to anyone.

In accordance to art. 18 of Law no. 115/1996, if the court – in this case the Court of Appeal - concludes that the acquisition of certain assets or a weighted share of an asset is not justified, it will decide either the confiscation, the justified partition of the assets or the payment of a sum of money equal to the value of the property determined by the court on the basis of expertise. In case of the obligation of payment of the amount of property, the court will determine the term and payment. If in connection to goods whose origin is unjustified, the suspicion of an infraction arises, the court sends the file to the competent Prosecutor to investigate if it is necessary to initiate the criminal proceedings. If it is found that the origin of the goods is justified, the court decides to close the case.

5. Transparency

The activity of the central and territorial public administration authorities is subject to an annual report showing the main activities, including the application of Laws no. 544/2001 and no. 52/2003.

The reports of activities of public administration authorities are published, usually, on the website of the institution.

According to art. 1 of Law no. 544/2001, free and unrestricted access of an individual to any information of public interest, defined as such by this law, represents one of the fundamental principles for relations between individuals and public authorities, in accordance to the Romanian Constitution and international documents ratified by the Romanian Parliament.

To ensure the access of any person to information of public interest, public authorities and institutions are required to organize specialized compartments of Information and Public Relations or to nominate persons responsible for this area. Each authority or public institution is required to communicate ex officio the information of public interest in art. 5 of the law. Access to information is achieved through the output at the headquarters of the authority or public institution or by publication in the Official Gazette or in the media, in their publications, as well as on their own Internet page and the consultation at the public authority or institution, in spaces made available for this purpose. Authorities and public institutions are obliged to provide to persons interested about the privatization contracts concluded after the entry into force of this Act by informing them on the premises of the contracts.

Under art. 7 of Law no. 544/2001, the authorities and public institutions are obliged to respond in writing to the requested information of public interest within 10 days or, within no more than 30 days of the registration of the application, depending on the difficulty, complexity, volume of business documentation and the urgency of the request. If the time required for the identification and dissemination of information requested exceeds 10 days, the response will be communicated to the applicant within maximum 30 days, provided notification in writing of the delay within 10 days. Denial of the information required shall be motivated and communicated within 5 days of receiving the petition. The request and receipt of information of public interest may be executed, if the necessary technical conditions are fulfilled in electronic format as well. As well, according to art. 15 of Law no. 544/2001, the media's access to information of public interest is guaranteed.

To ensure the access of the media to information of public interest, public authorities and public institutions are obliged to appoint a spokesperson, usually in the information and public relations departments. A department or a person to perform the tasks on the application of Law No. 544/2001 and No. 52/2003 are mandatory in each public authority ; appropriate information is displayed on the website of those structures, and monitoring on compliance with these laws is carried out by the Agency for Governmental Strategies of the Government.

6. Complaints and Enforcement Mechanisms

The Law no. 571/2004 on the protection of whistleblowers from public institutions, authorities and other unites apply to the central public administration, local public administration, the Parliament, the work structure of the Presidential Administration, the work structure of the Government, the autonomous administrative authorities, the public institutions of culture, education, health and social assistance, the national companies, the autonomous agencies of national and local interest, as well as the national companies with state capital.

The principles governing the protection of whistle blowing are:

a) the principle of legality, under which public authorities, public institutions and other establishments stipulated in art. 2 have the obligation to respect rights and freedoms of citizens, procedural rules, fair competition and equal treatment of beneficiaries of public services, according to the law;

b) the principle of the supremacy of the public interest, according to which the rule of law, integrity, impartiality and efficiency of public authorities and public institutions and other establishments stipulated in art. 2 are promoted and protected by law;

c) the accountability principle, according to which any person who reports violations of law has the obligation to support his claim with data or evidence of the action committed;

d) the principle of non abusive sanctioning, according to which persons who report or inform about violations of law, directly or indirectly, cannot be sanctioned by applying an unfair and more severe punishments for other disciplinary proceedings. In the case of whistleblowing, rules of professional conduct of a nature to prevent the warning in the public interest are not applicable;

e) the principle of good administration, which sustains that public authorities, public institutions and other establishments stipulated in art. 2 have the obligation to operate for the achievement of the general interest acting professionally in terms of efficiency, effectiveness and economy in the use of resources;

f) the principle of good conduct, according to which whistle blowing is protected and encouraged in matters of public integrity and good administration in order to enhance administrative capacity and prestige of public authorities, public institutions and other establishments specified in art. 2;

g) the principle of equilibrium, whereby no person may rely on the provisions of this law to reduce administrative or disciplinary penalty for a grievous action;

h) the principle of good faith, according to which the person who trusted a public authority, institution or other establishment referred to in art. 2, is protected; having made a complaint, the person is either shown the lawfulness of the fact or that the fact constitutes a violation of the law.

Whistleblowing represents the report on the facts of a legal violation by the persons referred to in art. 1 and 2 and on the following disciplinary deviations, contraventions or crime:

a) corruption, corruption assimilated crime, crime directly related to corruption, forgery and offences in the line of work infractions in office or in connection with ;

b) crime against the financial interests of the European Community;

c) discriminatory or preferential practices in exercising the responsibilities of the units referred to in art. 2;

d) infringements of the provisions on incompatibilities and conflicts of interest;

e) the abuse of material or human resources;

f) political partisanship in exercising public responsibilities, excluding persons politically elected or appointed;

g) breaking the law on the access to information and transparency of decision-making;

h) breaking the legal provisions on public procurement and grant funding;

i) incompetence or negligence in the office;

j) subjective evaluation of staff in the recruitment, selection, promotion, demotion and dismissal processes;

k) breaking the administrative procedures or the establishment unlawful internal procedures;

l) issuing administrative or other acts that serve group interests;

m) maladministration or fraudulent administration of public and private patrimony, public institutions and other establishments referred to in art. 2;

n) breaking of other laws which require compliance with the principle of good administration and protection of public interest.

According to art. 75 of Law no. 188/1999, public servants breaching in bad faith work duties are liable disciplinary, legally, civil or criminally as appropriate. Explicit or tacit refusal of the designated employee or of a public institution to implement the provisions of the law constitute misconduct and attract disciplinary liability of the guilty one. Against the refusal mentioned above, a complaint to the head of the authority or concerned public institution can be submitted within 30 days. If after the administrative research the complaint proves to be well-founded, the response is transmitted to the injured party within 15 days of filing the complaint and will contain both the requested public information and indicate the disciplinary sanctions taken against the guilty party.

According to art. 22 of Law no. 544/2001, when a person's rights have been infringed, he/she may submit a complaint to the court of administrative litigation. The complaint has to be made within 30 days from the date of expiration of the 10 days term or, within maximum 30 days of the registration request. The court decision is subject to appeal. Court of Appeal's decision is final and irrevocable. Both the complaint and the appeal are judged in emergency procedure and are exempt from stamp duty.

According to art. 15 O.G. no. 27/2002 on solving the complaints, the following actions are considered disciplinary infringements and are punished according to Law no. 188/1999 on the Statute of civil servants or, under the labour law for contractual staff:

a) the failure to respect the terms for solving the complaints, as mentioned in this ordinance;

b) interventions to resolve some petitions outside the legal framework;

c) receiving directly from the petitioner a complaint, in order to be resolved, without registering it and without being assigned by the head of the specialized compartment.

According to art. 18 of Law no. 554/2004, the administrative court solving applications submitted by injured parties may, where appropriate, cancel, in whole or in part, the administrative act. The court can oblige the public authority to issue an administrative act, to issue another written document or to perform a specific administrative operation. As well, when solving complains, the court will decide on compensation for the material and moral damage, if requested. Furthermore, in case the subject of

administrative litigation is an administrative procedure, the court may require cancellation, in whole or in part; it also may oblige the public authority to conclude the contract on which the plaintiff is entitled; require one of the parties to fulfil a particular obligation;; or demand the payment of compensation for material and moral damages.

7. Relationship with other NIS pillars

As shown, the central and territorial public administration authorities have responsibilities, either directly or indirectly, in relation to integrity, transparency, responsibility or anticorruption. Some ministries and institutions under these ministries such as Public Finance or of the Administration and Interior are bound to play a more important role than others in the national integrity system, as parts of the pillar of Public Administration.

Agencies of central and territorial public administration cooperate with the President of Romania, the Parliament, the Constitutional Court, with judicial authorities, with local public administration authorities, the media, nongovernmental organizations, and with other physical or juridical persons. They may also maintain relationships with similar authorities in other states and may participate in the activities of international organizations in their field of activity.

B. Actual Institutional Practice: the institution of the Prefect

1. Role of institution

The Prefect is the link between the central government and the local government. As the enforcer of the central government in the territory, the prefects' independence in terms of decision-making is limited.

The main tasks of the institution of the Prefect are to control and verify the decisions of the local autonomous authorities – the mayor, the local council, the president of local council and the local council - in terms of the legality of their provisions. Therefore, the decisions issued by the institution of the Prefect regarded procedures, and not content.

Besides, the Prefect has also the task of a loose coordination of the deconcentrated public services, meaning the territorial branches of the ministries. However, this particular role has decreased lately in favour of the county councils and of the mayors.

2. Resources and Structure

As tertiary credit release authority, the Prefect has been the main administrator within this institution. The assigned budget came from the Ministry of Finances through the Ministry of the Administration and Interior. Other sources of incomes are not allowed; therefore auto-financing by any other means was not possible. However, the institution of the Prefect has had the competence of promptly verifying the management of money by the local authorities.

Appointments, promotions and dismissals have been under the competence of the Prefect as employing entity. Still, the institution's organigram had to be approved by the central government through the Ministry of Administration and Interior.

In terms of audit activities, both internal and external inspections were assumingly made. First, internal audits have been pursued according to an annual audit plan, but also upon request by the Prefect. External audits have been carried out by representatives of the Ministry of the Administration and Interior and those of the Court of Accounts. Moreover, inspectors from the Government's control department had the competence of pursuing verifications following complaints from the office. Generally, they submitted proposals of remediation. The National Agency of Civil Servants could also carry out verifications in the human resources area.

The overall tendency in terms of control and verification of the central authorities on their territorial branches passed from coercion to guidance and assistance.

3. Accountability

In what may concern supervising the activity of the deconcentrated public services and verifying the legality of the decisions of the local governments from the respective administrative-territorial units, the Prefect has been assisted by two sub-prefects, who are accountable to him. As for the other staff, they were accountable to the immediate hierarchic superiors.

4. Integrity

Integrity mechanisms have proven to create particular problems. With respect to statements of assets and interest, filling and publishing procedures have not been fully respected by the civil servants employed in the public administration. Conflicts of interest have often remained unresolved due to circumstantial factors strongly related to incompatibilities. The codes of conduct applying to the civil servants within the public administration institutions, including the Prefect, have not generally created litigious issues. There have been grounds to consider that this situation stemmed from a poor knowledge and awareness of the respective deontological stipulations, rather than from their full respect.

Suspicions and citizen dissatisfaction with regard to the professional behaviour of the civil servants working in the public sector have persisted. Both integrity and transparency principles have been invoked as not fully respected. Among the main reasons, the relatively high stability in office of the civil servants and the lack of effective accountability mechanisms have been said to have caused citizen dissatisfaction regarding public services. The most vulnerable areas in terms of corruption and misconduct were those comprising the deconcentrated public services with competence in control and verification, and in issuing different types of authorisations, as, for instance, the territorial branches of the National Guard for Environment, or for consumer protection, the local passports services, licence permits and construction permits.

5. Transparency

Indeed, suspicions and citizen dissatisfaction with regard to transparency in the public sector persisted. Despite the legal provisions guaranteeing the application of this principle, transparency appeared to be not fully integrated in the institutional behaviour of public sector services. The most representative public areas in terms of opacity were those comprising the deconcentrated public services with competence in control and verification, and in issuing different types of authorisations,

as, for instance, the territorial branches of the National Guard for Environment, or the National Authority for consumer protection, the local passports services, licence permits and construction permits.

6. Complaints and enforcement mechanisms

In the institution of the Prefect, exterior complaints have said to be handled by the Prefect who had to distribute them to the inferior departments according to the object of complaint and to the required field of competence. Generally, the registered complaints are claimed to have been handled in time. However, this didn't necessarily imply a satisfactory response for the external plaintiffs, but rather a formal one. Indeed, complaints mechanisms proved to be ineffective as the grievances failed to be fully resolved.

As for enforcement mechanisms, they were generally in the hands of the manager of the respective public institution. Practice showed that they were not effective enough, due to, among other reasons, a lack of real accountability of the civil servants towards their superiors.

7. Relationship to other pillars

The institution of the Prefect has been constantly interacting with the central and local governments. The Ministry of Administration and Interior was the main agent cooperating with the public administration from the deconcentrated level.

The institutions of the Prefect does not have close relationships with the economic operators. The only area where the Prefect interacted with business agents was the environmental sphere: the environmental authorisations that economic agents were required to have for their respective lucrative activities of collecting and storing recyclable waste had to be obtained from an organism comprising both representatives of local government and of the Prefect.

8. Past developments and future prospects

Acting as representative of the central government in the territory, the institution of the Prefect has constantly registered a diminishing of its assigned competences, many of its attributions being transferred to the local government. However, this tendency of decentralisation, fairly visible in the case of the institution of the Prefect, has remained limited, since a great part of the budget assigned to the public administration at all levels has continued to be pre-allocated, despite the increasing budgetary competences of the local governments. Furthermore, the presumed favourable consequences of deconcentration and decentralization, meaning the increase of the responsibility of the local and territorial entities in spending public money and responding to the needs of the citizens, have allegedly induced side effects, such as the increase in the level of corruption perception, macroeconomic instability, and an enlargement of the corps of public agents .

9. Stakeholders' recommendations

In this context, the first steps to be taken towards increasing the performance of the public administration, refer not only to legislative measures, but also to institutional clarifications with

regards to the distribution of competences between the central and local spheres of government so as to avoid an overlapping of attributions, dispersal and weakening of accountability mechanisms. More specifically, the following recommendations need to be taken into consideration:

- Elaboration and implementation of a clear and comprehensive administrative code
- Improvement of the communication and coordination between the central administration's deconcentrated authorities and the local governments
- Setting-up long term institutional strategies for the different areas of action of the central administration, along with action plans and indicator-based assessment frameworks
- Improvements in the process of selection and appointment of the managers of the deconcentrated services of central administration, on competence-related criteria.
- Specific measures to professionalize the civil servants, particularly those working directly with the public.

POLICE

Capacity	Governance	Role
2 (small extent)	1 (not at all)	1 (not at all)

The police have yet to prove its strength in the national integrity system. Its structural deficiencies, related to weak checks and balances, corroborated by discretionary hierarchic-framed daily relations have affected the independence of the police officers in enforcing law.

Furthermore, the loose mechanism for internal complaints and the strong person-based accountability of police officers have contributed to the maintenance of the current state of affairs.

A. Legal framework

Iulia COŞPĂNARU

1. Role

The role of the police in any legitimate state is to guarantee that the state, the rule of law and fundamental rights and freedoms are protected. A corrupt and failing police is the key reason for the faulty implementation of the legal framework and overall underperforming justice.

Recent studies have shown a noticeable improvement in public perception regarding the level of police corruption. However, 0.1 point variations shown by the police in the Global Corruption Barometer are insufficient to signify a real improvement in perception towards this institution. On the one hand, these variations are a result of the recent measures taken to streamline police services such as computerization, the introduction of the information desk and the reduction in the time it takes to obtain documents.

On the other hand, between 2008 and 2009 several important cases were discovered involving actual networks of police officers who were releasing permits illegally in several counties. There were also problems with the way criminal investigations were carried out for certain defendants and the manner in which police officers ensured order and public safety. All these situations could tarnish the image of the police and raise suspicions regarding the integrity of police personnel and the way they carry out their activities.

This development is particularly worrisome knowing that the police have to adopt the necessary measures to enforce the law at the individual level, as well as to punish at the outset those who breach it. Furthermore, the police are also responsible for investigating criminal violations and thus aiding and supporting the overall justice system. Therefore, the role of the police in society is

extremely important and the legal framework that prescribes its organization and operation is primarily responsible for the performance of this institution.

2. Resources and Structure

Romanian Police is one of the order and public safety institutions that is subordinated to the Ministry of Administration and Interior and is a crucial element of the Department for order and public safety that aims to ensure an integrated management in this field. Romanian Police is the governmental institution that exercises the responsibility to defend the fundamental rights and freedoms of citizens, to prevent and uncover criminal activities, and to respect order and public safety.

Within Police structures there is the Inspectorate General of the Romanian Police (IGPR), the territorial branches, which are under the supervision of the Inspectorate and set up on the basis of the national territorial and administrative structure, academic and training institutions, as well as other specific units.

The Inspectorate General of the Romanian Police functions as a stand-alone structure, with a legal framework and its manager is the second credit release authority. This institution is funded from the Ministry of Administration and Interiors' budget and its operations are entirely state funded. The management of this institution is ensured by an inspector general, who is appointed by the prime-minister following the recommendation of the Minister of Internal Affairs, after consultations with the National Police Corps.

The role of this institution is to coordinate the activities of the subordinate police units, to carry out investigations and research of serious crimes such as organised crime, white-collar crime and other criminal acts that are prosecuted by the Prosecutor's Office of the High Court of Cassation and Justice. At the county level, there are legally constituted structures that operate under the leadership of an official appointed by the Minister of Internal Affairs, following the nomination of the inspector general, and are primarily responsible for police units, precincts, and posts.

Romanian Police may be organized on the basis of local national economic sectors or of local socio-economic objectives.

The main responsibilities of the police are related to the protection of life, bodily integrity and human liberties, the defence of private and public property and of other rights and legitimate interests of citizens and the community, the prevention of and fight against crime as well as the investigation and research of criminal cases, corruption, economic and banking crime (white-collar crime), cross-border crime, cyber-crime and organised crime. The police is also responsible for monitoring traffic on public roads, aiding public administrative authorities both central and local in order to allow them to carry out their activities unhindered, as well as cooperating with academic institutions and non-governmental organization to educate the population about fighting crime.

By special decree , the Romanian Parliament created the judicial police whose role is to assist members of the Prosecutor's Office in carrying out criminal investigations. The investigative bodies of the judicial police are organized and operate within the structures of the Ministry of Administration and Interior, the Inspectorate General of the Romanian Police, the Inspectorate General of Romanian Border Police and their territorial units and is made up of officers and agents specialized in reporting crime, gathering information in order to initiate criminal investigation and prosecution.

This category of police officers is atypical because they have a double subordination. While carrying out their investigative tasks as judicial police, the specialized officers are subordinated to the attorney general or the head of the Prosecutor's Office where they work; otherwise, when carrying out other activities, the officers are subordinated to their superior officers. The judicial police within the National Anticorruption Directorate carry out their activities according to the organizational legal framework of this office.

The National Police Corps aims to promote and defend the interests of police officers. Even though this organization represents a professional, autonomous, apolitical and non-profit group of the police corps, it is not the direct result of police officers exercising their right to assembly but rather an association instituted by the law governing the status of police officers. Also there is the National Syndicate of Police Officers and Contractual Personnel, which has similar tasks with the National Police Corps, and operates in parallel with the Corps.

Alongside the Romanian Police, ensuring order and public safety, there is the Community Police set up in municipalities, cities, towns and Bucharest Municipality sectors in order to provide public services to local communities. The role of this unit is to make more efficient the protection of sites and of public and private goods from within the administrative-territorial units; to prevent and fight the breach in cities' sanitation and street commerce rules; to assist and protect city hall representatives when they carry out checks and specific actions; to ensure smooth traffic; to monitor parking lots, schools, commercial and entertainment areas, market places, cemeteries; to report contraventions and apply the necessary penalties; to check the proper disposal of garbage and industrial waste or waste of any kind and to ensure that the cleaning of peripheral areas and the banks of water flows, as well as other areas, is carried out according to the rules established by local council resolutions.

The norms that prescribe the activities of community police are not significantly different from those of the Romanian Police, although the realm of activities of the former is much smaller than the latter, and civil servants within this corps do not benefit from the special status of police officers.

Police personnel, generally speaking, can be made up of police officers, civil servants and contractual personnel, each one with its own legal standing.

Police officers are public civil servants with a special status who are vested with the task to exercise public authority, who generally wear uniform and exercise the specific tasks of the Romanian Police. Police officers enjoy stability and, according to law, they have a hierarchical structure in which high ranking officers are responsible for the validity of the orders given to their subordinates. They are generally graduates of academic institutions of the Ministry of Administration and Interior, but they can also be recruited from an external source. Police officers' placement is determined by an examination or competition.

Regarding their level of education, police officers are divided into two categories: agents – having five professional ranks – and officers – having ten professional ranks. Concerning the designation of police officers, the president of Romania appoints high ranking officers; the minister of internal and administrative affairs appoints officers; and the inspector general of the Romanian Police or the executives of other structures appoint agents.

A personal record is created for each police officer, including the appointment and oath-taking documents, an academic transcript or diploma, annual activity reviews, income statements, and others.

3. Accountability

The Authority for Public Order was established to ensure the proper functioning and improved efficiency of police services within the specific administrative-territorial units where they work, at the level of each county and within Bucharest Municipality.

The territorial authority for public order is made up of the head of the inspectorate of county police, a representative of the National Police Corps, a deputy prefect, 6 counsellors appointed by the county council, the chief of community police, 3 community representatives appointed by the president of the county council.

The tasks of the territorial authority for public order are: devising an agenda and establishing the objectives and the minimal performance indicators; identifying the flaws within police activity and suggesting measures to remedy them; contributing to the resolution of complaints that are brought to its attention through police units; organizing consultations with members of local communities and organizations.

Evidently, although the Authority seeks to represent and promote the interests of the community, its role is purely advisory since it does not have the qualification to decide on the measures that need to be taken to ensure public order. The authority does not have a scope in the operative issues of the Police.

The Authority, which is led by a president elected from among the counsellors, carries out its activity in plenary meetings and in three work committees. The three committees are: the committee for coordination, emergency situations and petitions; the committee for planning, establishing and evaluating minimal performance indicators; and the committee for social problems, professional standards, consultancy and human rights. On the basis of conclusions resulting from public consultations and the analysis of the operative situation at the level of administrative-territorial units, the Authority devises each year a strategic plan for the following year, covering the main objectives which have to be met by police units and minimal performance indicators.

4. Integrity

Regarding the conduct of the police officer, he/she must act according to the norms prescribed by the Statute of the Police Officer and those of the Police Officer's Code of Ethics and Deontology. Among his/her most important tasks, the police officer must be loyal towards the institution, the legitimacy of the state, democracy, confidentiality, respect, and perpetual improvement.

The Code of Ethics stipulates the general principles that should govern the conduct of the police officer. These principles are: legality, equality, objectivity and non discrimination, transparency, the capacity and duty to communicate effectively, availability, giving priority to the public interest, professionalism, confidentiality, respect, moral integrity, operational independence and loyalty. Furthermore, it is important to mention that in the process of law enforcement, the police officer must abide by the presumption of innocence. In his/her line of duty, the police officer may use force only as a last resort abiding by the principles of necessity, gradualness, and proportionality.

The police officer must identify him/herself by showing rank, name and institution that he/she belongs to in order to contribute to the achievement of the public good, ensure his/her protection and set up the necessary premise to take personal responsibility for his/her own actions or inactions. Furthermore,

the police officer must never tolerate or apply torture. He/She must have an adequate behaviour both on and off duty so as to preserve evidence, identify and apprehend the guilty parties even off duty when he/she witnesses a crime.

According to the same Statute, the police officer is forbidden from: using force in ways other than those prescribed by the law; causing a person mental or physical harm in order to obtain from them or a third party information or confessions; to punish them for an act that they or a third party committed or is suspected of having committed; to intimidate or pressure them or a third party; collecting money from individuals or legal entities. If, however, these rules are violated, the ensuing penalty could be, depending on the severity of the act, not only a disciplinary but civil and criminal as well.

Knowing that the police officer is a civil servant with a special status and in lieu of certain regulations regarding conflicts of interest and the officer's incompatibilities, the police officer's actions are regulated by the general public civil servants' rules, stipulated in law nr. 161/2003 and law nr. 144/ 2007 . Consequently, according to the aforementioned rules, the police officer has a conflict of interest if he/she is called to solve petitions, make decisions or participate in the decision-making process regarding individuals or legal entities with whom he/she has had pecuniary/patrimonial relations; if he/she is a member of a committee of other public civil servants who are their spouse or relatives once removed; or if his/her patrimonial interests, those of the spouse or of the relatives once removed can influence the decisions that he/she must make in the line of duty.

Where there is however a conflict of interest the law forbids direct hierarchical relations between spouses or relatives once removed. People who find themselves in this situation must refrain from pursuing the act that puts them in this situation; otherwise, they will have a disciplinary, civil or criminal penalty. Disciplinary committees, the National Integrity Agency or relevant judicial institutions have the jurisdiction to apply these penalties to the police officers in question.

Regarding incompatibilities, the job of police officer is incompatible with any other public service other than the one that the police officer was appointed to do, as well as with any high ranking public function. Police officers cannot have other occupations or carry out other activities, remunerated or not within other public institutions or authorities; they cannot operate within the cabinet of the dignitary, with the exception when the public civil servant is suspended from his/her public function for the duration of the term in office; they also cannot work within government business enterprises, commercial or other profit making entities, from the public or the private sector, within a family association or as an authorized individual; and they cannot be a member of a group with an economic interest. Police officers can however carry out or partake in teaching activities, scientific research and literary or creative performance.

Knowing the special nature of the activities that they carry out, police officers are bound to, in addition to avoiding conflicts of interest and incompatibilities, respect a few obligations. For instance, officers may not offer consultancy services for three years after leaving office to the companies that they had monitored or controlled. Officers cannot be the trustees/proxies of certain people regarding the processing of documents that are related to the public function that they carry out.

In order to ensure their integrity and moral rectitude, police officers cannot have membership in political parties, political organizations or associations or do propaganda in their favour; express political opinions of preferences at work or in public; run for positions within local public administration authorities, the Romanian Parliament and the office of President of Romania; express

in public opinions that are contrary to Romanian national interests; declare or participate in strikes, public demonstrations, processions or other political-type meetings; adhere to sects, religious organizations or other legally forbidden organizations. Moreover, classified data and information that the police officer learned about in the line of duty cannot be made public for a period of 5 years after the termination of his/her work duties.

5. Transparency

Police officers must, upon their first appointment, at confirmation or termination of their function, as well as at the end of all work-related activities, submit an income statement as well as an interest statement. The statements are written, public written declarations. Income and interest statements are kept on the web page for at least 5 years since publication and are later stored in the archive. Public declarations are also posted on the webpage of the National Integrity Agency. Income statements include personal goods, shared goods and indivisible goods, as well as goods belonging to children who are in the care of the police officer in question.

Interest statements refer to the roles and activities that the police officer carries out, except the ones that are related to his/her mandate or public function. These statements are kept in the police officer's personal file as well.

6. Complaints and Enforcement Mechanisms

The disciplinary measures applied to police officers are regulated by Order nr. 400/ 2004 , which stipulates the rules regarding the recompense of police officers as well as their legal responsibilities. Recompenses are both moral and material and are awarded in order to acknowledge the merits of the personnel who distinguish themselves in the line of duty and to motivate the rest to ensure discipline and internal order. When the police officer wilfully breaches the norms that regulate police activity, his/her actions represent disciplinary violations and ensure his/her disciplinary punishment.

Order 400/2004 establishes the principles and rules that must be taken into account when the police officer is held accountable for his/her actions. Moreover, when determining disciplinary sanctions, one must consider the nature and severity of the act; the activity that the police officer carried out; the circumstances in which the disciplinary violation was committed and its causes and circumstances; the concern with disposing of the evidence of his/her act and the conduct of the police officer during the disciplinary investigation. The disciplinary procedure has two phases: a preliminary investigation phase and a consultation with disciplinary councils phase.

The preliminary investigation aims to establish whether the act took place or not, as well as its circumstances. The investigation can be carried out by the chief of unit or by an officer appointed by him who has to be at least equal in rank with the investigated officer. In the case in which the appointed officer finds him/herself in a situation that may affect his/her objectivity during investigation, he/she may be exempt from the case. The preliminary investigation is carried out also when the act is of a criminal nature but is deferred until the criminal cause has been resolved.

The investigated police officer is subpoenaed in order to be informed about the notice material and he/she may formulate petitions, submit reports and demand the administration certain evidence. Furthermore, the entire personnel who have knowledge of the investigated acts must contribute to

the clarification of the situation. Police officers who contribute to the clarification of certain aspects of the preliminary investigation will not be sanctioned if is proven that they acted in bad faith.

These rules are reinforced by those regarding the protection of integrity whistleblowers according to which the police officer may not be sanctioned for a good-faith warning regarding any act that involves the violation of law, professional deontology or the principle of good administration, efficiency, swiftness and transparency, and he/she may not be sanctioned more severely for an act which is a disciplinary misdemeanour.

At the end of the preliminary investigation, the investigation report must be brought to the attention of the investigated person and afterwards to the attention of the high ranking official who ordered it. When the existence of the act is confirmed, the officer who initiated the investigation may decide the penalty, in the case of minor misdemeanours, or may consult the disciplinary council.

The disciplinary council is a collective judicial and professional analysis body that examines the misconduct of police officers and the way in which it was investigated. The council is established for each case that will be examined and has an advisory role. The founding principles that govern the council's activities are: the presumption of innocence; the guarantee of the right to self defence, including the right to counsel; the swiftness of procedures; contradictoriness; proportionality; the uniqueness of the sanction and the validity of the sanction. The disciplinary council is asked to deliver an opinion regarding the legality and thoroughness of the investigation as well as the relevance of the formulated solutions. Council sessions are not public and the council announces the verdict in a closing statement.

In order to analyse the preliminary investigation reports which refer to superior officers, a superior discipline council is established at the level of the Inspectorate General for the Romanian Police, of the Border Police and of the Ministry of Administration and Interior.

Disciplinary sanctions are administered by the chief of unit in maximum 60 days from the completion of the preliminary investigation but no later than a year from the time when the act was committed. The police officer may appeal to an officer of higher rank than the one who administered the sanction, within 5 days from hearing or being told about the decision. The higher ranking officer will release a decision within 15 days. The investigated police officer may appeal the decision of the higher ranking officer at a court of justice. Disciplinary sanctions are erased within 6 to 12 months of execution depending on the severity of the act but the documents that built the case remain in the personal file of the police officer.

Under the encompassing notion of corruption, the present legislation has many rules starting from the ban to participate in other such acts stipulated in the Code of Conduct and the Statute and ending in criminal regulation. Therefore, according to the Statute, the police officer is forbidden to receive, solicit, accept, directly or indirectly, or do so as to be promised, for him/herself and for others, in consideration to his/her official status, gifts or other bonuses; to solve petitions that are not within the scope of their duties or that were not given out by their superiors or to intervene in order to solve such petitions.

Similarly, the Code of Ethics stipulates that the police officer is forbidden from tolerating acts of corruption or to take advantage of his/her public authority. The police officer cannot request or accept money, valuable goods with the purpose of fulfilling or not fulfilling his/her professional

obligations and to receive duties, missions or tasks that exceed his/her duties as stipulated in the job description.

The police officer must take a stand against acts of corruption taking place within the institution, having the obligation to inform his/her superiors and other able bodies regarding the acts of corruption that he/she learns about. The police officer is forbidden to use his/her office or attributes to act upon personal interests.

From a legal standpoint, the police officer may participate in all types of corruption stipulated in the law, both actively and passively, as a perpetrator or as a beneficiary. Therefore, he/she may either be the agent paying a bribe or receiving a bribe and other undue benefits, partake in traffic of influence or purchasing influence, as well as abuse of his/her office powers, or all three of the above. Even though it is not stipulated as such in the Romanian legislation, conflicts of interest are a corruption-type offence and may be perpetrated by a police officer as well. Knowing that the police officer is a public civil servant with a special status and owing to this particular capacity, the officer is given the benefit of the doubt due to the rules regarding extenuating circumstances.

7. Relationship with other NIS pillars

On the ground and across the country, police units cooperate with prefects, local public administrative authorities, judicial authorities, decentralized public services of ministries and other centralized bodies, as well as community members.

The Chief of the General Police Directorate of Bucharest Municipality, the heads of county police inspectorates, of municipal and city police units and of local rural police posts present annual reports to the Public Order Territorial Authority, the General Council of Bucharest Municipality, county councils, municipal, city, and town councils regarding the measures taken to fulfil specific obligations.

The chiefs of the aforementioned units inform on a trimester basis or each time necessary the prefects, the Mayor of Bucharest Municipality, the presidents of county councils, the mayors of Bucharest Municipality sectors, of municipalities, cities and towns, depending on the case, about the trend in antisocial phenomena and the way in which their tasks have been fulfilled at the local level.

Police territorial units cooperate with local councils and, depending on the case, with mayors to implement resolutions or rules written and released to them within the scope of their public service duties. Under exceptional circumstances, local public administration authorities and police units can establish mutually agreed upon protocols in order to streamline the completion of police tasks.

B. Actual Institutional Practice

1. Role of institution

Formally, the legislation aiming at ensuring the independence of the Police in its daily activity and in handling corruption cases has been considered potentially efficient, naming that, if fully and correctly applied, it succeeded to accomplish the objective for which it was designed. Indeed, the set up of institutions as the National Anticorruption Directorate and especially the General Anticorruption Directorate within the Ministry of Administration and Interior, have been considered efficient instruments to fight and prevent corruption among the police officers.

Yet, according to the expert opinion of insiders, the police officers lacked, generally, a real independence in their daily activity. The institutionalized hierarchic relationship between police superiors and their subordinates has been said to have largely exceeded the legal limits. More precisely, the usual measures that the police officers were due to take for applying law depended highly on the will of the superiors, so that every proceeding of a police worker could have been potentially refrained or invalidated according to the discretionary decisions of the superiors. A plausible explanation for this state of affairs has been the existence of large competences of police managers in dealing with appointments, dismissals and promotions of the police staffs coming under their subordination. Accordingly, this high hierarchic pressure acted as an inhibiting factor in the everyday activity of the police.

2. Resources and structure

In what may concern the budget of the police institutions, it is allocated through the ministry of Administration and Interior, the main credit release authority, to the territorial police inspectorates, as second credit release authorities, which distribute the allocated sums to the subordinate institutions. In each of these institutions, the manager, who was assisted by the financial directors, has administered the assigned budgets. The most sensitive issues were related to investments and the efferent public auctions.

In what may concern the appointments, promotions of police officers, they have been supposed to be handled on the basis of objective contests. Yet, these examinations have been alleged as mere formalities, since vacant posts or better positions were said to be a matter of discretionary decision of the officers who signed the appointments and promotion papers, in collusion with the other members of the evaluation commissions. Furthermore, dismissals were said to bear the same discretionary regime, strengthened by political interests, especially when ruling positions were at stake. This could explain why the bulk of the leading posts have changed along with every governmental renewal.

This appointment mechanism raises suspicions regarding the political attachment of the appointees and is reinforced by the designation of the executives of the different structures within the Ministry and IGPR. The proof that these are not mere speculations lies in the recent events that unfolded: after the parliamentary elections of November 2008, three high ranking officials of the Ministry of Administration and Interior were appointed and dismissed within less than two months. Each time, the trumped nominations for the management of directorates within the Ministry were "vetoed" if the nominee came from the political party of the minister.

With regard to controls and audits, they have been mostly claimed as a formality, since the final word concerning their enactment belonged to police managers. Even if they have sometimes been effectively performed, they failed to be productive, except for the cases in which they served the police managers' subjective interests.

3. Accountability

In general terms, the police officers have been generally held responsible in front of the hierarchic superiors, except for the judicial police working under the prosecutors' authority.

This type of strong hierarchic accountability has been considered as extremely subjective and anchoring the police workers into dependence relations on their superiors. Accordingly, their professional behaviour in everyday activity had grounds of being deprived of impartiality, in particular cases.

4. Integrity

In what may concern the integrity, there have been issues related to conflict of interest, gifts and hospitality, but, generally, they have been covered or not investigated, particularly when persons in leading positions were involved.

5. Transparency

The wealth and interest statements were generally mistrusted as there were no control mechanisms being effectively employed in order to verify their validity.

6. Complaints and enforcement mechanisms

External complaints related to corruption acts done by police officers have been generally dealt by the Anticorruption Directorate from the Ministry of Administration and Interior and by the National Anticorruption Directorate.

As for internal complaints, they have been generally addressed to the hierarchic superiors, who had the competence to order preliminary investigations or to defer the cause to the above mentioned anticorruption agencies. Still, these cases were claimed to be of rare incidence.

7. Relationship to other pillars

Generally and by virtue of the nature of their activity, the police have interacted with all the public institutions, according to their afferent tasks. Still, the most frequent institutional contacts belonged to the justice sphere: the Public Ministry and Ministry of Justice, and to the spheres of administrative and financial control.

The character of these relations depended mainly on the context, but, on general terms, they have said to be based on collaboration. Still, direct relations between prosecutors and judicial police officers were often seen as based on abusive subordination.

8. Past developments and future prospects

Overall, the activity of the police has yet to evolve in terms of integrity since 2005 onwards. The lack of any consistent legislative change relative to the organization and functioning of the police, often claimed as being unclear and permissive, corroborated with circumstance-dependent and discretionary law enforcements have blocked the police from acting as a strong integrity agent. Furthermore, the highly hierarchy-based structure of action and the inefficient control mechanisms of the police managers have inhibited any attempts of change.

In this context, the future steps to be taken should regard, primarily, the legislative framework. Rules concerning the organization and functioning of the police should be changed in the sense of reducing the police managers' competences on appointments, promotions and dismissals and in the sense of setting up an effective mechanism of control for the police officials in leading positions, which would strengthen their accountability. Moreover, the system of personnel recruitment should be submitted to change in the sense of making its application less dependable upon the discretionary authority of the heads of offices.

9. Stakeholders' recommendations

The main steps towards the improvement of the standing of the Police within the national integrity system include measures regarding:

- The improvement of the application of selection and evaluation procedures and criteria
- Enhancing the balance between work volume and wage levels
- Improving the professional instruction of the police officers
- Reducing accountability disproportion resulting from excessively hierarchical relationship between police officers and their superiors
- Assuring promotion on the basis of open competitiveness

PERMANENT ELECTORAL AUTHORITY

Capacity	Governance	Role
2 (small extent)	3 (small extent)	2 (small extent)

The Permanent Electoral Authority[40] has acted as a balanced pillar within the national integrity system for both structural and circumstantial reasons.

Its institutional strengthening both in terms of acquiring new competences and of developing its capacity of monitoring in certain areas has been counterbalanced by a relative lack of effective control during the electoral stages and by suspicions of political interference on its operative independence.

Furthermore, despite its increase in transparency and efficiency, mainly due to the investments in informatics upgrades, the Permanent Electoral Authority has yet to ensure completely fair electoral competition on the ground. This was assumingly due to an apparent lack of sanctioning power and to a relative shortage of professionalized personnel, mostly in its territorial branches.

A. Legal Framework

Crina RĂDULESCU

1. Role

The Permanent Electoral Authority (AEP) is an autonomous administrative institution, acting as a legal entity of general competence that ensures the application of the provisions of the law in the management and operation of elections or other national or local consultations, between two electoral periods. During the election interval, the Permanent Electoral Authority supports the Central Electoral Bureau and constituency electoral bureaus in carrying out their duties and activities.

The constitutional framework governing this institution is represented by art. 73 (3), (a) from the Romanian Constitution, republished, according to which the organization and functioning of the Permanent Electoral Authority are regulated by an organic law. Law no. 373/2004 on the elections for the Chamber of Deputies and the Senate (art. 26-29) and the Statute concerning the organization and functioning of the Permanent Electoral Authority, adopted by the Standing Bureaus of the Chamber of Deputies and of the Senate (Decision nr. 2/19.03.2007), amended and completed by the Parliament's Decision no. 3/24.09.2008 are the main legislative acts regulating the Permanent

[40] Also tagged in graphic representations as *Electoral Management Body*

Electoral Authority. Art. 26-29 from Law no. 373/2004 contain provisions on its competences, tasks, structure and organization, both at central and territorial level. The Statute gives further details on the institution from the already mentioned standing points. Furthermore, art. 51 of Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns, modified by Emergency Ordinance no. 98/ 27.08.2008 introduces the Department of Control of the financing of political parties and electoral campaigns and a specialized department for subsidies allocation from the state budget.

The Authority's tasks that relate to promoting integrity, transparency, accountability or to curbing corruption in the country are presented in the art. 1, al. 2 of the Parliament's Decision no. 3/24.09.2008, stipulating that the Authority ensures raising citizens' awareness on the specific electoral procedures, exercises control on the financing of political parties and electoral campaigns. Also, art. 3 of the Parliament's Decision no. 2/19.03.2007 states that the Authority has the function of guidance, support and control of local government authorities and of their own structures, in what may concern the organization of the electoral consultations.

2. Resources and structure

The Permanent Electoral Authority is run by a president, ranked as Minister, appointed in a joint session by the Chamber of Deputies and the Senate, two vice-presidents, ranked as State Secretaries, one appointed by the President of Romania and the other by the Prime Minister. The Permanent Electoral Authority has also a Secretary General, appointed by the Prime Minister, following a contest, under the law. The President and the two vice-presidents are appointed for an 8 years term that can be renewed only once. The terms in office of the president or vice-presidents end under certain circumstances such as the expiration of the term in office, resignation, removal, or death.

The president and vice-presidents are removed from office by the very authorities that appointed them. While carrying out their legal tasks, the president and the vice-presidents hold a function that involves exercising state authority. Art. 27 (3) from the Law no. 373/2004 stipulates that they cannot be members of a political party.

In carrying out its activities, the Permanent Electoral Authority has its own working personnel, organized in departments. The personnel's tasks are defined by the aforementioned Statute. The distribution of departments is done through the orders issued by the president.

The Permanent Electoral Authority is organized around 15 departments inside the central structure, 8 branches and 34 territorial bureaus and 250 offices, excluding the dignitaries and the Cabinet of the President and of the Vice-presidents. The Authority decides on its own budget proposal, following the Ministry of Finances' approval and before the Parliament's budget debate and submits it to the Government so as to be included in the state budget. However, all capital expenditures are included in the budget after the Government's consultation.

According to art. 7, chapter II, from Decision no. 2/19.03.2007, the President of the Authority approves the annual budget of the institution, on the budget proposal elaborated and submitted by the Department of budget and finances, accounting and human resources, following art. 23 of the same Decision. On the same token, the President of the institution decides on the appointments, promotions, transfers and dismissals of the staff. According to art. 35 from the amended version of the Authority's Statute, appointments are based on contests or examinations. The procedures for

appointments, promotions and dismissals of the personnel with the status of civil servants stem from Law no. 7/2006 concerning the statute of parliamentary civil servants in the art. 21-24, respectively from the labour legislation regarding the personnel employed on the basis of individual labour contracts.

Following art. 1 from Decision no. 3/24.09.2008, the organizational structure of the institution is completed with a Bureau of Internal Public Audit. According to art. 15, chapter III, the Authority functions under the direct subordination of the President and is entitled to evaluate the financial and control management systems of the Authority in terms of transparency and agreement to the principles of legality, regularity, economy, efficiency and efficacy. Moreover, it is supposed to elaborate annual activity reports. Still, if wrongdoings are detected, they have to be immediately brought to the knowledge of the President.

3. Accountability

Art. 13 from the amended Statute stipulates that the Authority is territorially organized in branches for every development region of the country and in bureaus in every county where there are no branches. Accordingly, the staff's accountability is hierarchically structured, following the subordination scheme of the territorial structures to the centre. The hierarchic control is doubled by the activity of a special division of the institution, namely the Direction for guidance, control and coordination of the territorial branches.

4. Integrity mechanisms

With respect to regulations on conflict of interest, art. 41 of Decision no. 2/ 19.03.2007 stipulates that the provisions on the incompatibilities from the Law no. 7/2006 apply as well to the Authority's personnel having the statute of civil servants. Accordingly, their office is incompatible with any other public or private position, remunerated or not, with the exception of the functions and activities within the educational system . Furthermore, direct hierarchic relations between spouses and those between first-degree relatives are prohibited.

As for post-employment restrictions, art. 45 of the above mentioned Decision states that the provisions on the confidentiality clause of the art. 26 from the Law no. 53/2003, amended , apply to the Authority's personnel as well. Accordingly, for the duration and after the end of the employment period, the concerned parties are not to transmit data or information that have been known during their time in office, under the conditions stated in the internal regulations and in the labour contracts, be they collective or individual.

5. Transparency

Rules regarding the publishing of wealth and interests statements apply for all the personnel of the Permanent Electoral Authority, be they dignitaries, persons holding management and control offices or public servants . From 2005 onwards, these statements include further requirements for people holding associate or shareholder positions in private companies, national companies, nongovernmental associations, foundations or organizations, for positions in the already mentioned legal entities, and on membership in trade unions, syndicates, and political parties.

According to art. 28 of the amended Statute, a Department of communication and public relations ensures the communication between citizens, different organizations and associations and the Authority. More precisely, it keeps a permanent liaison with the press by informing them and expressing points of view, provides the media with documents and materials issued by the Authority offers citizens information of public interest, ensures the update of the internet page with the Authority's information, reports and analysis, and organizes press conferences.

6. Complaints and enforcement mechanisms

According to art. 46, Chapter 4 from the Permanent Electoral Authority's Statute, amended by Decision no. 3/24.09.2008, the personnel of the institution is disciplinarily accountable and is liable, under the civil and penal law.

Sanctions corresponding to the disciplinary misconducts of the institution's civil servants are stipulated in art. 82-92 from Law no. 7/2006 and are applied directly by the president of the institution. Still, reprimand and warning sanctions represented can be applied by the general director, directors, and heads of departments, services and independent bureaus as well. The decisions to sanction can be contested in front of the president, vice-presidents and secretary general. A disciplinary commission may be set up upon the president's decision, in order to address the respective contestation and its decision can be further contested to Court, according to art. 50, chapter IV from the Statute. The sanction decision is to be abrogated upon the president's order.

7. Relationship to other NIS pillars

By submitting to the Parliament, no later than 3 months after the closure of national or local elections, or of a national referendum a report on the management and progress of the elections or of the referendum, comprising references to the participation in the ballot, the progress of voting, the drawbacks encountered, including legislative ones, and the results of the elections, the Permanent Electoral Authority holds a constant relationship with the two Chambers.

Through its Department of Guiding, Control and Coordination of the regional branches, the Authority is supposed to give support and control, at electoral periods, to all the local authorities and prefectures in what may concern the electoral process and legislation, according to art. 24, p) of the Statute. Also, the Authority is due to represent the Romanian state in electoral matters, both internally and externally, in relation to similar organisms from other states.

B. Actual Institutional Practice

1. Role

The Permanent Electoral Authority, along with other public authorities with tasks in setting up of the electoral process, are responsible with assisting in the organization and the performance of elections, providing the required logistics, and ensuring a uniform implementation of the electoral legislation. Moreover, it was supposed to guide, support and control local governments in organizing and administering the electoral process.

Since 2005, AEP has functioned mainly according to Law no. 373/2004 for the election of the Chamber of Deputies and the Senate and its Regulation of organization and operation, approved by the Government Ordinance no. 279/2004. 2004 and 2005 were the time when the institution was set up, both in terms of human resources and logistics. Much of these resources were taken from the former Central Electoral Bureau.

During 2006, problems related to the organisation and functioning of the Authority persisted: there were difficulties in recruiting personnel and in establishing its territorial branches. In addition, after the release of Law no. 334/2006 regarding the financing of political parties and electoral campaigns, the modification of the Regulation of organization and operation of this institution raised particular problems, due to internal disputes between the president and the two vice-presidents of the Authority. Consequently, delaying the adoption of a new regulation ceased all necessary transformations in terms of creating new departments, setting up territorial branches of the institution and supplying them with personnel.

In 2007, the Permanent Electoral Authority had a complex agenda due to its new tasks and to the electoral events of that year: two referendums on the dismissal of the President of the State and on the change of the general voting system, the elections for the European Parliament, and partial local elections. However, the Regulation on the organization and functioning of the institution was modified and, accordingly, the control department for the financing of political parties and of the electoral campaigns, along with the service of subsidies allocation for the entitled parties were created together with seven territorial branches of the Authority. Furthermore, the personnel were provided.

In 2008, the Permanent Electoral Authority acquired new competences: it has been entitled to grant credentials/permits for media delegates aiming to participate in the 2008 parliamentary elections, upon the written request of the representatives of the concerned media companies. Furthermore, the Authority has issued credentials to representatives of non-governmental organizations who would monitor elections at electoral offices from a number of constituencies. Other credentials were delivered to international observers and to foreign press.

2. Resources and Structure

Regarding the budgetary issue, since the beginning, the President has been the main credit release authority of the institution and has had the competence of approving the annual budget of the Authority, the annual investment plan and the public acquisition plan of the Authority.

The budget, finances, accounting and human resources department of the Authority have been dealt with the elaboration of the annual budget proposal and with its administration after having been approved. Also, this department had the responsibility of verifying and approving all the papers related to the patrimonial activities of the institution, and all the financial operations, as well as registering in the accounting records all the expenditures. Furthermore, it had to draw up the balance sheet and the annual budget execution.

From the point of view of human resources, the Permanent Electoral Authority has been headed by a chairman with the rank of minister assisted by two vice-presidents with the rank of state secretaries and a secretary general. The President was appointed by the Chamber of Deputies and the Senate following a resolution adopted at a joint meeting. One of the vice-presidents is appointed by the President of the state and the other by the Prime Minister. The secretary general of the Authority with

the rank of senior civil servant is appointed following the decision of the Prime Minister. The rest of the permanent staff of the Authority is comprised of both of civil servants with management and execution functions and of employees recruited on the basis of individual labour contracts. Their appointments and promotions were decided by the President following contests and exams organized by the institution. The President of the Authority decides also on their dismissals. Regarding the management board of the Authority, the dismissal decisions belong to the entities that appointed them: the Parliament, the President and, respectively, the Prime-minister.

In terms of audit proceedings, they were carried out by the bureau of public internal audit which is under the direct subordination of the President. The audit activity regarded assessments mainly in terms of both financial and human resources and was based on an annual plan stemming from a three year strategy which was approved by the President of the Authority. For instance, in 2006, the identified problems were related to: the insufficiency of financial resources to the amount of scheduled activity, the organization costs prior to term elections that had not been forecasted in the budget proposal, the need for trainings for the permanent staff. In 2007, one of the main problems presented in the audit reports was the insufficiency of specialised staff, but also the lack of computer updates for the financial departments, and the necessity of enhancing the administrative capacity of the territorial branches of the Authority. In 2008, the same problems were said to persist and new ones were identified such as, the shortage of a unitary control system for the territorial branches of the Authority.

Lack of staff and insufficient funds made the AEP unable to provide a representative of AEP in all electoral offices at district level, which should ensure professionalism of these structures for the elections for the representatives of Romania in the European Parliament, or for the presidential elections. AEP could not establish county offices, as stipulated in art. 26, paragraph (a) of Law 35/2008, as they were not allocated the necessary funds. AEP appointed 30 representatives in county level electoral offices instead of 48.

The retirement of experienced staff made very difficult the control activity of party financing and of organisational work at local level. And the impossibility to employ more staff made the situation even more difficult to handle..

Another problem of the Authority capacity is the headquarters, especially the location of the archive.

3. Accountability

The management board of this institution is mainly accountable to the institutions that decided their appointments: the Parliament, who analysed the annual activity reports, the President and the Prime-minister. As for the other personnel of the institution, they have been ultimately accountable to the president and the consultative board of the institution, but also to the superiors. The Consultative Board comprises of the President, the vice-presidents and the secretary general of the Permanent Electoral Authority, who debated, in their monthly meetings, on decisions and instructions that had to be signed by the President and countersigned by the two vice-presidents.

4. Integrity

In terms of integrity, no issues on incompatibilities or conflicts of interest within the Permanent Electoral Authority were claimed. Indeed, the legislation regarding these topics applied to the personnel of this institution as well as to any other parliamentary civil servants. Accordingly, this statute presupposes the incompatibility with any other office, public or private, with the exception of didactic positions. Besides, they were not allowed to act as representatives of individuals, in what might have concerned activities in connection with the public office they were handling. Furthermore, they were not authorized to place themselves in direct hierarchical relations with their spouses or relatives of first degree.

5. Transparency

Regarding transparency, the overall activity of the institution has proven to be fairly overt. Comprehensive annual activity reports from the previous three years were made available on the website of the institution. Other documents related to the dealings of specific departments were also made public online. For instance, from 2007 onwards, the control department of the financing of political parties and of election campaigns has published on the website of the institution the results of its control activities carried out at political parties' central and territorial headquarters, as well as reports on the public subsidies and private donations given to the parties. Furthermore, reports on the parties' income and expenditures in the 2007 and 2008 electoral campaigns were made available online.

As for the Department for legislature and liaison with the Parliament – responsible with assuring decisional transparency within the institution, informing on the activity of the Authority by submitting for public debate their draft legislations – its main tasks were related to providing information materials generally regarding changes in the electoral system, subsequent consequences and elections results.

Regarding the activity of the personnel from the Department for studies and monitoring of the electoral process, electronic brochures related to the main electoral events of the previous years were published. For instance, in 2006, they released information materials on the tasks of prefects and mayors in the electoral process, on the procedure for electing the two Chambers of the Parliament, the President of the State and the local public authorities. In 2007, brochures on the referendums and on the election of the members for the European Parliament were devised. In 2008, a guide for the presidents of the electoral offices from districts, a guide for the Romanian citizens exercising their right to vote, and a guide for EU citizens on the right to elect and be elected have been provided to the public. Furthermore, the 2006 and 2007 reports regarding the activity of public information (containing statistical data on audiences, petitions, solicitations or memorials) of the institution were published on the website.

Yet, it is worth mentioning that the Authority's acquisitions remained dubious. For instance, the purchase of new software for monitoring the 2009 elections for the European Parliament has revealed sensitive issues related to the acquisition of computer equipment, claimed to be ineffectual and unjustifiable, as the already acquired one was perfectly functional. Furthermore, civil society representatives claimed that the value of the public contract had been overestimated. Eventually, software equipment was purchased but three times cheaper than the one initially estimated by the Permanent Electoral Authority.

The representatives of the AEP requested some derogative rules form the public procurement ordinance, manly the shortening of deadlines, in order to best replay the needs of emergency execution during electoral periods. They also observed the value of the contracts for software and electoral materials is not proportional to the complexity of the work requested to bidders, but to the importance of the electoral moment.

6. Complaints and enforcement mechanisms

In case of internal complaints, they had to be handled primarily by a discipline committee that was supposed to be set up following the President's order. The disciplinary sanctions had to be applied directly by the President himself, but the heads of departments had also the ability of giving minor warning and rebuke sanctions. However, disciplinary sanctions could be contested by the concerned employee by addressing an appeal to the President, vice-presidents, or to the secretary general or submit a complaint to Court. If the complaint was approved, the sanction could have been abrogated following the President's order. Still, no internal complaints have reached the public sphere.

As for external complaints, the bulk of the criticisms addressed by the citizens in audiences or via petitions, memoranda or solicitations regarded the organization of the electoral process or the functioning of the institution and its territorial branches. Still, complaints to administrative or judicial courts have not been registered in the annual activity reports until recently, excepting 2008, when the institution has been called to the administrative and civil Courts several times.

During electoral periods, contestations were submitted to the Central Electoral Bureau. Usually, it consisted of 7 judges of the High Court of Cassation and Justice, the president and the vice-presidents of the Permanent Electoral Authority, 16 representatives of political parties, political alliances, electoral alliances, participating in elections and a representative of the parliamentary group of National Minorities from the Chamber of Deputies. The appointment of the judges was made by the President of the High Court of Cassation and Justice, in a public hearing, within 5 days after his/her election, by ballot, among the judges in office within the Court.

7. Relationship to other pillars

Since 2005, by virtue of its activity the Permanent Electoral Authority has been collaborating, mostly during the electoral with the Parliament, with the Ministry of Administration and Interior, with local governments, with the Ministry of External Affairs and with the National Institute of Administration. Also, its new task of controlling the financing of political parties determined close relations with them.

However, as its activity has been mainly focused on periodic electoral events, the Permanent Electoral Authority has yet to be among the most visible public institutions. More often than not, questions arose in the public arena on the discrepancy between the financial resources invested in this institution and the lengthy periodicity of its activity.

8. Past developments and future prospects

Since its beginning, the Permanent Electoral Authority has evolved both institutionally and logistically. It has gained competences in terms of verifying the financial records of political parties both on a regular basis and during the electoral campaigns. Furthermore, it has been given the responsibility of

handling the subsidies to the parliamentary parties. Still, suspicions on its overall activity persisted, particularly regarding the effectiveness of its control over the electoral process and over the financing of the political parties in regular and electoral stages .

There are two types of challenges the Permanent Electoral Authority have to face: the opposition, silent and non-transparent of the political men and parties to electoral reforms that can make the entire electoral process and elections fairer. On the other hand there are some resource problems, concerning manly human resources, but also financial and material resources necessaries to a high standard work in producing, controlling and archiving electoral materials. The resources allocation, namely the budget, is also influenced by a political decision.

More precisely, despite its success in assuring a minimal level of transparency in the finances of political parties and their revenues and expenditures during electoral campaigns, the Permanent Electoral Authority has yet to ensure the framework of fair elections and the trust of the citizens in the fairness of elections. Problems related to the organization and administration of the electoral competition added to the misbehaviour of both political representatives and voters themselves. Suspicions of electoral tourism and vote transaction have persisted at all local and national elections from 2005.

Among the main steps that should be taken, building trust on the functional independence of this institution is of utmost importance. First, removing suspicions of political interference in the activity of the Authority should have a favourable role in legitimising the fairness of the electoral process and of its results. The appointment of the management of the institution on criteria that should not include political affiliation might be seen as a solution. Secondly, the set up of specialized electoral contentious court, separate from the Permanent Electoral Bureau, that would handle complaints related to the electoral process should also be taken into consideration. Moreover, improving the current electoral legal framework in terms of further regulating electoral misbehaviour and fraud and giving real enforcing competences to the Permanent Electoral Authority is of utmost importance for the improvement of the general functioning of the national electoral system.

9. Stakeholders' recommendations

In this context, the first measures towards the improvement of the standing of the Permanent Electoral Authority within the national integrity system should refer not only to legislative amendments, but also to institutional practice clarifications. More specifically, the following recommendations need to be taken into consideration:

- Interdicting the financial support of electoral campaigns of any party, alliance, and independent candidate by trade unions, cults, associations or foundations inside or outside the country
- Introducing the obligation of parties to declare, at the beginning of electoral campaigns, the transferred sums of money for the electoral campaign from the earnings obtained outside the electoral campaign
- Introducing the obligation for the parties to open a bank account for electoral campaigns
- Introducing the obligation of political parties, candidates and economic operators to send to AEP samples of the electoral materials and their amount divided on categories of product

- Establishing the obligation for the individual donors to make the proof of the income that is the subject of donation
- Registering the contracts concluded for producing electoral materials to AEP
- Introducing the "trial balance" correspondent to the electoral period
- The obligation for the financial agents to have economic studies
- Distinguishing, in the financial sheets, between the daily activities of the parties and those during electoral campaigns
- Improving the operational capacity of the AEP through supplementing the human and financial resources of this institution
- Introducing alternative ways of voting like the electronic vote, the vote through phone call, vote machines.
- Introducing mechanisms of preventing multiple votes

TRANSPARENCY INTERNATIONAL ROMANIA
10 years of ART in INTEGRITY

THE OMBUDSMAN

Capacity	Governance	Role
4 (great extent)	4 (great extent)	2 (small extent)

The Ombudsman has failed to act as a strong pillar within the national integrity system.

Notwithstanding its independence from any other public authority, in its daily activity, the Ombudsman has yet to fully accomplish the role of protecting citizens' rights against public administration abuses, mainly because of a lack of law enforcement competences.

Functioning exclusively as an authority for complaint has proven to be inefficient, in the absence of any sanctioning powers. Its structural weakness was deepened by a poor use of all its prerogatives.

However, the constant improvement in terms of its daily activity and visibility, along with the reputation of being one of the least corrupt public entities prevented this institution from being a weak integrity pillar.

A. Legal Framework

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1. Role

According to the provisions of the Law no. 35/1997 regarding the organisation and functioning of the Ombudsman, this institution is an autonomous public authority, that doesn't depend of any other public authority, its the working objective being the defence of the citizen's rights and liberties, in their relations with the public administration authorities.

The legal framework regulating the institution of the Ombudsman comprises, first, constitutional provisions (art. 58-60, art. 146), organic laws (Law no. 35/1997 relative to the functioning of the institution), and ordinary regulations, such as the Functioning and Organisation Regulation (ROF). In addition, other laws include stipulations on the functioning of this institution, as, for instance, the Law no. 554/2004 of the Administrative Procedure .

According to the above mentioned constitutional provisions, the Ombudsman is designated and revoked by the two Chambers of the Parliament in a common session, for a 5 year term in order to defence the citizen's rights and liberties at their request or ex officio. The Ombudsman presents activity reports once a year or when required in front of the Parliament. The reports usually contain recommendations regarding the legislation or other measures aiming at defending citizens' rights and liberties. But they cannot comprise recommendations with regard to law amendments. Still, the

Ombudsman can make referrals to the Constitutional Court regarding the unconstitutionality of laws, both prior to their enactment, and afterwards, if it is the case of unconstitutionality exception of laws and ordinances.

The Ombudsman does not substitute to the public authorities and cannot be submitted to any imperative or representative mandate. No one can coerce the Ombudsman to comply with its directives or provisions. Its activity is public. The Ombudsman and its deputies are not judicially liable for their opinions or for the acts they accomplish, by law, in the exertion of their respective competences. According to art. 2 from Law no. 35/1997, the Ombudsman Institution is an autonomous public authority, non dependable of any other public authority, as far as the Law is complied. Exerting its attribution, the Ombudsman does not substitute to the public authorities, cannot be submitted to any imperative or representative mandate.

According to the law, if the Ombudsman takes notice, in its activity, of legislative lacks, severe corruption cases or non-compliance with the laws, he will submit a report to the two Chambers of the Parliament, or where necessary to the prime minister, containing all the ascertained issues.

2. Resources and structure

The Ombudsman institution deployed its activity in 2007 with a personnel chart of 100 posts, mentioning that the institution owns territorial bureaus with 33 posts according to the 2007 activity report. The Ombudsman's institution had in 2009 a budget of 8414 thousands lei, compared with to the one from 2004, of 3069 thousands lei. According to the art. 36 from Law no. 35/1997, the budget of the institution is part of the state budget. Through annual budgetary laws, a special fund can be approved at the disposal of the Ombudsman in order to offer aids.

3. Accountability

The Ombudsman is accountable in front of the Parliament solely, being obliged to submit reports in this matter. In the reports, the Ombudsman can make recommendations regarding the legislation or taking measures for protecting citizens' right s and liberties. These recommendations are having a statute of proposals. Therefore, in the activity reports made public for 2006-2007 there are no references regarding this type of recommendations.

The natural persons have the right to contact the institution by audiences to the headquarters or the territorial bureaus and to invoke right infringements through petitions, including phone calls, by presenting the infringements upon certain rights or liberties through abuses of the public authorities .

The ombudsman institution acts as an oversight authority and it does not own legal means of coercion, obligation or sanctioning, another public authority. This fact comes out of the provisions of art. 13 let. (c) from the Law no. 35/1997, reiterated, which provides that the Ombudsman pursues the legal settlement of the requests and it demands to the authorities or public servants of the administrative field in question the ceasing of the infringement of the citizen's rights and liberties, restoring the petitioner's rights and overhauling the prejudices; as well as the article 21, line 1 and 2 which states that " in the framework of its attributions, the Ombudsman issues recommendations which cannot be submitted nor to the parliamentary control, neither to the judicial control. By this

means, the Ombudsman refers the matters to the public administration authorities regarding the illegality of the administrative facts or deeds .

4. Integrity

Within the institution, the following personnel categories deploy their activity: dignitaries, public servants, and contract-based personnel. The public servants benefit of all the rights provisioned by the law for the public service. The personnel with executive attributions consist of counsellors and experts, usually with judicial experience, and has the same statute as the administrative personnel of the Parliament.

According to art. 43 from Law no. 188/1999, the public servants are obliged to fulfil their work duties in terms of professionalism and impartiality and according to the law, and to abstain from any deed that can bring prejudice to the natural or legal persons, or to the prestige of the public servants body. The public servants have the duty of observing the ethic and civil code provided by Law.

According to the second chapter of the Law no. 7/2004, the general guidelines of ethic conduct of the public servant mention the obligation to insure a public service of quality, for the benefit of the citizens, by active participation within the decision making process and by their everyday activity. During the exercise of their public service, the public servants are obliged to prove a professional behaviour, as well as to insure the administrative transparency so as to maintain the confidence of the citizens in the integrity, objectivity and effectiveness of the public authorities and institutions. They also mention the principle of loyalty to the Constitution and to the Law, meaning that the public servants are obliged to abide by the Constitution, the national laws. However, they must comply with the legal provisions regarding the restraint of certain rights, due to the nature of their public statute. Public servants are obliged to loyally defend the prestige of the public authority or institution they work for, as well as to abstain from any deed that can bring prejudice to the image or to the interests of the institution.

By the same token, it is forbidden for the public servants to publicly express statements not compliant with the reality regarding the activity of the public authority or institution where they work for, with their policies and strategies, or with the normative or individual projects, but also to make unauthorised declarations regarding the litigations in progress that involve the public authority or institution where he works. As well, they are forbidden to disclose information that is not public, in other conditions than provisioned by law . Still, when requested by the representatives of other public authority or institution, disclosing information that is not public is only allowed with the approval of the manager of the public institution where the public servant is activating.

During the exertion of their public service, the public servants are also forbidden to have a political activity of any sort.

As for the rules referring to the conflict of interests applicable to the Ombudsman institution's personnel, they are stated in the Law 188/1999 regarding the public servants statute, as well as in the art. 79 form Law 161/2003. According to art. 79 from Law 161/2003, the public servant finds himself or herself in a conflict of interests when he or she is called in for settling requests, for making decisions or to participate to decision making processes regarding natural or legal persons with whom he or she has patrimonial relationships, or when he or she participates within the same commission, constituted according to the law, with other public servants that are spouses or 1st degree kin. In

these cases, the public servant is obliged to abstain from the resolution of the case, from the decision or participation to the decision-making process, and he or she has to inform immediately the hierarchic superior. This person is obliged to take the required measures in maximum 3 days from the moment he was informed of the matter. In the abovementioned cases, following the hierarchic superior in charge, the manager of the public authority or institution will designate another public servant sharing the same training and experience. The infringement of these provisions can draw disciplinary, administrative, civil or criminal liability, according to the law.

Within the obligations framework regarding the anticorruption measures, according to art. 47 from Law 188/1999 with regard to the public servants statute, they are forbidden to demand or accept directly or indirectly, for them or for third parties, considering their public function, gifts or other assets. Therewith, in art 14 form the Code of Conduct it is foreseen that the public servants are not allowed to accept, gifts, services, favours, invitations or other sort of advantage, that are intended personally either family, parents friends or business related, or politic related persons that can influence their impartiality in the exertion process of their public functions, or that can constitute a gratification with regard to these functions . According to art. 75 from the Law 188/1999, the infringement of the work duties draws disciplinary, contravention, civil or criminal liability where applicable. As long as the penal liability is concerned, it refers to corruption provisioned in art. 254 and the following articles form the Criminal Code.

Speaking of post-employment restrictions, the Ombudsman must not do disclose or make public confidential documents or information that he had access to. This obligation is valid as well as after ceasing his activity as an Ombudsman and it extends upon his deputies, as well as upon the personnel in service, otherwise it is sanctioned according to the criminal law.

5. Transparency

Concerning the rules regarding the assets declarations, the Law 115/1996 provides in art. 3 that the asset declaration is written, affidavit and comprises own assets, shared assets and indivisum assets, as well as assets belonging to children in custody, according to the model provided in the annex afferent to the law.

In terms of transparency in its own activity, the Ombudsman delivers an annual report submitted to the Parliament, where there are mentioned the main activities, respectively those during the hearings, the petitions settlements, the call answering, the unconstitutionality exceptions of laws and ordinances, as well as the process of citizen awareness upon the protection of rights and liberties they benefit of, and for the media exposure of the Ombudsman's role. This report is published in the Romanian Official Journal, 3rd part, according to the provisions of art. 5 line 3 from Law 544/2001 regarding free access to public interest information, but also to the provisions of art. 5 line 2 from Law no. 35/1997 in which it is mentioned that the annual report is to be made public. In addition, this report is published on the institution's website and is presented as well to the mass media.

Speaking of access to procedures and documents, it has to be assured, as the institution of the Ombudsman exerts his attributions not only ex officio, but also at the injured person's request. The request can be filed by any kind of natural person, disregarding citizenship, age, sex, political membership, or religious convictions. Within the Ombudsman institution, as well as the territorial offices, the procedure applied concerning the receiving and settlement of natural persons' petitions as

well as the procedure for the ex officio situations are to be found in Chapter 4 Section 2 from the Functioning and Organisation Regulation of the institution (ROF) – art 15-23. Therefore, according to the 15th art from the regulation, the petitions addressed to the Ombudsman must be written, sent via post mail, e-mail, facsimile, or they can be submitted personally or through a proxy.

If a serious infringement of rights of the petitioner or the illegality of the administrative fact is noticed, the Ombudsman issues a recommendation addressed to the public administration authority that has infringed the particular rights or has issued the legal document. According to art. 21, if the public administration authority in question claims the recommendation, the Ombudsman or the designated person approves the proposal of file closure. Otherwise, the Ombudsman will intimate the superior authorities. In both of the situations, the results are brought to notice to the petitioner. According to the Regulation, anonymous requests are not counted in.

6. Complaints and enforcement mechanisms

Regarding the provisions of Law 571/2004 concerning the personnel's protection within the public authorities, public institutions and other bodies that signalize law infringements, it is worth mentioning that these are applied as well for the Ombudsman institution staff.

Signalizing facts considered to be disciplinary malpractices, contraventions or crimes, constitute whistleblowing. These include facts of corruption and assimilated facts, work malpractices or related, facts against the financial interest of the European Communities; preferential or discriminatory practices or treatments in the activity; breaching the provisions regarding the incompatibilities and the conflict of interests, abusive usage of material or human resources; political partiality while exerting prerogatives of the position held, except those persons appointed or elected by political means; law infringement regarding the access to information and decisional transparency; infringement of the legal provisions regarding public purchase and non refundable financing, incompetence or negligence; non-objective assessments within the process of recruiting, selection, promoting, downgrade and dismissal; infringement of administrative procedures or establishing procedures without observing the law; issuing administrative or other sort of documents that favour group interests or clientele; maladministration or fraudulent administration of public or private patrimony of the public authorities, institutions and other public bodies; infringement of other legal provisions which require the observance of the good-administration principle as well as protecting the public interest principle.

The infringement of the provisions of Law 35/1997 or of the Organisation and Functioning Regulation of the Ombudsman institution by its personnel draws the criminal, disciplinary or administrative liability. Disciplinary liability is established according to the Organisation and Functioning Regulation of the Ombudsman.

According to the Regulation, within the framework of the relation with the citizens, the personnel is obliged to show availability and politeness; during the elaboration and decision–implementing process, as well as when settling the petitions, to assure equality and no privileges and discriminations; not to be influenced in his conduct by personal interests and political intervention; to assure free access for the citizens to documents, in terms of legal compliance

The applicable disciplinary sanctions in case of misbehaviours are the warning, the admonition, diminishing the pecuniary rights, or reducing the management allowance for 1 to 3 months, with 5-

10%, postponement of the promoting right for a period of 1 to 3 years, downgrading for 6 to 12 months along with decreasing the salary, disciplinary ceasing of the labour contract.

As mentioned above, if during the process of investigation, the Ombudsman observes that there are deficiencies in the legislation, or serious corruption cases, or non-respecting the rules of the country, he will present a report in front of the two presidents of the Parliament Chambers, or when applicable to the prime minister, consisting of these facts. The law 554/2004 regarding administrative contentious, provides that when the Ombudsman appreciates that the illegality of refusing the public authorities to carry out its legal attributions can be dismissed only by justice, according to the organic law, he can intimate (the legal provision is not mandatory), the responsible court from the area of the petitioner. The petitioner acquires the statute of plaintiff, in order to be subpoenaed in this matter. If the petitioner does not assume the submitted cause, in the first term of trial, the court can cancel the petition.

In case that the Ombudsman observes that the settlement of the petition he was contacted with, is in the area of the judicial authority, according to art 18 from Law 35/1997 he can address, when applicable, to the Ministry of Justice, to the Public Ministry or to the Court Room president, they being obliged to respond with the measures taken. There is a legal mean through which the Ombudsman can intervene (the legal provision does not oblige) in the bureaucratic situations occurred by the non implementation of the article 21, line 3 from the Constitution, a fact which generated the exploitation of the art. 6 form the Convention for Protecting the individual rights and fundamental freedoms with regard to the right of the halves to have an equitable trial and to settle the file in a reasonable period of time.

As well, the Ombudsman can get involved with his own proceedings in the process of controlling the constitutionality of the laws and of the ordinances; process coordinated in Romania by the Constitutional Court. . Therefore, according to the art 146 let. a form the Constitution and art 146 let. e from the law 35/1997, the Ombudsman can make references to the Constitutional Court regarding the non constitutionality of the laws legislated in the Parliament, before the President's enactment, according to the art. 146 let. d from the Constitution and art 13 let. f from the Law 35/1997 he can intimate directly the Constitutional Court , as well as with the exception of non constitutionality of the effective laws and ordinances, and according to the art 19 from Law 35/1997 he can iterate points of view for these exceptions that refer to the rights and liberties of the citizens.

7. Relationship to other pillars

The Ombudsman institution collaborates with the Parliament, by submitting annual reports or by request, with the Constitutional Court by making references regarding the non constitutionality of the laws prior to their enactment, or regarding exceptions of non constitutionality of laws and ordinances and provides outlook with regard to these exceptions that refer to the rights and liberties of the citizens. It also collaborates with the Government by making references concerning any illegal administrative doings of the central public administration and of the prefects and it demands to take the required measures, and otherwise it forwards the situation to the Parliament. The Ombudsman communicates with other authorities of the public administration both central and local, and it demands to take measures in order to banish the illegality of the administrative acts, and with the mass-media in order to disseminate the activity of the Ombudsman.

B. Actual Institutional Practice

1. Role of institution

In the last and current legislatures, the institution of the Ombudsman has primarily dealt with citizen rights abuses by public authorities, and instances of unconstitutionality in laws and ordinances. The bulk of the registered petitions referred especially to constitutional rights like the right to private property, to petition, to a decent life, or to information, and the free access to justice.

As for the exceptions to unconstitutionality raised by the Ombudsman, in 2007, for instance, they referred to provisions from a law amending the Criminal Procedure Code (article I, (228) and art. Article II (3) of the Law no. 356/2006 amending and supplementing the Criminal Procedure Code), from a law regarding the protection and the promotion of the rights of persons with disabilities (art. 57 (6). b) of the Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities), from the law on the referendum (art. 11 (3) of the Law no. 3 / 2000 on the organization and conduct of the referendum) and on the law regarding ministerial accountability (art. 12-22 of Chapter III "The prosecution and trial" of the Law no. 115/1999 on ministerial accountability, republished, art. 23 and art. 24 of the same Law and art. I and art. II of the Emergency Ordinance no. 95/2007 to amend the above mentioned Law). Out of the four exceptions, the last two mentioned ones were approved by the Constitutional Court. In the previous year, out of three exceptions of unconstitutionality raised by the Ombudsman, two were accepted by the Constitutional Court: one regarding some provisions of Law no. 3 / 2000 on the organization and conduct of the referendum; and, second, regarding certain provisions from the Government Emergency Ordinance no. 43/2006 on the organization and functioning of the Court of Auditors. In 2005, out of three exceptions, only the one concerning the provisions of the law on free movement of the Romanian citizens abroad was accepted by the Constitutional Court.

Notwithstanding its independence both in its daily activity and in administering the allotted budget, this institution had no sanctioning power: its assumed objective is the mediation between citizens and public authorities. Even if certain sanctioning authority was claimed to have been granted to this institution and made its activity more effective, the legal framework of the institution of the Ombudsman has changed fundamentally since its establishment. However, the constantly increasing number of audiences, of the registered petitions and of the phone call demands, on the one hand, and the growing number of submitted and approved exceptions to unconstitutionality on behalf of the citizens, on the other, show that this institution has become more active since 2005.

Petitions were rejected for reasons other than being incomplete, or because the Ombudsman lacked competence on the issue raised by the complainant.

Despite its improved activity, the Ombudsman still lacks visible results, as compared to the expectations.

2. Resources and Structure

The institution's budget allocation and administration have been generally dealt by the Ombudsman in person, as main credit release authority, along with a delegated economic officer and the secretary general.

As for appointments, promotions and dismissals, the final decisions belonged to the Ombudsman in person. However, they were said to have been based on reports, evaluations and verifications.

Internal audits were claimed to have been regularly done by the institution's counsellor on auditor. Besides, the quarterly budgetary executions have been usually discussed within the advisory council meetings. As for the external ones, they were done on a regular basis by the representatives of the Ministry of Finances and of the Court of Accounts. Recommendations were claimed to have been approached as mandatory.

Speaking of internal controls, they were alleged to have been done by the Ombudsman's deputies on their respective departments.

3. Accountability

In terms of the institution's general accountability, the Ombudsman has shown its accountability in front of the Parliament by submitting for approval annual activity reports. However, taking into consideration that the Ombudsman does not have an imperative, nor a representative mandate, meaning that nobody can compel it to abide by its provisions or instructions, this accountability has been rather of a formal nature.

Strictly speaking of the staff's accountability, it is hierarchy-based, meaning that each person working under a superior's authority was, at the same time, accountable to them. More concretely, control over the activity of the personnel dealing with citizens' demands was done by those who verified, mended and signed the documents released from this institution, namely the Ombudsman and the assigned deputies.

4. Integrity

In the institution of the Ombudsman, there have allegedly not been any issues related to conflict of interest, gifts and hospitality. These claims were roughly related to the general perception of the citizens on the Ombudsman's activity. According to a 2008 poll regarding the citizens' perception on corruption, transparency and integrity in the justice system in Romania , the Ombudsman was perceived by most of the citizens as the least corrupt (9% of them link this institution to corruption). At the opposite pole, the Parliament, the city and town halls, and the county councils were considered the most corrupt by 55%, 54%, respectively 53% of the respondents.

5. Transparency

The institution of the Ombudsman has made public its annual activity reports on its website, after the Parliaments' approval. Wealth and interest statements of the Ombudsman and their deputies, of the secretary general and some of the councillors have been published online, as well, since 2007. It is also worth mentioning that brief presentations of some files selected from the activity of the Ombudsman have been made available online by way of example. Moreover, the national radio and broadcast used to host regular transmissions related to Ombudsman's activity. However, the role and the activity of the Ombudsman were said to be obscure for most of the citizens. One explanation would be the insufficient media coverage/ interest with regard to this institution's output.

6. Complaints/enforcement mechanisms

Taking into consideration that the aim of this institution is to protect citizen rights and freedoms in conflict with public administration by the way of mediation and in the absence of any direct power of constraint, the expectations regarding the Ombudsman's efficiency in handling citizen complaints ought to be matched to this context. In other words, the evaluation of the Ombudsman's performance by the number of the petitions having been solved in relation to all the registered petitions would need to be synchronized with structural and circumstantial factors: on the one hand, the lack of constraint competences, and on the other, what has proven to be an insufficient volume of human and financial resources in relation to the amount of citizen demands.

Generally, the complainants have addressed their demands to the institution in audiences, by calling to the Ombudsman's dispatcher, and by written petitions. There were also cases of public institutions submitting complaints with regard to the Ombudsman's activity.

More often than not, the registered complaints have been solved by contacting the concerned public authorities – by telephone, or in writing – or by following investigations. In case of the absence of a redress or of a response within 30 days from the concerned institutions, the Ombudsman notified the higher ranking institutions. Experience showed that if local authorities did not take into account the Ombudsman's demands, the territorial and central public authorities were even less responsive. If, for instance, a mayor didn't take into consideration the requests of the Ombudsman, the prefect, the government and the parliament were even less keen to do it. The handling of a petition lasted, usually, 30 days. The petitioners were informed of steps taken by the Ombudsman and if they were not satisfied with the results, the complainants had the possibility to appeal to administrative judges. However, they did not use this right, generally, to avoid financial and time costs and, strictly speaking of corruption, citizens did not use this institution in order to report corruption acts purported by public servants; in that case, the complaints had to be sent to the General Prosecutor. As for the internal complaints, they were rare and concerned disciplinary matters that have been solved by disciplinary commissions convened ad hoc.

7. Relationship to other pillars

Since 2005, the Ombudsman has interacted mostly with local public authorities like city and town halls, county councils, pension offices, penitentiaries and autonomous authorities. There are no available statistics on whether the concerned institutions have followed the Ombudsman's recommendations on the redress of their abuses to citizens. Still, the general perception is that public institutions fail mostly to be responsive to the citizens' claims.

In contrast, the Ombudsman continues to enjoy credibility among citizens. One of the explanations could be that the lack of public administration's receptiveness is not intrinsically due to the limited competence, and subsequently, to the reduced effectiveness of the Ombudsman's activity, but to the lack of will of those institutions to voluntarily comply with Ombudsman's recommendations.

Indeed, most of the activity of this institution from 2005 onwards was focused on transmitting solicitations to public administration authorities on behalf of the petitioners and on formulating points of views on the exceptions of unconstitutionality of laws and ordinances concerning rights and freedoms of citizens, at the request of the Constitutional Court. Recommendations to public administration authorities and investigations were not of frequent use. Besides, the Ombudsman has

not made yet effective use of the competence to challenge in court, on behalf of citizens, public administration decisions .

As stated in the institution's annual reports, media coverage of the Ombudsman has improved since 2005, both in broadcast and written press, but more at local than at national level. Still, this institution has had a relatively poor public visibility, compared to other public institutions. In addition, media coverage on the Ombudsman included for the most part its proceedings on contesting governmental acts to the Constitutional Court. Accordingly, this institution's image is related more to the activity of the Constitutional Court than to the daily protection of citizens' rights from public authorities' malfeasances.

Overall, the Ombudsman has played a superficial role within the national integrity system for two main reasons. Firstly, its limited competences forbade it to successfully redress the citizens' claims and to effectively protect constitutional rights. Its mediating function consisted solely in notifying public authorities about their misbehaviour. In these terms, it has functioned as an effective complaint mechanism. Therefore, the lack of enforcement capacities has made this institution structurally weak. Secondly, the disuse of all its prerogatives, such as, taking administrative authorities to court for their decisions for reasons of infringement of citizens rights, or the modest use of making recommendations, have deepened its institutional weaknesses.

8. Past developments and future prospects

From 2005 onwards, the institution of the Ombudsman became constantly more present in the public sphere. However, it has yet to make an effective use of its main prerogatives, focusing almost exclusively on its mediating role. Obviously, considering the lack of enforcement competences, this institution has yet to effectively tackle public administration abuses to citizens' rights.

For the future, acquiring more powers, particularly in what concerns enforcement competences, seems to be one of the major challenges for the Ombudsman, since, so far, the existing institutional framework did not contribute to effectively protect citizens from public authorities' misconduct.

9. Stakeholders' recommendations

In this context, the first steps towards improving the standing of the Ombudsman within the national integrity system regard measures that should strengthen the role of this institution among the other public institutions. More specifically the following recommendations need to be taken into account:

- Providing stricter sanctioning legislation for the public authorities that fail to comply with the Ombudsman's requests
- Enhancing the cooperation between the Ombudsman and the public authorities
- Providing sufficient human and financial resources
- Improving the visibility and openness of the Ombudsman in the public sphere
- Improving the annual evaluation system of the personnel of this institution

SUPREME AUDIT INSTITUTION

Capacity	Governance	Role
4 (great extent)	3 (moderate)	2 (small extent)

The Court of Accounts has acted as a balanced pillar within the national integrity system for several reasons.

First, despite noteworthy improvements in terms of legislation, following the need oh harmonization with the EU acquis, the Court's application of the legal framework and its internal organization, as well as the practical collaboration with the public institutions on the same field of activity, determined only a partially functional external audit.

Second, the daily behavior of the Court's auditors both in terms of applying regulations and of integrity raised the problem of further professional formation.

Third, the poor and slow responsiveness of the Legislative to the Court's reports and recommendations blocked the potential outputs of the Court with regard to coping deficiencies in its internal and external functioning.

A. Legal framework

Cătălin PETRESCU

1. Role

The Court of Accounts is the supreme institution exercising external subsequent financial control over the formation, administration and use of the financial resources of the state and public sector. The Court of Accounts functions near the Parliament of Romania but performs its activity independently, observing the provisions of the Constitution and the laws of the state.

The Court of Accounts is organised and functions according to the provisions of art. 140 from the Romanian Constitution, of Law no. 94/1992 on the organisation and functioning of the Court of Accounts, republished, with the subsequent amendments, and according to its Functioning and Organisation Regulation (ROF).

The ROF establishes the organisational structure of the Courts of Accounts, the organisation and operational procedures of the departments, directorates, services and special compartments, both in the central and in the territorial courts of accounts, and of the Audit Authorities, with the subsequent offices and services. The Regulation comprises stipulations on the organisation and functioning of the General Secretariat, as well as on specific tasks of the institution.

The provisions of the ROF create the framework for putting into practice the tasks and the competencies of the Court of Accounts as stated in Law no. 42/1992 regarding the organisation and operation of the Court of Accounts, reissued, with the subsequent amendments and completions. Other internal rules such as the Regulation on the organization and conduct of specific activities of the Court of Accounts, as well as on the re-evaluation of documents resulting from its activities or the Regulation of the Plenum of the Court of Accounts and the Statute of the External Auditor apply on a case-by-case basis to the staff of the Court of Accounts.

The management of the Court of Accounts is exerted by a Plenum comprising of 18 members - accounts counsellors appointed by the Romanian Parliament, and the executive dimension is exerted by a president assisted by two Vice presidents. The control activity of the Court of Accounts, carried out through audit procedures, is carried on the basis of an activity programme elaborated according to the provisions of the Law regulating its organization and functioning.

The Court of Accounts exercises its external financial control function over the formation, administration and use of the financial resources of the state and public sector, as well as over the management of the public and private patrimony of the state and of the administrative-territorial units. By exercising its control, The Court of Accounts aims at ensuring that the law is applied in the management of the material and financial means of the aforementioned institutions. Furthermore, the Court of Accounts is supposed to analyze the quality of financial administration on the basis of cost-effectiveness and efficiency.

The Court has access to all records of the audit departments or services from the public institutions in the exercise of its mandate. It has the capacity to enforce or initiate enforcement actions to secure access to the needed records as well. However, the Court's representatives do not have the power to seal, investigate and seize documents other than those related to the audit activity.

The Court of Accounts exerts the function of control/audit over the allocation, administration and use of the financial resources of the state's institutions and of the public sector, as well as the audit on the performance in management of the general consolidated budget and of any other public funds.

Generally, the Court of Accounts issues notifications/approvals with regard to, first of all, the draft of state budget and draft of laws covering finances and accounting at the request of one of the two Chambers of the Parliament, and, secondly, to the establishment of special subordinate bodies of the Government or of the Ministries.

Specifically, the Court of Accounts carries out tasks in all areas related to the allocation and administration of the state budget resources, of the budget of state social insurances and the budget of the administrative-territorial units, as well as the circulation of funds among these budgets. For instance, preparing and administering the other public funds that are part of the general consolidated state budget, outlining and managing the public debt and the governmental warranties for external and internal credits, as well as the budgetary allocations for investments, subsidies and transactions or other categories of financial support provided by the state or by the administrative-territorial units fall under the competence of the Court. It handles also the preparation and the administration of the public funds and has to assure of their correct use by the autonomous administrative authorities and by the other public institutions as well as by the state's autonomous bodies of social insurance.

Through the audits it carries on, the Court assesses compliance with applicable laws and regulations as well as with the principles of economy, efficiency, and effectiveness in the management of material

and financial resources. In order to perform these duties, the Court audits the allocation and implementation of state budget resources, state social insurance budget, and the budgets of the administrative territorial units, as well as the transfer of funds among these budgets, the establishment, utilization, and management of special and treasury funds, the formation and management of the public debt and government guarantees for internal and external loans. Also, the Court audits the utilization of (1) budgetary allocations for investments and (2) subsidies, transfers, and other forms of financial support from the state or territorial administrative units, the allocation, management, and use of public funds by independent commercial and financial public institutions and independent social insurance entities. Furthermore, the Court audits the situation, development, and management of public assets and patrimony of the state and of the territorial administrative units by public institutions, independent public corporations, commercial enterprises, or other legal entities operating under contract or lease, but also other areas that fall within the Court's legal jurisdiction.

2. Resources and structure

The organisational framework of the Court of Accounts comprises of 12 departments, 11 departments of control and audit, and one judicial department. In the territory, there are county courts of accounts and Bucharest court of accounts. The structures subordinated to the president of the Court of Accounts are the internal audit service, the external relations and protocol service, a service of communication and public relations, the unit for implementation of the non-refundable funds projects (UIP), the Audit Authority, and the General Secretariat.

As for the financing of the institution, according to the ROF, the Plenum of the Court has to adopt the budget proposal that is to be sent to the Parliament for approval. The Plenum has to decide, as well, on the Court's budget execution that will be transmitted to the Legislature.

The president of the Court of Accounts is the main credit release authority, but this competence can be devolved to the Secretary General, along with the incumbent responsibilities. Furthermore, the Secretary General, who coordinates the elaboration of the Court's budget proposal, can transfer the already mentioned attribution to the general director or to the other directors under his direct coordination. The financial and accountancy department contributes to the substantiation of the Court's budget and ensures its distribution in the Court's territorial branches.

3. Accountability

As a general observation, according to the ROF of the Court, its controls are initiated ex-officio and cannot be blocked by anyone except the Parliament and only when the Court has gone beyond its sphere of competences.

According to the legislation, the main reporting line available to the Court is the submission of annual activity reports to the Parliament, as well as the submission of specific reports upon request, to the Parliament, to the authorities belonging to the administrative-territorial units, and to other public authorities such as the Government, the ministries etc. The annual public reports mainly comprise the Court's observations on the audited execution accounts, the conclusions of its regular audit reports on public and private entities, the detected law infringements and the measures taken.

Moreover, starting with 2008 until 2015, the Court has the obligation to transmit to the European Commission annual control reports with yearly audit results on the management of European funds.

4. Integrity

Through the Decision no. 31/2008 of the Court of Accounts' Plenum, the statute of the public external auditor of the Romanian Court of Accounts has been approved.

The regime of incompatibilities applied stipulates that the persons to whom there were applied final convictions for embezzlement, forgery, the use of falsified documents, fraudulent bankruptcy or any other crime cannot become external auditors.

Moreover, the external auditors are not allowed to have any political activity or affiliation, to hold other public or private offices, with the exception of teaching activities, to pursue, directly or indirectly, commercial activities, to take part in the administration or management of other entities with legal personality, to offer expertise or arbitrage, to use their position in advertising activities, to make public accusations or defamations regarding their colleagues and superiors.

Furthermore, public external auditors are not allowed to express publicly their opinion with regard to their ongoing audit activity and they are prohibited from giving consultations in matters of Court's competence.

Last but not least, they are prohibited from being under the direct hierarchical subordination of external auditors that are their first and second level relatives. Furthermore, the provisions of Law no. 161/2003 on certain measures to ensure transparency in the exercise of public office and in the business environment, on preventing and sanctioning corruption also apply to this case.

On the issue of receiving gifts and hospitalities, the Plenum decided through Decision no. 31/2008, to forbid the public external auditors to require or accept, directly or indirectly, for themselves or for other parties, during the exercise of their attributes gifts or other avails. Secondly, it is forbidden to the public external auditors to handle direct requests that fall under the competencies of the Court of Accounts, or to intervene in the settlement of these requests, if those requests were not assigned to them. In addition, the public external auditors are obliged to submit their declaration of assets and interests, where applicable, updated according to the law.

5. Transparency

The documents issued by the structures of the Romanian Court of Accounts are public only after the closure of the procedures that fructified the findings of the audit processes, as stated in the Regulation on the organization and conduct of specific activities of the Court of Accounts.

If, during their activities, the public external auditors find out about information constituting state classified information, work, or commercial or individual statements that represent classified information, they are obliged to disclose them only in front of the entitled authorities. The character of confidentiality is to be kept both during and after the control/audit activity.

The regular reports issued by the Court of Accounts have to be public. For instance, the yearly reports, the yearly reports on local public finances that are submitted to the public deliberative authorities of the administrative-territorial units, the reports on specific domains submitted to the Parliament, as

well as to the other interested institutions (Government, Ministries, and other public entities) are public.

6. Complaints and enforcement mechanisms

According to Law no. 94/1992 republished, the President of the Court of Accounts has the authority to apply disciplinary sanctions on the basis of the institution's Code of Ethics. This Code specifies the categories of acts constituting disciplinary breaches and their corresponding sanctions that apply according to the severity and circumstances in which the external auditor committed the respective acts . The President has to apply a sanction only following the notification of the director of the chamber of accounts of the respective county/ the Municipality of Bucharest that regard the public external auditors who are under their subordination. However, the counsellors of accounts themselves may issue notifications considering the external auditors who are under their authority. Still, these notifications have to be submitted to the directors of the territorial branches under the coordination of the counsellors of accounts who made the notifications . The sanctions can be applied only after a prior disciplinary investigation, with the exception of the written warning , which is carried on by a special commission appointed by the president of the Court and authorized to suggest a solution. Still, in case it is decided for a sanction, the public external auditor has the possibility to dispute the president's pronouncement in front of the Court's Plenum within 15 days after its communication and he can also challenge the Plenum's verdict in front of the Court within 30 days after its acknowledgement by the concerned auditor .

7. Relationship to other NIS pillars

Institutionally, the Court of Accounts interacts with all the public authorities as audited entities: the Parliament, the Presidential Administration, the Government, the ministries and other public administration bodies and their specialized structures, the autonomous administrative authorities, the local government and their subordinated institutions, irrespective of their financing, and companies with partial or full state capital.

However, stronger interactions are to be found between the Court of Accounts and the Parliament by virtue of the two Chambers' role in the appointment of the institution's management and of the reporting lines that tie these public entities. Furthermore, the Ministry of Finances and its subordinated structures are supposed to have a tight liaison with the Court since they share a wide sphere of action.

Since 2005, noteworthy legislative and regulatory amendments have been made: the transformation of the statute of the financial controller into a public external auditor statute, in 2008; the amendment of the Law no. 94/1992, republished in 2009; the establishment of the Code of ethics and professional conduct of the personnel of the Court of Accounts; the adoption of the Regulation on the organization and functioning of the Court of Accounts and the Regulation of the Court of Accounts' Plenum.

B. Actual Institutional Practice

1. Role

Since 2003, the Court of Accounts has strengthened its financial independence, with the scope of improving its capacity to pursue an unaltered control over the allocation, management and utilization of financial resources of the state and the public sector. Still, after the 2004 elections, pressures on the Court threatened its constitutionally guaranteed functional independence. Chapter 32 of the Accession treaty was a safeguard preventing those tendencies to become reality. Currently, the Court has been claimed to have a functional independence: it has been functioning near to the Parliament, but not under its subordination; their interaction consisted in submitting activity reports to the Parliament or making punctual controls on its request. However, it was reported that the Court maintained good relations with the Parliament as it was the Parliament which approved its annual budget.

The role played by the Court in combating corruption has changed. The current legislation conferred to this institution an eminently audit nature. From 1992 up to 2003, the Court of Accounts enjoyed both control and jurisdiction attributions, as there were magistrates acting as financial prosecutors and financial judges that were designed to handle law infringements. However, since 2003, its jurisdiction capacity was transferred to tribunals.

2. Resources and Structure

As already mentioned, the Court of Accounts has been financially independent beginning with 2004, meaning that it has drawn up and approved its own budget, that was transmitted to the Government, in order to be included in the state budget, and afterwards submitted to Parliament for approval.

The assigned budget has been generally administered by the Secretary General to whom the President of the Court, as main credit release authority, delegated this competence. However, the final responsibility for the budget management belonged to the President of the Court.

In terms of human resources policy, the 18 counsellors of Accounts, appointed by the Parliament at the proposal of the budget and finances permanent commissions of the two Chambers, formed the plenum of the Court that decided on the number and structure of the institution's staff with management positions. As for the other categories of personnel, the final decisions belonged to the President. Appointments and promotions were claimed to be made following contests and examinations. Since 2005, it was said not to have occurred any dismissal based on incompetence or incompatibilities. Investigations of the General Prosecutors have been pursued, but they did not target the professional behaviour of the Counsellors, but private incidents.

In terms of audit activities, the Court of Accounts has been provided with a department of internal audit, under the direct subordination of the institution's President, and exercising its attributions both centrally and in the territorial branches. Audit activities were run according to annual audit plans. The subsequent reports were presented to the President of the Court, who was responsible with the implementation of the recommendations.

3. Accountability

Within the Court, activities have been supervised on a hierarchical basis. Accordingly, sanction mechanisms were structured in the same way, meaning that immediate superiors proposed sanctions; however, the President applied them.

More concretely, the Courts' activity has been coordinated by the 18-member plenum. Each of the 18 members was assigned a geographic region where to supervise the activity of the counsellors of Accounts from the respective territorial branches. Generally, hierarchic control materialized mostly in activity reports that were evaluated and scored. Annually, counsellors signed twenty reports on average and were assessed based on the sum of their reports scores. Promotions or dismissals depended on these scores. However, there have not been reported cases of removal from office on the basis of poor evaluation results.

4. Integrity

In terms of integrity, proven conflicts of interests, or receiving gifts and hospitalities have not been reported from 2005 onwards. However, suspicions regarding incompatibilities persisted. As the counsellors were subject to the incompatibility stipulations that applied to the judges, they were interdicted to hold offices or functions other than that of teaching. Still, according to the information resulting from interviews, there were situations in which counsellors held management offices in education institutions, others that gave consultancy or administered private companies. None of these situations resulted in proven incompatibilities.

5. Transparency

In terms of transparency, all the public expenditure have been claimed to be made public in the official budget. As the Court hasn't received extra budgetary incomes and the annual balance sheet of the institution was sent for verification to a Parliamentary special commission before being submitted to the Parliament for approval.

6. Complaints and enforcement mechanisms

In terms of complaint mechanisms, both internal and external grievances were ultimately settled by the manager of the institution. External complaints regarded mostly misconducts of counsellors and were handled by ad-hoc commissions. Furthermore, external auditors, that formed a distinct control organism, and a special department with the General Secretariat that handled contestations, were involved in handling complaints. Generally, the President of the Court decided on disciplinary sanctions, according to the Labour code, but there were not any subsequent situations of dismissals.

Internal complaints were handled hierarchically, the heads of departments and services being the first notified instances. Ultimately, it was the plenum and the President that took the final decisions. Usually, the objects of complaints were the contestations of the assigned scores on the activity reports of the counsellors and they were handled by the Court's plenum.

7. Relationship to other pillars

The Court of Accounts has been interacting with all the public institutions and with the private sector, by virtue of its financial control role. First, throughout the reports that have been sent to the Parliament, the Government and interested Ministries, the Court of Accounts has remained in a close relationship of collaboration with these institutions.

The relationship with the private sector and especially state-owned companies proved to be the most difficult. Legislative deficiencies have been claimed by practitioners to further refrain an efficient control of the aforementioned entities by the Court of Accounts.

It is worth mentioning that, despite the overall cooperation with the Parliament, the relationship between the Court and the Parliament has yet to produce effective consequences. More precisely, the lack of a special commission within the Parliament, which would analyze and debate the Court's reports and send it directly for approval in real time so that the Court's recommendations would still be suitable, it is perceived to have caused important delays in the process of approving the respective reports and often validity loss of the included recommendations.

Furthermore, interactions of the Court of Accounts with the internal auditors from the other public institutions' have not been claimed as very efficient. The legally supposed correlation between the internal audit plans and activities and the external ones belonging to the Court has not been seen as being a current practice. This caused a loss in the efficiency of the overall auditing process. However, noteworthy steps were taken in this direction with respect to the Court's collaboration with certain institutions: for instance, the protocol with the Ministry of Finances comprising the engagement of the Ministry to transmit to the Court all their findings and to pursue verifications at the Court's request. As for the relationship with ANRMAP, it has been claimed to be unclear and characterized by overlapping competences, as much as by a weak inter-institutional communication.

8. Past developments and future prospects

The EU accession marked, as for almost all other pillars of integrity, a milestone in the development of the Court. Matters relating to audits, internal integrity and complaint resolution were improved in accordance to EU regulation. Also the Court managed to keep its financial independence according to the EU accession treaty.

However, internal legislation has proved to be far from totally enforced in practice. Discrepancies in terms of legal interpretations of the same regulations persisted, mostly with regards to the difference between control and audit competences belonging to the Court.

8. Stakeholders' recommendations

In this context, the first steps to be taken towards increasing integrity performance of the supreme audit institution refer not only to normative improvements, but also to measures for enhancing the correct application of procedures. More specifically, the following recommendations need to be taken into consideration:

- Supplementing the number of auditors and extending the timeframe for audit procedures
- Improving transparency and cooperation between the SAI and the correspondent trade unions
- Improving and unifying the selection and evaluation procedures applicable to the auditors

- Improving the Court of Accounts' mechanisms of monitoring the application of the recommendations concerning the remedy of the deficiencies detected to the audited entities
- Improving the performance indicators system and its application during activity assessments
- Improving the relationship between the Court of Accounts and the Parliament through more frequent communications/reporting.
- Enhancing the contribution of the Court of Accounts to the improvement of the legal auditing framework by transmitting to the Parliament of proposals and amendments that result from the audit activity
- Further specifying the situations of conflicts of interests imputable to the Court of Accounts' auditors
- Reducing the practice of issuing unilateral acts by the auditors of the Court of Accounts and introducing the statement of the audited institutions in the audit reports

ANTICORRUPTION AGENCIES

Capacity	Governance	Role
3 (moderate)	3 (moderate)	3 (moderate)

The anticorruption agencies acted as a balanced pillar within the national integrity system. This was not necessarily due to the institutional setup, but mostly to the interference of circumstantial factors related to the political arena and media coverage.

If the internal organization of the three institutions did not raise any particular issues, except for the lack of binding codes of conduct, their external performance in handling high corruption cases has been considered by the public opinion as unsatisfactory.

The perceived low degree of effectiveness of the three agencies was related to a generally weak justice system and to problems specific to each of the aforementioned institutions, as for instance: the shortage of personnel within the ANI, the institutional dependence of the DGA on the Ministry of the Administration and Interior, and, finally, the political and media pressures on the DNA.

A. Legal Framework

Iulia COŞPĂNARU

1. Role

All the corruption perception indexes on Romania in the last years revealed the high level of corruption in the country, which made corruption one of the main issues regarding Romania's integration to the EU. In this context, several measures were agreed with the EU officials in order to diminish this phenomenon and to contribute to its sanctioning, including the creation of specialized anticorruption agencies.

The first such institution was the DNA (National Anticorruption Directorate), initially founded as the National Anticorruption Prosecutor's Office (PNA), regarding the sanctioning of corruption. But since sanctioning was never sufficient, in 2005 the General Anticorruption Directorate was established as a specialized structure within the Ministry of Administration and Interior, with both preventing and combating attributions since the first draft of the law until its adoption in 2007.

The last anticorruption agency to be created of these institutions was the National Integrity Agency which took 3 years to create under the threat of the activation of the safeguard clause by the European Commission.

Evidently, none of these institutions has exclusive competence regarding corruption prevention. Therefore, the ministries, in particular the Ministry of Justice have carried out several awareness and education campaigns. However the main part has been played by civil society which assumed the role of informing and educating the population about the risks, costs and consequences of corruption and about the complaint instruments against this phenomenon.

Under these circumstances, the next chapters will approach the anticorruption structures in our country, in light of the level of the fight against corruption that they represent, disregarding a potential hierarchy of the effectiveness of their measures.

The Anticorruption General Directorate (DGA) was founded in 2005 by Law 161 as a result of an EU financed project, within the accession process, for which experts from the UK and Spain were involved. It became operational in October 2005, through the Emergency Ordinance 120/2005 and reported a promising start in purging a system perceived by the public as being seriously affected by corruption.

Its primary role is to prevent and fight corruption within the Ministry of Administration and Interior personnel. Among its main attributions are the identification, assessment and concentration on the specific risk factors and the vulnerabilities that favour acts of corruption among the Ministry's employees; informing the Ministry's personnel, through awareness campaigns and trainings about the causes and consequences of corruption; cooperation with the Prosecutor's Office running corruption investigations under the prosecutor's supervision; and the verification of the plaintiffs' opinions and petitions followed by their redirection to the institution responsible for complaint resolution.

Acts of corruption regarding the DGA activity are regulated by law 78/2001 .

The Corruption, Fraud Prevention and Investigation Directorate is organized and operates as a specialised structure within the Ministry of National Defence (MAPN), according to the provisions of the Minister's decree M.S. 195/2006 regarding the creation, organization and operation of the Corruption, Fraud Prevention and Investigation Directorate, with the subsequent amendments. In addition, the legal framework is complemented by the provisions of the Emergency Ordinance 119/1999 regarding the internal audit, prevention, and financial control and by the public finances minister's decree no. 946/2005 regarding the approval of the internal control code.

The Corruption, Fraud Prevention and Investigation Directorate has the role of insuring the establishment and implementation of specific measures meant to prevent, discover, investigate and report the error, misuse, abuse or fraud in the economic – financial field, as well as recovering the damage caused by committing the acts of corruption and to protect and to complement the patrimony of the Ministry of National Defence. Also, the Directorate assures the establishment and implementation of specific measures in order to prevent corruption and to investigate the causes that generated or could generate acts of corruption.

The main tasks of the institution are: to carry out administrative investigations of damages brought to the central structures of the Ministry of National Defence, as well as fraud that takes place within the subordinate units; to identify, analyze and assess the risks and vulnerabilities of potential fraudulent acts within the MAPN, to carry out fraud and corruption prevention, and to elaborate its own procedures regarding the organisation of fraud and corruption prevention activities.

The approaches for setting up the National Integrity Agency (ANI) have been initiated ever since 2004, when the first legislative draft that referred to establishing an agency for corruption prevention and

control was developed. In September 2004, the project was approved by the Chamber of Deputies and sent to the Senate. During 3 years (2005 through 2007) several versions for this law have been elaborated, the final draft being unanimously approved on the 9th of May 2007 in the Senate, owing to the EU threat of activating the safeguard clause.

The National Integrity Agency is an autonomous administrative institution whose mission is to exert control over the wealth acquired by public servants during their mandates or during their public serving, as well as to detect the existence of conflict of interests and incompatibilities. The wealth acquired during public service, meaning the aggregate of ones assets, as well as the rights and obligations with economic value that belong to a person and that must be included in the statements, are subjected to control.

The investigations are carried out by the integrity inspectors, at their own initiative, or when reasonable information about any public servant occurs, but the verification activity cannot exceed the limits of the notice. When the notice points to the Agency's staff, these are handled by the National Council of Integrity.

ANI's main attributions are related to the verification of income statements and interest statements and their submission within the deadlines; observing the visible differences that cannot be justified in terms of acquired wealth during the time in office; observing the non compliance with the legal provisions regarding the conflict of interests and the incompatibilities regime; informing about the criminal investigation bodies if reliable evidence or probable cause exist, regarding the perpetration of criminal offences, as well as implementing the sanctions and measures stipulated by law within its capacity or informing the competent authorities in the matter.

The National Council of Integrity (CNI) is the representative body under the control of the Senate, whose role is to supervise the activity of the ANI, to ensure the set-up and the implementation of procedures for the nomination of the president and vice-president of the ANI; to analyse the reports, submitted by the president of the Agency regarding its activity; to make recommendations referring to the strategy and the activity of the Agency regarding wealth statements and conflict of interests; to analyse the annual audit report; to submit to the Senate the report about ANI.

While the Agency complies with the terms of independence as stipulated in the legislation, CNI cannot benefit from the same attribute as it is under parliamentary control, while on the other hand it has the authority to appoint and dismiss ANI management, thus to threatening the independence and impartiality of the decision.

The National Anticorruption Directorate (DNA) was established in 2002 , under the name of National Anticorruption Prosecutor's Office (PNA) as an autonomous structure, with legal personality, working within the framework of the Prosecutor's Office attached to the former High Court, with the purpose of fighting against corruption. The name and the legal status were valid until 2005, when the Constitutional Court ruled against them within the Decision no. 235/2005 . The Court rationale was that art. 72 (2) from the Constitution established the exclusive competence of the Prosecutor's Office attached to the High Court of Cassation and Justice to investigate and to send to court the Members of the Parliament, while the provisions that were regulating the PNA activity were related to fighting high level corruption, including the parliamentary level. Therefore in September 2005, by Emergency Ordinance no. 134 , the Government "sets up the National Anticorruption Directorate, as an autonomous structure with legal personality, within the framework of the Prosecutor's Office

attached to the High Court of Cassation and Justice, through the reorganization of the National Anticorruption Prosecutor's Office".

Therefore, by organising the DNA within the framework of the Public Ministry, its independence was limited and the chief prosecutor is subordinated to the General Prosecutor, as well as to the Minister of Justice, according to the hierarchical control rule that governs the prosecutor's statute .

The main attributions of DNA consist of carrying out the criminal pursuit for the crimes provisioned in Law no. 78/200 ; operating, supervising, and controlling criminal investigations and the technical activities carried out by the judicial police officers or by DNA specialists; informing the courts and participating at court trials, as well as appealing against court sentences from the first jurisdiction level. According to art. 13 from EO 43/2002, the infractions that are pursued by the DNA are: the acts of bribe receiving or giving, bribing a national public official, influence trafficking and influence buying, crimes with direct connection to acts of corruption, as well as crimes against the financial interests of the European Communities if they have caused a material damage greater than 200.000 euro, or for an aggravated disturbance of the activity of an authority or public institution or of any other legal person, or if the value of the amount or the asset involved in the corruption act is greater that 10.000 euro, or if the acts were perpetrated by individuals with high ranks within the state structures.

2. Resources and Structure

DGA is organised as a specialised structure within the Ministry of Administration and Interior that is managed by a general manager, usually a prosecutor appointed in this position. The general manager is appointed by the minister, as they have a direct hierarchical relationship.

At central level, DGA is structured into five services, as follows: prevention, public relations, logistics, human resources, continuous training and psychological insurance, analysis, synthesis and IT; and two offices – international relations bureau and judicial bureau, secretariat and classified documents, as well as the financial – accounting department. At national level, DGA runs 41 territorial county offices and one for Bucharest Municipality.

The personnel of DGA consist in magistrates, officers and agents of the judicial police, public servants and contractual personnel. They benefit from the rights and obligations derived from the legislation afferent to each professional category. Currently, the DGA personnel sum up to 292 persons.

The officers of the Investigation Service of DGA are members of Judicial Police, being nominally appointed by decree from the Ministry of Administration and Interior, with the notice of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice. They operate under direct coordination, surveillance and immediate control of the prosecutor, according to the provisions of the criminal procedure code. Together with the operative structures, DGA owns a collegial body entitled "The Strategic Committee for supporting and assessing the DGA". This represents an innovation among the anticorruption structures in Romania, from the standpoint of the institutionalization of the collaboration mechanisms with the civil society, and it was founded by decree from the Ministry of Administration and Interior 1154/2006. This consultative body has monitoring, analysis and assessment tasks related to the DGA activity, and it gets together representatives of the Ministry and several NGOs .

Financially speaking, starting 01.03.2006, the general manager of DGA is the third credit release authority and is able to approve and use the approved budgetary credits.

The Corruption, Fraud Prevention and Investigation Directorate is managed by a military magistrate and is under immediate subordination to the MAPN, actually being founded by reorganising the antifraud section.

The Directorate's personnel comprise of both military cadres and civilians, with academic backgrounds in economics/finance, law, engineering, and IT.

The ANI is managed by a president with the rank of state secretary, assisted by a vice-president, both of them appointed by the Senate, pursuant to a contest or examination organised by the CNI, for a single non-renewable 4 years mandate.

The ANI president is the main credit release authority, completely state funded since the ANI budget is distinctly included in the state budget proposal.

The Agency's personnel comprise of the president of the Agency, the vice-president, integrity inspectors as public servants with special statute, public servants and contractual personnel. The maximum number of employees at the Agency is 200, a number which can be modified by state budget law at the president's proposal. Currently, the agency has 108 employees, of which 62 are integrity inspectors.

The integrity inspectors, the other public servants and the contractual personnel are appointed by contest or examinations and they are subject to the actual norms of their statute .

The organisational structure of the Agency, the attributions, the tasks and the liabilities of the personnel that is part of the Agency are established by the organisation and operation regulation, approved in 2009 . According to the Regulation, ANI comprises of 3 general directorates: the Integrity Inspection, the General Economic Directorate, the General Organisation and Human Resources Directorate and other field related structures. For the moment, the Agency has only a central structure, but following the president's proposal, the CNI can decide the establishment of territorial structures.

Concerning the National Council of Integrity, it is led by a president elected from among the members and it comprises 13 members. The members hail from the Ministry of Justice, the Ministry of Economy, the Romanian National Union of County Councils, the Association of Romanian Towns, the Romanian Municipalities' Association, the Association of Romanian Communes, high public servants, magistrates associations, legally constituted civil society organisations with activities linked to human rights, judicial, financial and economic fields, as well as the parliamentary groups in the Senate, national minorities group within the Chamber of Deputies. Public servants and the magistrates' associations are not represented due to a potential incompatibility of the statute of magistrate with the statute of member of the Council. Membership lasts 3 years and is renewable only once.

Currently, the National Anticorruption Directorate is managed by the Romanian General Prosecutor, through a chief-prosecutor, assigned by the Romanian President, at the recommendation of the Minister of Justice, and approved by the Superior Council of Magistracy. He is assisted by two deputy-chief prosecutors.

The Chief Prosecutor is the secondary credit release authority, the funds intended for the DNA being insured from the state budget and separately earmarked for the Prosecutor's Office attached to the High Court of Cassation and Justice.

The National Anticorruption Directorate is organised into five sections: the corruption fighting department, the department for combating crimes related to acts of corruption, the department for combating acts of corruption perpetrated by army officers, the department for criminal justice and the department for studies, human resources and professional training. These departments are managed by chief-department prosecutors, assisted by deputy-chief department prosecutors. The departments are established and at the same extent dissolved by decree of the Chief Prosecutor of the National Anticorruption Directorate and with the notice of the Superior Council of Magistracy.

At the national level, DNA operates with 15 services and 3 territorial bureaus, managed by chief prosecutors, headquartered within the prosecutor's offices attached to the courts, based on the particular district they belong to.

The DNA activity is carried out by prosecutors, officers and judicial police agents, experts in economics, finance, banking, customs, IT and other fields, auxiliary personnel, as well as economical and administrative personnel.

The prosecutors benefit from all the rights and obligations provided by their position as magistrates, while being subject to the regulations of Law no. 303/2004, republished with regard to the statute of judges and prosecutors and to the Code of Ethics for Judges and Prosecutors .

The officers and the judicial police agents from DNA carry out their activity solely within the Directorate, under the exclusive authority of the chief-prosecutor, and it is mandatory to abide by the directives of the DNA prosecutors. The transfer of officers and judicial police agents is executed by request from the Chief prosecutor of the DNA. Officers and judicial police agents cannot be assigned with any task by their hierarchic superior and as long as they are operating within DNA, they have the rights and obligations provided by Law no. 60/2002, with regard to the Police statute and the Code of ethics for police officers .

High qualified specialists in the economics, finance, banking, customs, IT and other fields are assigned by order of the DNA chief-prosecutor with the approval notice of the respective ministries. They are regarded as public servants and they carry out their activity under direct subordination, supervision and control of the prosecutors from the DNA. The specialists have the rights and obligations provided by Law no.188/1999 with regard to the Status of the Public Servant and the Law no. 7/2004 regarding the public servant's code of conduct .

Currently, within the framework of DNA, both centrally and in the territorial structures, there are 518 employees, among whom 121 are prosecutors, 155 judicial police officers, 52 specialists, 138 auxiliary personnel, and 52 employees within the economic-administrative framework.

3. Accountability

Although the DGA is directly subordinated to the MAI, the Strategic Committee of the DGA has the exclusive competence to monitor and assess the activity of the directorate. Regarding the DGA personnel's accountability, this is carried out according to Decree 400/2004 on the disciplinary regime of the MAI personnel.

When the General Manager of DGA is a magistrate – the assessment of his/her activity lies with the Supreme Council of Magistracy, on behalf of the MAI to which it is subordinated – the law requires an independent assessment mechanism, if it is asked for by the Minister.

From an institutional point of view, CNI is held accountable in front of the Senate for its activity, as the Senate can revoke the membership in the case of not fulfilling the appointment prerequisites or not observing the adequate integrity standards.

Regarding the ANI, neither the Senate nor the Council can exert any kind of institutional control over it. However, CNI can suggest to the Senate the dismissal of the president or vice-president in the case of managerial failure.

Referring to personnel accountability, each personnel category within the Agency is fully disciplinarily accountable according to the procedures applicable to their statute, and criminally accountable according to the common law of the matter.

The National Anticorruption Directorate is subordinated to the Romanian General Prosecutor and carries out its activity under the authority of the Minister of Justice. This is an anomaly of the Romanian judiciary system, taking into account that according to the Constitution and the national laws, the prosecutors are magistrates, are part of the judicial branch; they are subordinated to the executive authority .

Every year, the National Anticorruption Directorate carries out an activity report that is submitted to the Superior Council of Magistracy and to the Minister of Justice, the latter being obliged to present the conclusions further to the Parliament .

4. Integrity

Regarding the personnel's conduct, it is governed by three normative acts: the code of conduct of public servants, the code of conduct of contractual personnel and the code of conduct of judges and prosecutors. These norms are general terms and they are applied to all public personnel sharing the same statute. However for each institution there are special provisions in its organisational law applicable exclusively to the personnel within its framework.

Each of these codes includes special norms regarding ways to avoid acts of corruption, while for the ways to avoid conflicts of interests and incompatibilities, other sections from Law no. 161/2003 regarding measures for insuring the transparency of the public function, of the business field, together with the prevention and sanctioning of corruption are applicable.

Next to incompatibilities, conflicts of interests and common law injunctions, the Agency's personnel are forbidden from publicly expressing their opinion regarding the analysed cases. Moreover, one has the obligation not to disclose data or information encountered during the activity for 5 more years after leaving office, or risk criminal sanctions. The members of the Council must refrain from publicly manifesting or expressing their political convictions regarding the Council or the Agency's activity and cannot favour a certain political party or a certain organisation subjected to the same judicial regime as the political parties.

The position of prosecutor, judicial police officer or specialist within the framework of the DNA is incompatible with any other public or private function, except the academic activity at the university level. Also, the employees carrying out criminal investigations, specialists, as well as the speciality

auxiliary personnel must obey the rule of professional secrecy regarding information acquired during the time in office.

5. Transparency

The transparency of anticorruption agencies is a highly important component that entails several approaches, some justified and others inconsistent and illegal.

From this point of view, the General Anticorruption Directorate (DGA) is a well-known structure, which fails to communicate accurately its nature and the limitation of its anticorruption mandate. This institution provides a free-of-charge call-centre, as well as other information related to its activity. Within the Strategic Committee the minutes of the meetings are made public, therefore the transparency of their activity is more obvious.

The files in progress and its documents are not public, as it is a standard characteristic for any investigation document. However, as far as DGA is concerned there were certain uncovered features regarding transparency, more specifically the organisation and functioning norms of the institution and of the Strategic Committee. These issues must be made public, except for secret information.

Regarding the Fraud, Corruption Prevention and Investigation Directorate, it is suffering from total lack of transparency in violation of the exceptions regarding the secret statute of military documents.

As for the National Integrity Agency, it is too soon to evaluate its transparency. Following the procedures of every such agency, ANI as well manages documents that are not designated to be made public.

DNA documents are related to trial procedures and hence are not made public. However, DNA has developed its own communication strategy insuring its transparency towards the public. One of the pillars of their strategy consists of the information provided by the mass-media regarding analyzed cases, as well as the annual reports including statistical data about their budget, personnel and outcomes.

As far as income statements are concerned, it is mandatory for all specialized employees of the anticorruption agencies to submit them. These are made public and they are accessible on the specific website of the agency they work for. ANI is in charge with controlling the process of submitting and ensuring proper and accurate content. Not fulfilling these provisions can incur disciplinary, civil or criminal accountability.

6. Complaints and Enforcement mechanisms

Regarding the whistleblowing process, the protection provided by Law no. 571/2004 is applicable to everyone who reported misconducts and law infringements within public authorities and institutions in the central public administration framework, local public administration, Parliament, Presidential Administration's working apparatus, cultural, education health and social assistance public institutions, national companies, as well as the national companies with state capital, except for the magistrates.

7. Relationship to other pillars

The anticorruption agencies are organised and enforced as specialised structures within several different pillars – the executive, police and justice. According to their activity, it is necessary for them to collaborate, whenever they analyze and investigate certain cases that involve either persons or cases within their area of expertise.

The DGA operates as a structure of the judicial police for the DNA, while the National Integrity Agency reports to the Prosecutor's office the facts that they ascertain.

None of the Romanian anticorruption structures use a differentiated investigation procedure, depending on the person's statute, except the DNA. It applies the common law procedure for most of the perpetrators, yet if they are ministers or MPs, the special provisions within the Romanian Constitution and within Law no. 115/1990 are to be applied.

From this point of view, Law 115/1999 with regard to ministerial accountability had had a very sinuous trajectory and the only palpable outcome resulted from this successive amendments process that made it almost impossible to enforce the regulation. The issue has been solved by the Decision of the Constitutional Court no. 270/2008, which ruled that the President must give a favourable notice in order to initiate the criminal investigation for ministers and former ministers, the Chamber of Deputies for the ministers and former ministers who have the status of deputies and the Senate for ministers and former ministers who have the quality of senators . The new procedures require that the Prosecutor's Office demand the positive notice in order to press charges from the Chamber where the member or former member of the Government belongs to and exerts its parliamentary attributes even when the investigation does not concern his/her public votes or opinions .

B. Actual Institutional Practice

1. Role

Romania's Anti-Corruption agencies have been claimed to enjoy full political independence and a fair economic independence. No influences on investigations were reported, despite several media allegations on that.

As for the functional independence, DNA and ANI have been under the supervision of the Parliament, respectively of the Senate in terms of reporting, while the DGA has been in direct relationship with the Ministry of Administration and Interior, regarding the functional subordination. All subordinations were claimed to be done for functional reasons - meaning bureaucratic proceedings.

ANI and DNA have reportedly faced occasional problems in terms of receiving approval on their respective budgets, but generally for managerial reasons, rather than for reasons of political influence. A certain influence on economical issues has been, nevertheless, noticeable when raising the question of budget approval.

Despite several public debates on the independence of the ANI, experts from the inside of the institution consider that the current legal framework provides three main safeguards guaranteeing its political independence: first, ANI has been set up so as to report on the budget, and especially on achieving managerial objectives, but not on their investigative activities. Second, ANI has not been settled to report directly to state institutions, but to the National Integrity Council (CNI) which had to forward the report to the Senate, and, therefore, served as a buffer. Third, the Integrity Council has

been having a diverse composition, which prevented any political interest from surfacing in the Council. On the same token, a 2/3 majority was required for taking decisions. The common practice has been to reschedule issues which were too controversial until a consensus was reached.

2. Resources and Structure

DNA's budget is allocated by the Parliament. The chief prosecutor is responsible for all economic transactions and the economic department registers financial activities.

Regarding the appointment procedures, except for the contractual personnel, all staff members were appointed on a standard procedure, involving the DNA in the selection of the candidates and the Superior Council of Magistrates (CSM) in the final decision on their appointments. Policemen were recruited following a transfer order of the Public Ministry, but they were paid by and accountable to the Chief Prosecutor of DNA. The registrars and the contractual personnel were contracted after contests carried out by DNA itself. The Chief Prosecutor DNA and his deputies have been appointed by the Romanian President, based on the Minister's proposal and the CSM's approval.

Concerning audits, it has been said that DNA carried out regular and ad hoc audits. The auditors did not belong to the economic department; they were subordinated directly to the Chief Prosecutor. Thus, the department carrying out the economic operations is different from the one carrying out the audits. External control was put into effect by the CSM, especially in the case of external complaints.

The DGA submitted budget requests to the ministry each year, in order to be forwarded to the Government and further sent for the parliamentary approval. The approved funds were to be administrated by the financial department. The final decisions on its administration belong to the general manager of the institution.

With regard to the DGA's personnel, the three managerial positions were decided on by the Minister of Administration and Interior, to whom they are accountable as well. The general manager decided on the rest of the staff.

Concerning audits and controls, the DGA had its own internal control office carrying out these activities. It has the competence to execute ongoing as well as ad hoc audits when professional conduct-related situations appeared. This department had the ability to suggest disciplinary measures as well.

The president of the ANI was in charge of setting up the managerial objectives and supervising the progress of objectives' achievement, but until the moment of writing, no report was approved by CNI.

The President of the ANI was responsible for the execution of the budget, the economic director was responsible for specific operations such as payments, the Minister of Finance had to analyze the budgetary needs of ANI, but the ultimate decision belonged to Parliament, which is entitled to approve the national budget, within which the budget of the ANI is separately detailed.

Regarding appointment procedures for the staff, there were three main actors involved in the decision-making process: for contractual employees, the decision lies fully within the agency; for regular civil servants, decision-making involved both the agency' s management and the National Agency of Civil Servants. As for the integrity inspectors, there was a special procedure involving the National Integrity Council in designing the rules and the National Agency of Civil Servants in evaluating the applicants. Considering the president of the ANI, the full competence for its selection

lies on the CNI, who is in charge of designing the afferent procedures and of running the contest, while the appointment is made by the Senate.

Regarding audits, it was claimed that both internal controls and audits were in place. For instance, in 2008 an audit of every department was made. Still, audits were said to function improperly. As for external audits, they were carried out by the Court of Accounts.

3. Accountability

As the three institutions were hierarchically structured with regard to activity oversight, the personnel from every department were overseen by department chiefs, and the directors were supervised by the managers of the institutions.

In the case of ANI, the general activity of the agency has been overseen by the National Integrity Council.

4. Integrity

DNA's staff had no dedicated Code of Conduct, but the magistrates, the policemen and the civil servants were compelled to follow their respective deontological codes instead. The breach of the magistrates' code was considered to be a disciplinary infringement subject to the Superior Council of Magistracy's decision. No recent cases of conflict of interest were reported.

As DGA's staff have police officer status; it is mandatory for all personnel to respect the deontological code of police officers. Additionally, the ROF (Organization and Functioning Regulation) comprises of provisions on rights and duties of the staff members. Disciplinary evaluations were based on the obligations included in these codes or regulations.

ANI had no specific Code of Conduct either, therefore the general provisions on the matter were applicable. For the National Integrity Council there were specific articles covering issues like conflicts of interest etc. The Council was forced to adopt these specific articles since there were cases of conflict of interest among the Council's members. For ANI, the introduction of a Code of Conduct was described as being a managerial objective, especially for integrity inspectors, goal that, at the moment of writing has not been achieved.

Efforts were made within this institution to check the National Integrity Council's members for potential conflicts of interests. Regarding these investigations, there was criticism that they were not carried out efficiently and fairly. The distribution of some cases to the persons in charge of inspections appeared to be questionable.

5. Transparency

The three Anti-Corruption Agencies had competences in carrying out investigations and, with regard to ongoing investigations, only a limited level of transparency was possible. By virtue of similar structures and similar objectives, these three Agencies had also similar transparency policies, namely that facts and decisions were made public only after finalizing investigations. However, there were cases in which confidential data from the files reached the press before file closure. Information was normally delivered to the public, mainly via the Agencies' WebPages, especially with regard to work

methodology, recruitment (job descriptions and appointments), and administrative activities. Usually, they also issued press-releases on finalized investigations.

The DGA had a so-called "green line" where citizens could get information about the Agency's activity or could submit petitions and complaints. As for ANI, informational campaigns were carried out in order to make this institution known.

6. Complaints and enforcement mechanisms

Deriving from the hierarchical structure, complaint resolution was similarly organized in all the three agencies, meaning that complaints were addressed to the superiors, to management and to disciplinary commissions. The Law 571/2004 on whistleblowers' protection also applied to the three Agencies. In any case, recourse to the courts was the last level of complaint resolution.

Inside the DNA, there was a special complaints resolution commission set in place, dealing with complaints which could not be solved within the hierarchical structure. The aforementioned deontological code functioned as a basis for sanctions. Inside the DGA it was possible to forward complaints to the general managers if the hierarchical complaints resolution did not work. It was their responsibility to delegate investigations.

At ANI, only administrative complaints such as the ones related to procurement were handled internally. Complaints regarding personnel were addressed to the National Agency of Civil Servants. Complaints regarding budget execution are addressed by the Court of Accounts. Furthermore, the National Integrity Council has to deal with matters related to integrity, conflicts of interest, unjustified wealth etc. within the personnel of the Agency. Accordingly, if there were cases of incompatibilities, assets control, conflict of interest the complaints were to be made to this Council, which made the verifications and informed the Senate for a final decision.

Regarding enforcement, it was claimed that ANI fined last year quite a large number of people working in public institutions because they did not submit their declarations of assets on time and about half of them were taken to court. DGA reported to have received more than 100 inquiries on corruption accusations, unethical behaviour etc. coming from the activity area it covered. DNA claimed that the overwhelming majority of their notifications were taken into consideration by Courts.

7. Relationship to other pillars

Romania's Anti-corruption agencies are mostly interacting with the police and all the public authorities belonging to the legal system. A functioning relationship with prosecutors and with the courts was a prerequisite for the work of these institutions. DNA had to report to the Parliament and ANI to the Senate. The three Agencies have also interacted with one another. DNA maintained intense relations with the Superior Council of Magistracy. A representative of the DNA has normally participated in the aforementioned Council's discussions, for instance. Constructive cooperation was also reported with regard to DNA's relationship with the DGA.

It was reported that there were problems in investigating public persons, mainly because of their media impact. If this external pressure did not affect, at least it politicized the outcome of the

investigations and made them appear as having been run differently, even though it was difficult to prove that this was the case.

8. Past Developments and Future Prospects

DNA's operative independence has been threatened by possible modifications of the current institutional and legislative framework, which has been claimed to be suitable enough for assuring an effective autonomy. For instance, the government tried to cut DNA's competences in investigating ministers.

An assessment of the ANI in terms of performance and internal functioning could seem rather rushed. However, recent investigations on members of the managerial team of the Agency indicated that there could be problems in terms of internal integrity. DGA's independence may be threatened by the Minister's interference.

The institutional setup for the fight against corruption has not been irreproachable when put into practice. Its performance has been increasingly perceived as following a descending trend. If, for instance, in 2007, opinion polls showed that only 17 % of the population considered that the effectiveness of the anticorruption agencies had decreased, in 2008, they proved that the percentage of those not trusting the aforementioned institutions amounted to 29. The registered decline in trust might assumingly be explained by the apparent lack of concrete action with regard to media-covered corruption cases in which former ministers or ministers in office, as well as members of Parliament were involved. This lack of action did not only corroborate the perception that these agencies were suffering from political interference, but highlighted the lack of real parliamentary will to assure a complete independence of the three institutions.

9. Stakeholders' recommendations

- The main steps towards the improvement of the standing of the anticorruption agencies within the national integrity system include measures regarding:
- The improvement of the capacity of territorial branches
- The enhancement of recruiting criteria and of institutional capacity
- The involvement of civil society organizations in educating citizens about the role and mandate of anticorruption agencies
- Improving cooperation between civil society actors and anticorruption agencies in order to promote the anticorruption message towards the citizens

POLITICAL PARTIES

Capacity	Governance	Role
3 (moderate)	1(not at all)	2(small extent)

Political parties have remained a weak pillar within the National Integrity System.

Notwithstanding their capacity to contribute to the overall functioning of society by virtue of their organizational nature, they have yet to play am active and pro-active role herein.

On the contrary, their opacity with regard to their internal governance, as well as their obscurity in terms of financial and human resources, have prevented political parties from being reliable pillars of integrity.

A. Legal Framework

Dan SULTĂNESCU

1. Role

The legal framework concerning the activity of the political parties must be analyzed from two perspectives: there are legal elements that directly define aspects regarding the organization and funding of the political parties; there are also provisions that prescribe the political activities within a set context (such as electoral campaigns).

The first category of laws comprises of Law no. 334/2006 concerning the funding of political parties and electoral campaigns and Law no. 14/2003 concerning political parties. The second group of norms entails the rules that govern the electoral competitions of the parties (Law no. 67/2004 concerning the election of the public local authorities; Law no. 370/2004 concerning the election of the President of Romania; Law no. 373/2004 concerning the election of the Chamber of Deputies and the Senate; Law no. 33/2007 concerning the organization of elections for the European Parliament).

The general framework (set forth by Law no. 334/2006 and Law no. 14/2003) establishes several conditions for the organization of the political parties. Among these, the most important encompass the obligation of the political parties "to promote national values and interests, political pluralism, to contribute to the forming of the public opinion by participating with candidates in the electoral process and in the establishment of public authorities". The activity of parties that through their actions, propaganda or their internal statute infringe upon the Constitution is forbidden by law. Law no. 334/2006 that abates Law no. 43/2003 concerning the funding of political parties states the conditions under which the financing of the political entities is allowed. The main income sources are represented by donations, member subscriptions, incomes derived out of the parties' collateral activities and state funding. The electoral laws establish a minimum set of rules on the ways to spend

the funds during electoral campaigns (the rules are complementary to the rules stated by Law no. 334/2006).

The independence of the political parties is to be analyzed from two perspectives: the nature of the financial relations between the political parties and the state and the nature of the political relations between the political parties and public institutions. On the financial level, one can observe that parties have basically only two constant and predictable sources of income - member subscriptions and state funding (the collateral non-commercial activities of the parties are currently underdeveloped). In this context, although they cannot rely solely on state funding, political parties must provide for their revenues (the essence of the political competition enhances the link between the parties and the state, if we admit that a more generous funding ensures tighter relations between the parties and the state). The main variable in the equation of state funding is the number of votes a party receives during elections. At the same time, the sums received by parties from the state are far smaller than the cost of an electoral campaign .

As to the stated or inferred responsibilities of the parties regarding the fight against corruption, several facts must be acknowledged. On the one hand, the problems posed by corruption are taken into account by the Romanian state and there are several laws that address the issue. The National Security Strategy of Romania (2007) states corruption is a threat to national security. In spite of that statement, although political parties are juridical entities, they are not part of the group of actors responsible for enforcing these laws. The actors responsible for these matters are solely public institutions: the National Integrity Agency, the Court of Audit, the European Anti-Fraud Office, the National Authority for the Enforcing and Monitoring of Public Acquisitions, the National Anti-Corruption Department, the National Council for Solving Litigations.

The set of laws regarding the fight against corruption does not state a direct role that political parties should play – Law no. 161/2003 concerning some measures to ensure transparency in wielding public office and in the business environment incriminates the act perpetrated by a person benefiting from the use of his/her position in a political party, stating the incompatibility between holding public office and a leading position in a political party. In a similar vein, Law no. 78/2000 concerning the prevention, discovery and punishment of acts of corruption declares that membership in a political party constitutes an aggravating circumstance if a person uses this position to unjustly obtain money, goods or other unlawful advantages. The law is addressed specifically to party members (article 1, paragraph f), but only when it concerns leading offices within a political organization. On the whole, Romanian laws do not see political parties as an integral element in fighting corruption.

2. Resources and structure

According to existing data from the Registry of Political Parties, held by the Bucharest Municipal Court, at the beginning of 2009, a number of 40 parties are currently operating in Romania (in addition to the parties there are a number of organizations of ethnic minorities that enjoy a superseding legal regime concerning participation in electoral campaigns). Conventionally, the party system is defined by the political organizations represented in Parliament (the parties that passed the electoral threshold): PSD (who entered an alliance with PC), PD-L, PNL and UDMR (which has the legal status of an organization representing the Hungarian minority).

The number of party members in the leading three parties (PSD, PD-L and PNL) is 492.711 (approximately 5% of the voting population). These figures are however questionable, as the data is not up-to-date (figures concerning the numbers of members that PSD and PNL have are 3 years old). As there is no legal imperative for parties to declare their real numbers, the Bucharest Municipal Court cannot crosscheck the lists presented by the parties - the Court only monitors for legal requirements being met separately in each case. Consequently, these figures are not controlled by any legal entity.

According to Law no. 334/2006 concerning the funding of political parties and electoral campaigns, the income sources of a political party are the member subscriptions, the donations , the incomes collected from non-trading party activities, and state funding.

Although having a political experience of only 20 years, the Romanian post-communist party system has been characterized by an evolution similar to the one experienced by Western European systems. Nowadays, a tendency of overlap between states and political parties can be noticed. Being either a relation of dependency of the parties on the state (cartel party) or a partisan capture of the state by the parties (partitocracy) the phenomenon exists in Romania and is being generated and maintained by the funding system of the political parties. According to the law, political parties receive a sum equivalent to 0.04% of the national budget . This sum is divided between the parties and there are several obligation the parties have to meet when spending the sum (article 20 of the law expressly states what the state money can be spent on).

Starting with 2008, political parties receive their funding through the budget of the Permanent Electoral Authority and must keep a separate tab on the sums received from the state .

As to private funding, the law imposes a set of limits on the parties: the member subscription fee cannot surpass 48 minimum wages; the donations have to be smaller than 200 minimum wages, 500 minimum wages in case of the juridical entities. The Emergency Ordinance no. 98/2008 concerning the reform of Law no. 334/2006 has increased both limits – in a financial year that comprises of two electoral campaigns donations from citizens can amount to 400 minimum wages, whereas donations from legal entities must not surpass 1000 minimum wages, for each electoral campaign. The donations received by a party in a fiscal year cannot be larger than 0.025% of the state's budget (0.050% in an electoral year).

The law imposes some semi-transparent conditions for the benefactors. On the one hand, all donations must be registered with the accounts of the party, being compulsory to check and register the identity of the benefactor. On the other hand, at the request of the donor, his/her identity can remain confidential if it does not surpass 10 minimum wages. The total amount of confidential donations received by a political party cannot surpass 0.006% of that year's national budget. All benefactors that have financed a political party with sums larger than 10 minimum wages and the total sum consisting of confidential donations are published in the Official Monitor of Romania, Part III, before the 31st of March of the following year.

The EO no. 374/2008 concerning the reform of the methodological norms of enforcing Law no. 334/2006 concerning the funding of political parties and electoral campaigns approved by the EO no. 749/2007 states that administrative formalities that go with the donation procedure have been simplified by eliminating the requirement of offering certain information concerning the benefactor, in order to increase transparency and facilitate verification (the FD1a and FD1b forms). Obviously, the existence of much more data about the donor increases the transparency of party financing, but the

removal of some appendix from the Law concerning the funding of political parties and electoral campaigns limits the verification activity.

The law does not contain any provisions regarding the transparency of private funding - according to the legal definitions, there is no incompatibility between donations or services provided by a company that has contracts with the state. At the same time, there are no provisions for the control of a company that wins public contracts after sponsoring a political party, on its accession to power.

As a general observation, political parties are under less scrutiny than other public funded institutions. At the same time, the funding of the political parties is neither treated nor perceived as a unitary and integrated domain, with all its key aspects (public authorities, civil society, and political parties).

3. Accountability

There are several rules stated by Law no. 334/2006 regarding the way parties form and spend their own budget. Foreign funding during an electoral campaign is strictly forbidden. The law imposes certain thresholds for spending during a campaign (article 30). State funding can cover only certain types of expenses. There are limits on the sums that the state awards to parties and the amount of money parties can acquire either through donations or membership subscriptions.

The control over political funding and spending is assigned to two institutions. On the one hand, there is the Permanent Electoral Authority (AEP) in charge of distributing the public funds and verifying the role and the activity of the parties. On the other hand, the actual dynamics of the control procedures are a complicated matter. The law explicitly states that the role of the Court of Audit in controlling the funding of the parties will be maintained (article 35, paragraph 2) – the provisions regarding the Court of Audit have been active up to the 1st of January 2007 (the term was prolonged afterwards to the 31st of December 2007, by the EO 8/2007). From that day onwards, the AEP has become the leading authority on party funding control. The parties have an obligation of cooperating with the AEP in its yearly control procedures or in the controls initiated at the behest of any citizen who has knowledge of an irregularity or infringement of the law perpetrated by the political parties. The regime of informing the PEA is quite harsh – any citizen can petition the PEA, but offering false information is punishable by law (the punishment is up to three years detention). In addition to the obvious negative impact of such a false accusation, the penal character of the punishment severely discourages public scrutiny into the financial affairs of the political parties.

4. Integrity

The law on political parties does not set up any mechanisms of integrity, meant to condition the internal functioning of political parties. Under the form of arbitration committees such mechanisms do exist but their mention in party statutory acts is first of all the result of obligation required by law. Article 15 of Law no. 14/2003 stipulates that arbitration committees are created for solving disputes among members of one party or between parties and the leaderships of party organizations. An arbitration committee is organized and functions under regulation approved by the statutory body which has to ensure the freedom of speech and the right to a fair trial for all sides, as well as fair decision procedures.

The policy regarding human resources in partisan organizations is administered in a rather weak and general manner, and the decision of political commitment (admission of new members) is trusted to "empowered bodies". According to article 16, paragraph 1 of Law no. 14/2003, "the empowered bodies of the political party decide upon the admission of new members under the terms established by the statutory document following written requests by the applicants". Also, according to paragraph 3 of the same article, "the gain or loss of the position of party member is subject solely to the internal jurisdiction of the party, according to its statutory document". Therefore, the party establishes its own criteria and its own integrity limits.

A distinction must be made between being a member of a political party and aspiring to obtain public office through partisan membership. Firstly, the law cannot set many limits because that might infringe on the constitutional right to associate. From this point of view, the rule which regulates the existence and functioning of political parties conditions the obtainment of membership on two factors. First, only citizens who, by Constitution, have a right to vote may be members of a political party (article 6), and, second, persons who are forbidden by law to associate politically cannot be members of a political party (article 7). In the latter case, there are special laws that limit and condition the access to public office.

The statutory acts of political parties contain provisions imposing certain standards of morality and integrity to their members (in most cases these are loosely defined), as well as bodies called to supervise their implementation. For instance, people who have been deprived of liberty through a justice sentence or those proven to be collaborators of the former Securitate cannot become party members (PNL); people who are not deemed and known as honest citizens, with a good reputation, cannot become members (PDL); "morally and politically compromised" individuals or "those who have suffered convictions for betraying the interests of the country, or have committed acts of corruption, violent crimes and other serious antisocial deeds" (PSD) cannot become members and also "people currently prosecuted for various crimes can be accepted only after the pronouncement of definitive sentence of their cases" (PSD). For this final situation, the statutory stipulation is meant for those wishing to become members and not those already in this position. Certain parties, such as PNL, condition the admission on the applicant's adhesion to the "Ethic Code" of the organization, respecting this code thus functioning as an obligation for the members.

A closer inspection of the members should occur when they aspire to public office, but in this case the evaluation criteria are also very permissive. Furthermore, they are not regulated by the parties' statutory acts.

Regarding the progress within the party and the access to leadership positions, the conditions and/or incompatibilities are mostly absent. In most cases there is a formal condition – length of membership – and image-related demands. Nevertheless, it has to be mentioned that Romanian political parties hint, through statutory stipulations, at the prestige and moral authority of the would-be members, competitors for internal leadership positions or public office. Also, they include certain bodies with such tasks: honour and arbitration commission, ethics commission, honorary council, commission for arbitration and moral integrity etc. It has to be said that Law no. 14/2003 stipulates the obligation of parties to create such structures – an arbitration commission that mediates internal disputes. Varying with each party and its specific organizational blueprint, these bodies may differ in status: some issue decisions (impose penalties), others solely investigate certain cases; some have specific tasks, others have their own regulations (party statutory acts are more or less transparent towards that).

Considering statutory dispositions, these internal bodies do not seem to have great autonomy or a very active (central) role in the activity of political parties.

Taking into consideration that internal party democracy is a guarantee of integrity, the Law of political parties obliges political organizations to offer to their simple members and/or representatives direct ways for participating in the decision-making process. Within the General Assembly - the most representative and legitimate body - members decide upon major aspects for the party (they vote for the Statute, the political program, the leadership and other strategic and identity documents).

The General Assembly of members and the executive organism, irrespective of their name given by each party statutory act, are mandatory leadership bodies for a political party and for its territorial organizations (article 13, paragraph 1). The General Assembly of the members or of their delegates at the national level is the supreme decision-making organism of the party. Its meetings take place at least once every 4 years (article 4, paragraph 1). The delegates are elected to participate in the assembly by the territorial organizations, by secret vote (article 14, par. 2). However, major decisions are not always important decisions. Romanian political parties have developed pyramid-type hierarchies, most of the decisions thus being taken by organism at the top of the hierarchy (in which situation, the decisional organisms at the bottom of the party merely legitimate the decisions of the leaders, by a simple formality).

5. Transparency

Bearing in mind the role classically attributed to political parties – that of "link" or "conveyor belt" between civil society and state – transparency is essential. More transparency means more democracy. In this case, transparency means opening internal mechanisms (primarily the decision-making ones) towards members, as well as towards the public, and on the other hand exposure of the financial resources, of the income sources and of the way the funds at the disposal of the party are spent.

Regarding the first aspect, Romanian political parties are forced to manifest minimum transparency; Law no. 14/2003 imposes minimal organizational conditions meant to reduce centralization and the build-up of political power at the highest echelons of the party. Therefore, according to article 10 of the cited law, the statutory act of the political party must include, among others: the procedure of electing executive bodies and their competencies, along with the competency of the general assembly of members and their delegates, bodies empowered to bring forward candidacies in local, parliamentary and presidential elections, the competent body that proposes the reorganization of the party or to decide political or other forms of associations, disciplinary punishment and compliance procedures etc.

Obviously, these are formal clauses respected by the Romanian political parties. According to each organization's specificity (the context and conditions that shaped its inception, to their evolutions and even based on external conditions) political parties have developed structures which are more or less centralized, with decision-making concentrated at the top, where the transparency level is less significant, or lowering it to the basis of the party where, despite the multiplication of the decision centres, the autonomy corresponding to the level of transparency is greater.

Regarding the financing of political parties, it is regulated by Law no. 334/2006 regarding the financing of the activity of political parties and electoral campaigns. This law establishes rules for

public and private financing, regulates in a distinct chapter the financing of electoral campaigns and stipulates public control on the way in which political parties manage their financial resources .

6. Complaints and enforcement mechanisms

In the theory of political parties, there is a typology separating flexible and rigid parties. As an ideal type, the flexible party has a lax organization, does not impose strict voting rules or a strict party discipline. On the other hand, the rigid party has clear and precise internal rules, mainly due to its size, and any deviation is punished.

Although this typology is general and even anachronistic, it might represent a guideline for analyzing Romanian political parties. From this point of view partisan structures are mostly rigid parties, without completely corresponding to this model. Standardization may be observed mainly due to the provisions of Law no. 314/2003. This is due to the fact that the statutory act of any political party must contain rights and duties of the members, as well as disciplinary sanctions and compliance procedures.

This is why, excepting the Democratic Alliance of Hungarians in Romania, whose existence and functioning are not regulated by the law of political parties, the statutory documents of all political parties include, in the chapter regarding "obligations/duties of the members", provisions such as: respecting the statutory act and political program, respecting the decisions of the leadership bodies, respecting party discipline etc.

As a general rule, parties have tried to develop formal and especially informal mechanisms to deal internally, as opposed to externally, with any problem, dissatisfaction, conflict or misunderstanding. That is why sometimes it has come to situations when only certain individuals were allowed to appear in the public eye and send out political messages. For political and electoral reasons, political parties prefer not to "wash their dirty clothes in public". The trend is to create less publicity around internal conflicts. Consequently such conflicts are settled down in different and non-transparent ways toward the audience.

A particular situation is PSD which, formally, seems to pay more attention to this subject. One duty of their members is to contribute to "the formation and promotion of a democratic working formula, through the acceptance of the plurality of ideas and of the diversity of freely expressed opinions, in the organized setting of the party, by obedience to the majority decisions and the decisions of the hierarchically superior bodies and to ensure their execution". Also, the statutory act of PSD includes a distinct section called "members consultation", which offers to the leadership structures the possibility of consulting members, by internal referendum or debates and voting. The self-professed purpose of these mechanisms is the "development of party democracy" and identifying "chief problems for the party on a national, regional or local level, as well as solutions for including these in the political and electoral offer, in the governance or legislative program and in the party statutory act". They hold a formal character and they have not been used visibly on a national scale.

Regarding the enforced sanctions, these seem to fall into a standard pattern, ranging from written warning to expulsion. The statutory documents of all parties mention, according to Law no. 14/2003 and in a more or less elaborate manner, punishment procedures and competent bodies for applying them. But all these democratic mechanisms meant to ensure the transparency of the parties and the application of integrity criteria are mostly used for political purposes. These internal instruments are

usually activated in internal confrontations, used to legitimate or dispute actions and positions of power.

The statutory acts of Romanian political parties do not institutionalize mechanisms and procedures of external control. In other words, there are no stipulations that allow public society and the public in the broadest sense to intervene, even formally, to signal the emergence of internal problems. The only inputs allowed are the image-based ones and they only work if they are visible in the media. There are parties such as PSD and, less explicitly, PD-L, which by their statutory acts wish to develop relations with organized civil society, but eventual collaborations do not include their functioning and the problems regarding the internal mechanisms of the party. Basically, political organizations are closed to external pressure, although by their legal definition as well as by their public funding have an obvious public dimension.

7. Relationship with other pillars

By the very nature of their activity and specific functions, political parties interact, in one way or another, with all sectors of the National Integrity System. In addition, through the activity of the MPs, which assume allegiance to a political party, they are artisans of the System. By taking part in the legislative process, partisan organizations configure, shape and guide state institutions and society. Political parties are among those responsible for the functioning of the institutional system.

More obvious is their relationship with the Parliament and the Cabinet, since political parties decide the formal, as well as the functional shape of these two public authorities. This connection also explains the higher concentration of power in that area. Also, parties are categorically linked to all institutions which, by their functions and attributions, form the anti-corruption system.

Alongside this general dimension of the relationship, the political party sphere intersects more directly with the Permanent Electoral Authority, Court of Accounts, mass-media, organized civil society and the business sector. In the case of the Court of Accounts, and also of PEA up until 2008, the relationship is institutionalized, based upon the distribution of public subsidies from the state budget to parties and the control of their spending and of electoral campaigns, in the other cases the contact with the parties is more unpredictable, harder to control and measure.

The interaction of political parties with the media is obvious as the press is the main channel used to convey political messages. It could be argued that access to press is vital for parties and for political actors in general. At the same time, there are parties who are associated – at least as a perception – with the media through their leaders. It is clear though that the relationship is relevant for both parties involved.

As for the relationship between parties and civil society organizations, this is at most regulated through the parties' statutory acts. PSD is distinctive at this level, as they favour, through a whole chapter, their link with the Social Democratic Institute, trade unions, employers' representatives and revolutionaries' organizations. Nevertheless, the provisions are general, mostly principles that express a formal openness of the party towards those areas. As a specific aspect of the connection between parties and civil society, the tendency of political organizations to attract among their ranks – and offer access to public office to – non-partisan voices from the public space, intellectuals, opinion-makers and representatives of the organized civil society is obvious.

B. Actual Institutional Practice

1. Role

The Romanian sphere of political parties has not undergone significant changes in terms of standing within the National Integrity System. Their leading position in the last three years corruption rankings proved that they continued to be placed among the most corrupt institutions. Accordingly, their perceived role in what may concern promoting integrity, be it directly, or through institutional behaviour, has been minimal.

Several reasons may be invoked. The general lack of citizen trust in the overall functioning of political parties and in their capacity of representing groups and producing change towards increasing voter satisfaction have constantly undermined the position of political parties as pillars of integrity. This state of affairs has been regularly confirmed by the scarce mobilization of voters in electoral periods . As well, the relative unpredictable external behaviour of the political parties and their circumstantial way of acting prevented them from increasing their mass of supporters and, therefore, from acting as stable representatives of group requests. Furthermore, the opacity of their internal governance was a strong contributing factor to the existing place of the political parties within NIS in terms of public integrity input.

2. Resources and Structure

On the financial level, political parties have had two constant and predictable sources of income - member subscriptions and state funding. However and obviously enough, these two ways of financing didn't provide the bulk of the financial means of these political organizations- the donations.

For instance, the costs of the political campaigns, according to media, were regularly larger than the official cost the parties themselves declared. Still, the difference between the official budget and what the media estimated has not been resolved by either the media or the public institutions verifying party finances, and has remained a subject belonging to the political folklore rather than a topic investigated and solved through judicial decisions.

The issue of membership subscriptions brought forward that political parties did not have an up-to-date registry of their membership. This fact didn't allow them to monitor the cash flow stemming from this side and, therefore, to count on it, or to measure their support amongst the adherents. Furthermore, the same situation went hand in hand with the fact that exclusion for not paying the subscription fees was not generally enforced by the political leadership. Therefore, given that membership fees have not proved to be a reliable and predictable source of income, state funding remained the stable source of revenue that allowed parties to cover their ordinary expenses (rents, utilities etc.).

Put in relation to the parties' stance on transparency and integrity, this situation has meant that although at a discourse level parties might have sustained greater transparency and a tighter control, they were unwilling to proceed on that course, not necessarily because they depended on illegal financing, but because parties have developed a very functional system of finding funds.

There was a degree of solidarity among parties on that level – both the electoral system and the state-funding mechanisms have been favourable to parliamentary parties. The privileges the parties enjoyed

were the result of a mix of party action and institutional action: the pensions and other facilities MPs were entitled to were not so much a matter pressed on by the parties, but by the MP's themselves.

3. Accountability

Within the first three parties in terms of electoral support, institutions with a quasi-jurisdictional task have been set up as bodies aiming at solving internal disputes and actualising accountability: the National Commission for the Statutory Act, Ethics and Disagreements, for PDL; the National Commission for Arbitration and Moral Integrity, for PSD; the Ethics Commission and Honour and Arbitration Commission, for PNL. The practice of these bodies lacked the formality of the legally-requested body and their mediatory role and their existence was rather a matter of legal requirement than an answer to internal needs. In their history, these commissions have not issued highly-visible decisions and did not treated accusations of corruption brought to party members. In these cases the preferred course of action was self-suspension from party membership and party leadership, without waiting for decisions from these internal bodies .

4. Integrity

As seen above, the lack of a real functioning of those ethics bodies, as well as of other institutionalised mediatory forms of resolving internal integrity issues have prevented political parties from being an integrity lever in the public sphere, even though their institutional character and capacity of mobilization would have permitted that. On the contrary, political parties continued to be the bearers of ill reputations in terms of intra-partisan and inter-partisan behaviour. The generally accepted stanza about the way of acting of party regimented political actors was that, despite what was disclosed in the public arena, real politics was backstage politics, structured by the interplay of the personal interests of those minorities in power.

5. Transparency

The transparency of the parties both in terms of activities and governance has not been subject to peculiar changes in recent years. Firstly, there has constantly been a communication lag between political parties and the constituents regarding several key aspects of the political dynamics: parties did not disclose their full membership and their funding did not represent a matter of public debate, except for electoral campaigns. Secondly, the institutions responsible for the enforcement of the law have not applied visible sanctions to the political parties, in spite of dire accusations concerning this aspect, brought forward in the media.

However, it deserves to be mentioned that most of the Romanian political parties have enhanced their communication strategies by making use of online information means.

6. Complaints and enforcement mechanisms

All parties have imposed limits to the freedom of expression to their members. There were, nevertheless, certain nuances that have created two patterns: certain parties (PD-L or PNL) forbade their members from participating in actions or expressing themselves publicly against the politics,

interests and/or decisions of the party; in other cases (PSD or PC), there was not an express interdiction from publicly stating personal points of view regarding internal party life; in such situations, interdictions affected only public messages transmitted in the name of the party and contravening to the party's orientation and decisions.

7. Relationship to other pillars

Parties have had tight relations with those institutions and sectors that depended or influenced in a way or another political life. Apart from the institutional relationship with the Executive and the Legislative, and the Local Government, parties have mostly interacted with the Media and the business sector. These latter relations have been more problematic than the fairly institutional ones.

The questionable intermingling between media and politics was obvious in the case of party leaders or politically emblematic figures that possessed media companies, be they national or local. The assumption that some media outlets were used as political tools was generally confirmed by a highly politicised journalistic discourse, which was not openly assumed as such. Despite the public's general awareness of this state of affairs, media and politics continued to have obscure interrelations, constantly avoiding clear positions and claiming impartiality.

The interconnections between political parties and the business sector have been highly discernable in the area of public contracting. Most of the corruption accusations from this sphere were related to the political leaders' involvement in influencing contract awarding.

8. Past developments and future prospects

During the last three years, political parties have resisted change in terms of improving their standing within the National Integrity System. Despite significant modifications brought to the legislation regarding the control over party financing and the creation of a permanent authority aiming at enforcing it, political parties have continued to be financially opaque entities. As well, internal governance remained obscure for the average citizen, in spite of significant advances in their communicational strategies and visibility.

Accordingly, in order to improve their performance as integrity pillars, political parties have to work on developing accountability towards their constituents and building trust among them. This cannot be made without increasing transparency, both in terms of financing and governance.

9. Stakeholders' recommendations

In this context, the first steps to be taken towards increasing the standing of political parties within the national integrity system refer to organizational aspects of the parties, as well as to types of actions available to them. More specifically, the following recommendations need to be taken into consideration:

- Improving transparency in terms of mode of functioning, financing and membership
- Enhancing the standing of ethics commissions within the parties
- Tightening the applicable sanctions for failing to comply with integrity standards
- Improving the communication between the centre and the territorial branches of the parties

- Promoting ethical behaviour among the youth organisations of the parties
- Enhancing the organizational capacity of the parties at the local level
- Increasing the standards of competence and integrity when appointing and nominating political leaders

TRANSPARENCY INTERNATIONAL ROMANIA
10 years of ART in INTEGRITY

THE MEDIA

Capacity	Governance	Role
3 (moderate extent)	2 (small extent)	4 (moderate extent)

The media has been effective in detecting wrongdoings (especially conflicts of interest) of public authorities and it has fulfilled its watchdog role. A very diverse market has ensured that almost every information got to the public, and since the Romanian media dealt with almost every political issue it has been a driving force in pushing the authorities towards higher integrity standards and good governance.

Media's internal structure prevented it from being a strong pillar: unclear sources of financing, links between big business and politics, as well as the impact of the ownerships on the outlets' Agendas have had a negative influence on its credibility; the low standard of reporting, especially in the local media, combined with a lack of professionalism of editors and journalists contributed also to the balanced assessment of the media in terms of integrity.

A. Legal framework

Ioana AVĂDANI

1. Role

The Romanian media boomed after the fall of communism. New, free media outlets appeared in a matter of days, immediately after the toppling of the Ceausescu regime. The media market evolved ever since, mushrooming in the early 90s, stabilizing in the early 2000s and currently undergoing a concentration and consolidation process. The complicated and slow transition to democracy, the rather weak political opposition, the sometimes arrogant political rulers and a generalized miscommunication between the social partners made the media look like the main (if not the only) recourse left to the discontent, disappointed or deprived citizens seeking (social) justice or recognition of their rights. Against the backdrop of overwhelming corruption, from petty to state level, and the even more diffuse perception of corruption blossoming with an inefficient state and an even more inefficient administration of justice, the media emerged as one of the most credible institutions, enjoying a credibility rate steadily staying at over 70% of the population . Ironically, the "dumbing down" of the media content (a trend specific not only to Romania, but rather globally due to the fierce competition on the market and the strive to maximize profits at the expense quality), the scandals in which media owners were involved, the constant accusations brought to media, journalists and "media moguls" by highly placed political figures (including the head of state) have done little to erode its credibility.

The state's attitude toward the media appears to be an ambiguous one. On the one hand, as part of the general harmonization of the legal framework, the media received its due constitutional protection and some law-based liberties. On the other hand, Romania witnessed – and is still doing it – countless attempts (more or less open) to curb the ability of the media to perform their role as watchdog, to prevent journalists from uncovering and exposing law violations, misconduct of public officials and wrong doings of the state authorities. Among them, the tentative legislation to introduce a 50-50 quota of good and bad news in TV newscast, the attempt at reintroducing in the Penal Code articles punishing with prison sentences the journalists who photograph persons in private spaces (without providing any public interest test or good faith defence), the re-criminalization of insult and calumny are just some of the most recent.

The Mass media enjoy constitutional protection, being the only industry benefiting from such a legal privilege; article 30 of the Constitution enshrines the freedom of speech. It explicitly prohibits censorship and makes clear that press freedom covers freedom of setting up publications. The article also sets up limits to the exercise of the freedom of expression (i.e. not to harm the honour and dignity of persons, not to defame the country and the nation, not to promote war or hate speech, etc.) The following article 31 enshrines the right to information and creates a positive obligation for the media, be they public or private, to correctly inform the public. Paragraph 5 of the same article reads: "The public radio and television services are autonomous. They have to guarantee equal exposure and air time to all important social and political groups."

Similar provisions can be found in the Audiovisual Law Article 3 that creates the obligation for the broadcasters to promote "political and social pluralism, cultural, linguistic and religious diversity, information, education and public entertainment". In paragraph 2, the article writes that "All audiovisual media services providers must ensure the objective information of the public by correctly presenting the facts and events and they must favour the free formation of opinions."

Censorship "of any kind" of audio-visual communication is forbidden expressly by article 6, as well as any kind of interference of public authorities or any Romanian or foreign individuals or legal entities in the content, shape or illustration methods of elements comprised in the audiovisual media services. Paragraph 2 of the same article states that "Editorial independence of audiovisual media services providers is acknowledged and warranted by the current Law".

Moreover, Article 8 compels the "authorized public authorities" to secure, on request, the protection of journalists in case they are subject to pressures or threats that could effectively impede or restrict the free exertion of their profession; the protection of the head offices and precincts of the radio-broadcasters in case they are subject to threats that could impede or affect the free development of their activity. However, such a protection should not become a pretext to prevent or restrict the free exertion of their profession or activity.

In a move to further consolidate editorial freedom, art. 9 of the same law states that when carrying out any searches at the head offices or precincts of radio-broadcasters, no damage to the free expression of journalists must take place nor the cancellation of the broadcasting of programs.

The public broadcast services are regulated by special, organic law. The first article describes the Romanian Radio Society and the Romanian Television Society as "autonomous public services of national interest, independent of the editorial point of view." Editorial independence is further reiterated by Article 8, while Article 14 describes the obligations of the two public broadcasters for fairness, objectivity and pluralism.

2. Resources and Structure

The media market is regulated based on and within the limits of the European Union acquis. As a result, the broadcast market is regulated in detail from entry to the market (through licensing) to ownership, concentration, advertising and even content (especially with regard to the protection of minors, the protection of human dignity, the right to reply, etc). There is no such regulation regarding the print media and any print operation can be started respecting the same legal requirements as any other business.

The amendments brought to the Audiovisual Law in December 2008 changed the system regulating monopolies in the market and strove to limit the concentration of broadcast ownership. Until December 2008, the law limited participation in a second broadcast operation and the number of licenses one person can have on the same market (locally or nationally). The current mechanism is described in Chapter IV of the Audiovisual Law, "The Legal Regime of Ownership within the Audio-visual Field". According to it, broadcasters shall be legal persons of public or private law, foundations and associations without patrimonial purpose, recognized as being of public utility, as well as "authorized individuals" under the law (Article 43 (1)). Until December 2008, only private companies or the state had the right to hold a broadcast license.

In order to protect pluralism and media diversity, the ownership concentration and the extension of the audience in the audio-visual field are limited "to dimensions ensuring economic efficiency, but not generating monopolies in the shaping up of public opinion" (Article 44 (1)). Further on, the same article defines the notions of national, regional market and local market, as well as "the relevant market" for both radio and television. The capacity to impact public opinion is calculated based on the market share of "the program services with significant importance in shaping public opinion", meaning the general programs, news, analysis and debates on political and/or economical topics (Article 44, (2),d). An individual or legal person shall be perceived as holding a dominant position in shaping public opinion if the average market share of its services surpasses 30% of the relevant market. The procedure for evaluating the dominant position in shaping public opinion of an individual or legal person shall take into account the program services stipulated in par. 2, point d) for which an audiovisual license is held, or the companies holding an audiovisual license where a percentage of more than 20% of the capital or of the company's voting rights are held. In evaluating the dominant position in shaping public opinion, one's family relationships (spouse, kin and in-laws, up to the second kinship) shall be taken into account and evaluated.

The Romanian legislation has no specific limitations on the ownership of print media operation, others than those provided by the general competition laws. The takeover of important media operations are evaluated and should be approved by the Competition Council. As well, there is no provision for limiting cross-ownership (broadcast and other forms of media, i.e. print, online, outdoor, etc.). Furthermore, there is no body of legislation providing for rules or regulations for media financing. While Article 30 (5) of the Constitution provides that "Under the law, media companies can be asked to reveal their sources of financing", such a law was never drafted and promoted. The amendments to the Audiovisual law adopted in December 2008 as an Emergency Governmental Ordinance, obliged the broadcasters to present on their websites, together with other identification and editorial control information, the balance sheet and the profit and losses sheet. This provision was scrapped off by the Media Committee in the Chamber of Deputies, when the amendments were submitted for

Parliamentary approval. As a rule, there is no compulsory provision for the media companies to reveal their ownership and financing, other than the requirements of the Audiovisual Law .

There is no regulation whatsoever regarding the entry to the journalistic profession and no legal requirement for the hiring/promotion/firing of the editorial or managerial personnel in the private media. For the public media, such issues are dealt with their own functioning law. The board is appointed through political mechanisms. The members of the boards are nominated by Parliamentary political groups, by the President and the Prime Minister and voted in block by the Parliament. The board is dismissed if the Parliament rejects the annual activity report. The Presidents-General Directors of the two institutions are appointed by the Parliament. They can, under the law hire and dismiss the personnel (including the editorial one).

3. Accountability

The editorial accountability of the media is enshrined, explicitly, in the Constitution. Article 30 (8) writes: "Civil liability for the information or the work brought to the public stays with the publisher, the producer, the author, the organizer of the artistic event, the owner of the multiplying facility, the radio or the TV stations, as provided by the law. Press-related crimes are to be established by law." The constitutional text is rather outdated and obsolete, as it places the liability of the content on entities completely unrelated to the editorial process, such as the "multiplier" (for example, the printing facilities). Moreover, the Constitution calls for the law to establish "the media-related crimes". Such a law was never adopted, despite a couple of attempts, fiercely rejected by the media community and human rights activists. The resistance was mainly rooted in the attempts of law-makers at curbing rather than protecting freedom of the press through these laws. While some of them gained the support of one or other professional groups, most of them were drafted in total ignorance of the professional community, disrespecting deontological rules. Thus, some drafts were a mixture of editorial obligations and occupational perks such as reduced fees for transportation and hotel for the journalists on duty. Other tried to regulate in detail the right to reply for print media (similar regulations are in place for broadcasters) or aimed at imposing an equal quota of "good news" and "bad news' in the broadcast news programs.

A more nuanced approach is reflected in the Audiovisual law, which states that the liability for the content of broadcast program services, including audiovisual commercial communications "is incumbent, according to the law, on the audiovisual media services provider, the creator or author, as the case may arise" (Article 3 (3)).

The entire Chapter 3 of the same law is dedicated to the accountability of broadcasters and deals explicitly with The right of reply. Article 40 specifically prohibits "any form of instigation to hate due to race, religion, nationality, gender or sexual orientation", while Article 41 describes the terms under which a right to reply can be asked for and granted. Articles 90 to 95Æ describe the offences and sanctions that the National Broadcast Council (Consiliul National al Audiovizualului) can impose to broadcasters violating the content-related provisions of the law, while Article and 95² describes how such sanctions can be appealed in Court. The sanctions can go from warnings to fines in various amounts (depending on the gravity of the infringements and on the general compliance of the broadcaster) to ending the program transmission (the programs shall be replaced by a broadcast of the text of the CNA warning, between 10 minutes and three hours) to the reduction of the term of license or its complete withdrawal (for cases of repeated infringements of the law by instigation of the public

to national, racial or religious hatred; explicit instigation to public violence; instigation to actions meant to undermine the state authority and instigation to terrorist actions.

Thus, article 80 of the proposed Civil Code describes at length what can be construed as "violation of private life". The offences include a variety of ill-defined acts, from getting into someone's house without the permission of the lawful occupant to using somebody's name for purposed others than "legitimate public information" and to taking photos of the exterior of houses without the approval of the lawful occupants. There is a public interest protection provision, but it is weak and not clear if it covers all the cases stipulated under the law. Similar provisions regarding photographing individuals in enclosures or taping private conversations are to be found in article 225 of the draft Criminal Code. This time, the offence is punishable by prison from one to six months or penal fine. Distributing such materials to third parties or to the public is punishable by three months to two years in prison or by penal fine. The penal character of the acts is dropped if the perpetrator can justify a public interest in doing so.

4. Integrity

The journalistic profession made several attempts at self-regulation, but none of them involved the whole community or has proven effective. There are several Codes of Ethics, Deontological Codes or Codes of Good Practices adopted and implemented separately by various professional associations or groups of associations. While these codes are not different in terms of principles and rules, their wording may be different and with various nuances. More important, their implementation is done differently, using separate implementation mechanisms. For example, the Romanian Press Club (CRP), an organization gathering some of the most important publishing houses, radio and TV companies, has its own Code, administrated by a Council of Honour.

The Convention of Media Organization, a platform for common action gathering some 35 media associations adopted its Code of Ethics and the Statute of Journalist in 2004, but let its members to implement its provisions the way each of them sees fit. The Federation of trade unions in mass media, Media Sind, elaborated its own Code and annexed it to the Collective Work Contract, which is legally biding and applies to all employers and employees in the media, irrespective of the fact that they participated or not in the negotiations. As any other problems in the application of the Collective contract, the deontological cases are to be judged by a parity commission, composed of an equal number of representatives of employers and trade unions. The Union of the Hungarian Journalist in Romania has one of the oldest Codes of Conduct, administrated by a functional Committee of Honour.

Other similar self-regulation documents have been adopted and implemented more or less rigorously by the public media institutions (SRR and SRTV), the Association of the Romanian Journalists (journalists and editors who separated themselves from the Romanian Press Club), and the Union of Professional Journalists.

The codes deal generally with the same basic ethical principles: the definition of the "journalist", the truth, double-checking of information, separating the facts from opinions, the respect for private life, the presumption of innocence, the protection of sources, the conscience of journalists, the independence of journalists, the accuracy of information and the correction of mistakes. Some of them include also rules regarding the respect of diversity and anti-discrimination provisions.

Most Codes have (or have introduced recently) provisions ruling the integrity of journalists and the possible conflict of interest. Thus the CRP code states in Article 8 that journalists shall not accept "agreements" that could undermine their independence and shall not be involved in negotiations involving advertising contracts. The journalist shall not accept any favourable treatments or privileges, any perks, benefits or gifts that could hamper their integrity. "In order to avoid conflicts of interest, it is recommended for journalists not to be members of any political parties and not to work as an informer or have an undercover agenda for the intelligence services." The Code also recommends that journalist file a "statement of interest" with their editors or administrative superiors. Journalists with editorial control positions shall make public such statements, posting them on the websites of their media channels.

The Deontological Code of the Convention of the Media Organizations dedicates its article 2.5 - Abuse of statute to issues pertaining to the integrity of journalists. The Code writes that using the journalistic position in order to get personal benefits or benefits for third parties is unacceptable, being a serious violation of the ethical norms. "Journalists shall not accept gifts, in cash or in any other form, as well as any other advantages offered to them with consideration to their professional status", writes the Code. It further recommends that journalist keep separate their editorial activities from their political and economic ones. Article 3.5 of the same Code recognize the right of journalists to refuse any task assigned to them related to attracting advertising or sponsorships for the media outlet they work with.

The Code that is annexed to the Collective Work Contract also includes provisions asking journalists not to accept "any privilege, special treatment, gifts or favours that could compromise their journalistic integrity". (Article 8) The formulation is similar to the one in the CRP Code.

5. Transparency

As mentioned above, transparency is not a frequent occurrence in the media field, when it comes to structures, funding, sources of revenues and financial statements. There is no general requirement imposed to media companies to declare the sponsorships they received. The sponsorship done by the media companies can be found in their annual financial report, filed under the law with the Finance Ministry, but only in total amount, not broken down on activities and recipients.

The financial data of the media companies are not a matter of transparency either, which led to abuses in their fiscal management. The major companies were said to have serious debts to the state budget that were rescheduled in exchange for their favourable coverage of the parties in power. In 2004 the Finance ministry made public the list of the "greatest debtors" to the state and social assistance budgets, which prompted most of the companies to pay their taxes. Changes in the public procurement legislation were adopted in 2005 and re-enforced in 2006 , obliging all public bodies to advertise publicly, on a dedicated site (www.publicitatepublica.ro) all the advertising contracts to be allocated and exceeding 2000 Euro/year. Introduced in 2005, this mechanism triggered a drop in the public money advertising of 10 million Euro that year alone. In 2009, the legislation on public procurement was changed , in order to speed up the absorption of the European Union funds. The transparency limit for the advertising contracts was brought up to 20,000 Euro per year. Under this limit, the contracts shall not be advertised on the dedicated site. The limit for direct allocation of contracts (no bid necessary) was brought from 10,000 up to 15,000 Euro.

The media companies do not openly support with money the political interest, the cash flow being quite the opposite. Under the electoral legislation , corroborated with the broadcast one, the broadcasters have the right to choose if they participate or not in the coverage of the electoral campaign. If they do, they have to announce the National Broadcast Council (CNA) and have to make public the sums they charge for the paid electoral programs. The tariffs should be equal for all the political actors.

New and explicit obligations regarding the transparency were introduced when Romania updated its broadcast legislation to harmonize it with the Audiovisual media Services Directive. The amendments adopted, becoming effective as per December 2008. According to these new provisions, all broadcasters have to provide "simple, direct and permanent access of the public to at least information categories":

- name, legal status, social headquarter;
- name of the legal representative and the structure of the shareholders to the level of the individual and legal person, as associate or shareholder having a larger share than 20% of the social capital or of the voting rights of a company holding an audiovisual license;
- names of the persons in charge of the trade company management and of those that are mainly in charge of the editorial responsibility;
- data of media services provider, including the e-mail and web-site, for rapid, direct and efficient contact;
- list of publications edited by the respective legal person and list of the other program services that it provides;
- financial and balance sheet performance as well as the profit and losses account;
- regulatory or supervisory competent authorities.

Any changes in these categories of information shall be announced to CNA within 30 days.

When it comes to the protection of sources, the principle is enshrined in different pieces of legislations, as well as in all deontological codes. Thus, the Audiovisual law writes that "The confidential nature of the information sources used in conceiving or issuing news, shows or other elements of program services is warranted by this Law." (art. 7). The law further states that any journalist or programs creator is free not to disclose the identity of the source of information obtained in direct connection to his/her professional activity. Such protected information includes the name and personal data, as well as the voice or image of a source, the concrete circumstances in which the journalist obtained the information, the unpublished part of the information supplied by the source; In the case of non-disclosure of the source, the broadcaster is obliged in return to assume the liability for the accuracy of the supplied data. The protection right extends to editors and any other media professionals who came to know them in their line of duty. The same article states that "revealing a source may be ordered by law courts insofar as it is necessary in order to protect national safety or public order and insofar as such disclosure is necessary to solve a case judged at a law court when: a) measures of similar effect, alternative to the disclosure do not exist or have been exhausted; b) the legitimate interest in the disclosure exceeds the legitimate interest of the non-disclosure." Similar provisions regarding the right of journalists to protect their sources appear in the functioning law of the public broadcast services, as well in the functioning law of the national press agency, Agerpres.

All the self-regulatory documents cited above contain provisions regarding the right and/or the duty of journalists to protect their sources.

6. Complaints and enforcement mechanisms

The complaints related to media are dealt with differently depending on the nature of the medium, as well as on the nature of the offence. The broadcast media is regulated by the National Broadcast Council (CNA), who is seen as the defender of the public interest in all matters pertaining to the audiovisual sector, including the content related ones. CNA works based on the Audiovisual Law and issues its own norms and regulations regarding the functioning of the broadcasters. CNA collected all the regulations and norms pertaining to the editorial side of the broadcasting in a single document, called the Audiovisual Code that was discussed with the broadcasters and civil society organizations with an interest in freedom of expression. Any interested party can address CNA, filing a complaint regarding the functioning of a broadcaster, be it technical or editorial. CNA analyses the complaints and rules on the merits of each case. The CNA sittings are public and their minutes are made available timely on their website. CNA rulings can be appealed in court.

The public television, TVR, created its own complaints and enforcement mechanism. The internal functioning document of TVR created a body called The Commission for Ethics and Arbitrage, in charge of ruling on the cases of violation of the professional rules. Subordinated to the Commission is the Ombudsman office, where the public can file complains, suggestions and comments regarding the editorial content. According to TVR site , those who have complaints about a program should address first their authors. In case the answer they get from the authors is unsatisfactory or if the complaint regards a breach of ethical and professional standards, the plaintiffs can address the Commission. The rulings of the Commission are consultative, and not compulsory for the TVR administration, which weakens the accountability mechanism.

In order to correct this, the major media organizations joined efforts to identify ways of negotiating a single, unifying, self-regulatory document and introduce a single complaints body. The process involves CRP, COM, ARJ, Media Sind, and is coordinated by the Centre for Independent Journalism and the Media Monitoring Agency.

Outside the professional mechanism, those who consider themselves hurt by the media can address the courts under the civil law and ask for damages and reparations. This legal instrument has been used intensively, especially by politicians, elected officials and businessman and predominantly in political-charged times (before and during electoral campaigns).

7. Relationship to other pillars

Performing their watch dog function, media interact with all the integrity pillars, in various forms and to various extents. Of course, the Executive and the Judiciary, together with the police and prosecutors are the most exposed to media coverage, given their crucial role in the running of the country and in fighting corruption. Equally, the Legislative and the political parties appear frequently in the media, although the coverage is often superficial, dealing with momentary cases rather than with systemic issues. The fight against corruption is depicted by the media mostly by exposing spectacular arrests or accusations brought to prominent public figures. In depth reporting,

investigations and other such "value-added" journalism pieces are a rare occurrence, especially in television.

Given the high credibility the media enjoy, they are perceived as an important link in the fight against corruption, both by the public and by the politicians. Therefore, politicians are not particularly fond of the media and the above-mentioned legislative initiatives meant to punish the journalists who exposed alleged corruption cases are tale-telling proofs. Moreover, surveys conducted among the magistrates identify media as the main source of pressure over the judges. The typical example is the study regarding the Independence of the Judiciary System in Romania, conducted by Transparency international Romania, in 2005, 2006 and 2007.

The least covered integrity pillars are civil society (with the notable exception of the big, vocal NGOs who are considered to be 'expert organizations") and the Ombudsman, a very "discreet" institution. The ability of the media to expose corruption is strictly connected to their access to the relevant information as well as to their professional knowledge and skills.

The access to public information is regulated by a special law, adopted in 2001 , following the first exercise of comprehensive cooperation between the politicians, the law-makers and civil society. The law states that access to information is the rule and the denial of access should be the exception, based on well defined grounds, thus creating positive obligations to public institutions (including the obligation to publish ex officio a set of information about their work, including the governing law, the activity reports and the budgets). The information can be requested by any person, in written, orally or electronically and has to be released within 10 days. Refusing to release the information has to be communicated within 5 days. In cases when the information is hard to retrieve, the information can be released within 30 days, but the decision to this avail has to be communicated to the requester in 5 days. The media enjoy preferential treatment, the journalists' requests having to be answered on the spot or within 24 hours. The law also lists the exceptions to the free access to information (ex. information dealing with national security, commercial secrets, personal data and information that might hamper the right to a fair trial or endanger the prosecution). No information covering a violation of a law can be considered protected from free access.

Successive amendments broaden the scope of the law to include explicitly commercial companies where the state holds the majority shares or is the single owner, entities that used the ambiguities in the law to exonerate themselves from the access obligations.

While permissive and bound to openness, the law has been only partially implemented, given the lack of resources (including trained human resources). In some cases (Bacau, Timisoara, Constanta), the local authorities (mainly mayors and city halls) denied the access of journalists to information or to the very premises of the institutions. When journalists sued them, they won the cases and their access to the premises was restored.

In the fall of 2007, there was an attempt to include the access to information provisions into the draft Code of administrative procedure, a move that stirred the outcry of civil society. Not only were the provisions transposed just partially into the draft Code, but a fundamental human right enshrined by the Constitution would have been transformed into a mere administrative procedure. The idea was dropped and the law was preserved at such .

B. Actual Institutional Practice

1. Role of institution

Generally speaking, the Romanian media was said to fulfil its watchdog role, due to its relative independence. From the political view the media has been perceived as fairly autonomous from this kind of interference, be it governmental or not. Still, there were episodes, especially during electoral campaigns, when the media has used as a political tool to influence the elections results, failing therefore to constantly carry out its watchdog task. Furthermore, the practice of business owners maintaining ties with politicians has continued to be common.

Romanian media companies, in their quality of profit-making economic agents, relied on their income sources. The way in which they stood afloat on the market (selling, advertising, donations and subsidies) has influenced their freedom of action. Still, Romanian media companies appeared to be often a supplement to bigger businesses, which were not primarily concerned with informing the public or monitoring wrongdoings.

On the contrary, one could legitimately think whether there was a political interference in the economic affairs of media companies in Romania. The question bore no definitive answer, but everyday life examples showed cases of media trusts owned by politicians (or their relatives), both at national and local level (in a greater measure, though in the last case). This explains why there was a significant difference in the journalists' perception regarding media outlets owned by foreign companies and those owned by nationals. The media companies that had a foreign ownership acted more independently than the ones with a Romanian ownership. The other side of the same reality is that the foreign ownership of the media active in Romania are looking directly for profit, thus generating the drop of the journalistic quality of the publications and programmes of these trusts.

In spite of a significant awareness among journalists and the public opinion concerning the fact that there were risks of political interference through economic means, some media outlets had nevertheless the rationale of Agenda setting and their diversity and competitiveness have underlie these premises. So, even if the independency of the Romanian media companies has been subject to a perpetual debate, their functioning in a diverse and competitive environment strengthened their role as a watchdog.

2. Resources and Structure

Directly related to media independence has been the question of their financing. If the foreign-owned media companies were financed solely through copy rights sales and advertising, the Romanian media companies relied not only on these two (copy rights sales and advertising), but also on subsidies coming from the ownership. The later way of financing was apprehended as questionable and distortive. Two main reasons could be invoked: first, it was frequently used by the ownership when companies were at loss; second, it stirred up the perception of transforming the media companies into vehicles for political interests. This image of the media being used as a political tool was more frequent in the local market than in the national one. Especially the local media appeared often to be politically allied.

As for appointments, promotions, dismissals, Romanian and foreign companies acted differently. In foreign companies it was the editor and the editorial manager who decided on these issues. There

were no connections with the owners. In Romanian companies, on the contrary, the owner was generally perceived as having a very strong say on this topic, in addition to the editor in chief. Accordingly, journalists' behaviour was expected to be influenced by this state of affairs (issue selection, way of writing). Hence, it appeared that the ownerships in Romanian companies have a bigger influence on imposing the editorial agenda than outlets of the foreign ones.

The ownerships had the right to impose an editorial strategy, which must be known and public. Accordingly, in principle, the content had to be overseen by the editor in chief, who was accountable for it. Still, the editors' supervision has been claimed to be superficial, if not absent. And this was due to what it was generally alleged to be a scarcity of professionalism among the editors, who paid little attention to checking the validity of the sources of information and to accuracy of the content.

Regarding auditing in the media business, except for the ordinary procedure of giving the financial records each year to the financial administration, foreign-owned media companies habitually did this sort of examinations. As for the domestic ones, they did not do them on a regular basis.

The relationship between ownership and editors, and that between editors and journalists varied, generally, according to the size and magnitude of the companies, namely whether they were local, national or multinational. In the multinational companies, for instance, the relations between these actors were claimed to be professional. In the local media, on the contrary, there were problems of obedience and the relations between editors and journalists were highly dependent on the relation between the owners and the editors.

3. Accountability

In recent years the Romanian media environment experienced cases of imbalanced reporting, withholding of information and neglecting the right to reply. Furthermore, information in the audiovisual sector was sometimes not properly verified, either because of a lack of professionalism, especially of the editors responsible for this task, or because of a lack of political will, within the companies or the concerned institutions.

Accusations related to the aforementioned issues were normally not brought in front of the court, mainly because of the high hurdles that had to be overcome and the long duration of the trial and its preparation. In the audiovisual sector these accusations were brought to the Broadcasting Council instead, which proved to be an effective tool to sanction such issues, even if the sanctions did not appear dissuasive. The Romanian Media encountered also some financial violations, but not on a large scale.

4. Integrity

Journalists in the audiovisual sector were compelled to obey the audiovisual code. In the print media, journalists' respect of the codes of ethics or conduct depended on the ownerships and on the local context. Still, the biggest gap can be observed between central and local media from this point of view. Nevertheless, journalists have had a growing awareness about ethics shaped by some past cases which had a bad influence on the general perception of the media and a new inclination to respect codes only when they are forced on them by their editors. In the local media the strong dependence on the owner has a further influence on the journalist's behaviour. Reporting on issues threatening

the interests of the owner are often stopped from publishing, and the editor becomes the institution enforcing the owners will.

5. Transparency

Transparency appeared to be a matter of voluntary good practice. For example, the Swiss group Ringier (print media and a 25% participation in Kanal D television) publicly announced (via a press conference) and widely distributed (via direct e-mailing) its financial results and the changes in its managerial and editorial teams. Central Media Enterprises (CME) owning Pro TV television was listed on the American stock market, therefore the mother company made public its financial results. A totally different approach characterised national and local media enterprises which claimed that such data was confidential. In the last electoral campaign, for instance, politicians had to pay for TV appearances and apart from the fact that this opened the door for political reporting and different treatment (different tariffs for different parties for instance), the companies refused to make the rates public.

6. Complaints/enforcement mechanisms

Normally, libel laws were not frequently used to restrict reporting, the confidentiality of sources was a common practice and there were no major proceedings to force journalists to reveal sources of information. However, confidentiality of sources was used by journalists when they issued unverifiable information. In addition, the argument of infringement of privacy proves to be the most effective tool to stop inconvenient reporting.

There were no unified complaints mechanisms for print or online media. Each organization and media association dealt differently with the complaints and there where cases when different organizations had dissimilar positions in cases of violation of the professional norms. Such cases gained little or no publicity and sometimes the different positions of various ethical bodies were confusing.

7. Relationship to other pillars

The media put a lot of pressure on public authorities. Apart from the aforementioned argument of infringement of privacy, access to information was sometimes problematic. The legal framework seemed to provide all necessary requirements for access to information, but then again, effective access was applicable only to some public institutions and only for some information. Frequently it depended on the people within the concerned institution and on the nature of the requested information. Since there was no tradition on investigative journalism in Romania, the media relied often on the authority's agenda and its willingness to reveal information.

The "informal" conduct of the people in power toward the media has sometimes taken different forms, reaching from intimidation and direct threats to arbitrary access to information or allocation of public money for advertising. National reports, such as Freedom of expression (FREEEX), produced by the Media Monitoring Agency , as well as international ones such as the Human Rights report of the US State Department and the European Commission country reports presented cases of journalists being harassed by the local authorities, physically assaulted by perpetrators that were never prosecuted, tried and sentenced, as well as cases of abusive use of public authority in order to favour "friendly

media", going from the allocation of preferential advertising contracts to the arbitrary distribution of licenses for vending kiosks and harassment of the street newspaper vendors.

In recent years self regulating bodies started to cooperate better and developed a common understanding of ethics. Also a risen awareness of the need for self-regulation among journalists has been noticed.

8. Past developments and future prospects

Over the past 20 years of transition and democratic construction, the mass media has represented one of the most visible and trusted integrity pillars. If in the early '90 the most frequent model was the one of the "Messianic journalist" – a person with "vision", eager to expose, judge and criticize any wrongdoing and wrongdoer, the current media landscape has been more professional, and information more consistently separated from subjective opinions. Still, excesses could be witnessed, especially when it came to conflicting rights, such as the right to receive and report information and the right to privacy or to a fair trial.

The legal framework regulating the media has been more or less stable over the last five years. The broadcast sector was regulated based on the European acquis and the general completion laws are obeyed. According to the National Broadcast Council, the print media was de-regulated, while the broadcasters were held to a minimal set of rules regarding the protection of minors and that of vulnerable groups. General rules on hate speech, racism, xenophobia and discrimination apply to media, as well as to any public display.

Over the last five years, more and more voices (especially from the political side of the society) have stated that private life should be protected more vigorously. The decision of the Constitutional Court in January 2007, claiming that one's reputation deserved a strong protection via penal means affected the freedom of the press and went against the decriminalization trend, supported by free speech activist from all over Europe.

Media self-regulation was seen by journalists as a viable alternative to governmental regulation, but even though self-regulatory acts have been in place in many organizations, their implementation was not effective.

9. Stakeholders' recommendations

In this context, the first steps to be taken towards the increase of the role, governance and capacity of the mass-media within the national integrity system include, for the most part, self-regulation aspects. More explicitly, the following recommendations need to be taken into consideration:

- Enhancing the selection and promotion criteria for journalists
- Promoting further specialization of journalists on different subject areas
- Limiting self-censure
- Publicly assuming press writing doctrine
- Promoting, directly and indirectly, by virtue of media's watchdog role, standards of integrity
- Improving auto-regulation in terms of standards of integrity: codes of ethics, incompatibility guides for journalists
- Running ethics training sessions for journalists

- Improving transparency with regard to ownerships and financial records of media companies

CIVIL SOCIETY

Capacity	Governance	Role
1 (not at all)	2 (moderate)	2 (moderate)

The Romanian civil society has acted as a strong integrity pillar within the national integrity system, despite its weak organizational capacity and poor citizen support.

The main actors within this sector have proved to be the NGOs organized on a professional basis within large cities.

Their dependence on external funding influenced their agenda and behaviour in terms of transparency and accountability as they focused on putting into practice these principles in relations with the external donors rather than with the final beneficiaries, the targeted citizens.

Collaboration with public authorities reached a climax in the context of EU accession preparations. Afterwards, their cooperation has rather taken the characteristics of an inter-sector competition.

A. Legal Framework

Iulia COŞPĂNARU

1. Role

Traditionally, civil society includes all those structures organized outside of the state system in order to influence the state's actions and aiming to protect the public interest. Generally, civil society comprises of nongovernmental organizations – associations and foundations, professional associations, trade-unions and syndicates, political parties, religious cults, private sector and, last but not least, the citizens.

In Romania, the existence of civil society is based on the constitutional right of association , according to which citizens may freely associate into political parties, trade unions, employers' associations and other forms of association, and on the freedom of assembly .

Still, in order to guarantee the respect of the rule of law, the Constitution states that these rights must be exercised peacefully, without militating against political pluralism, rule of law or the state's sovereignty, integrity or independence. In addition, secret associations are prohibited. The constitutional text also establishes that the exercise of these rights can be curtailed in specific circumstances .

Civil society in Romania is mostly considered as being represented today by nongovernmental organizations, structured in associations, foundations and federations (58,796 of non-profit

organizations). They are currently functioning on the legal basis of the Government's Ordinance no. 26/2000 .

The constitution of these organizations is governed by the principle of freedom of contracting and is based on the free agreement of members, and they function according to an agreed statute. The organizations obtain juridical personality subsequent to a judicial decision and to the registration in the Registry of Associations and Foundations belonging to the court from the territorial constituency where those organizations have their headquarters. Accordingly, the Court verifies whether the constitutional limits of exercising the right of association and all the legal conditions are respected. We will further use the term NGO (nongovernmental organisation) to name these entities.

Among the two major forms of organization – associations and foundations – there are differences regarding their ways of constitution, their leading structures and their ways of dissolution. However, these differences do not lead to fundamental differences in the deployment of their activities. Federations follow the same rules as the associations.

The purpose of these entities, as stated by law, appears from the first article of Ordinance no. 37 of 30 January 2003 amending and completing Government Ordinance no. 26/2000 on associations and foundations, which stipulates that individuals and legal entities aiming at pursuing activities of general interest and of community interest or, where appropriate, in their non-patrimonial personal interest may form associations or foundations, according to the terms of the already mentioned ordinance. General interest comprises all the activities related to economic, cultural and social development, promotion and defense of human rights and freedoms, promotion of health, education, science, arts, traditions, and culture, preservation of cultural monuments, social assistance, aid for the poor and disadvantaged people, support for persons with disabilities, children and the elders, youth activity, knowledge and civic participation enhancement, environmental and nature protection, religion and human values protection, social welfare support, aid for public works and infrastructure, promotion of sport .

As for the community interest, it is legally defined as any interest which is specific to a community: neighborhood, city, administrative-territorial unit; or a group of individuals or legal entities who pursue a common objective or share the same opinions, same culture, religious orientation, social professional and others .

If an association or foundation, basing itself on its activity, proves that it shows a specific interest for serving a general interest or the interest of a group, it can submit an application to the Government for achieving the public utility statute. Public utility is defined as any activity pursued in order to achieve beneficial goals in areas of general public and / or community interest , as long as all the other legally stated conditions are respected . This status offers to the organization the right to make use of public services devoid of commercial character; a preferential right to resources from the state budget and local budgets; and the right to mention in all of their documents that they have the specific status . At the same time, the organizations are obliged to maintain at least the levels of activity and performance that determined the achievement of their statute and to communicate to the responsible administrative authorities any amendments concerning the constitutive act and the internal statute, and also the activity reports and the annual financial situations, which have to be open to any interested individual or entity.

Employers' associations are generally defined as autonomous organizations of employers, apolitical, created by juridical persons of private law, without a patrimonial aim . They are created according to

the object of their economic activities, a minimum number of 15 members being required for their existence. Generally, they follow the rules applicable to associations and foundations. The role of employers' associations is to represent, support and protect the members' interests in their relations with public authorities, trade unions and other individual or legal entity .

According to the law, employers' associations enjoy the right of being consulted each time legislative initiatives concerning employers' activities are under debate. Moreover, they have the right to be consulted by the Government in matters of initiation, elaboration and promotion of the programs on economic development, reorganization, privatization or liquidation, and to participate in the coordination and administration structures of European programs. At the same time, employers' associations have the right to name representatives when negotiating and closing of collective labor contracts and for other discussions and agreements with public authorities and trade unions. Employers' associations may also initiate legislative proposals that have to be addressed to the appropriate public authorities.

According to Law no. 54/2003, trade unions function independently from public authorities, political parties and employers' associations and are created in order to protect the rights of employed persons and of public servants, which are found in national and international legislation and in collective labor contracts, but also to promote their professional, economic, social, cultural, and sports interests .

According to the law, the existence of a trade union presupposes the membership of at least 15 employees from the same branch or profession. Its legal personality is acquired by Court decision.

In spite of the constitutional freedom of association, art. 4 from the above mentioned law establishes a series of categories of employees for whom this right is limited, by reason of the distinctive character of their activity. These categories refer to the persons holding leading positions, dignitaries, magistrates, military personnel from the Ministry of National Defense and the Ministry of Administration and Interior, the Ministry of Justice, the Romanian Intelligence Service, the Protection and Guard Service, the Foreign Intelligence Service and The Special Telecommunications Service, as well as from the units in their subordination.

The law also states as a means of protecting trade union members and leaders that employers are prohibited to dismiss them by reasons of their activities within the trade unions. Furthermore, the law recognizes their right to address the court or other judicial bodies or public institutions on behalf of their members by virtue of defending their interests, even in the absence of an express mandate from their part.

At the same time, the employers are obliged to invite the representatives of the trade unions to participate in the administration councils, for discussing issues related to their professional, economic, social, cultural or sportive interest.

The Romanian Constitution guarantees, according to articles 29 and 30 the freedom of conscience and the freedom of expression, which represent the base of religious freedom. According to Law no. 489/2006, there is no state religion, and cults are equal before the law .

The creation of a religious association presupposes at least 300 members holding Romanian citizenship or residing in Romania and who associate on grounds of their common religious belief. As for the recognition of its cult status it is necessary for the religious association to prove that it has been continuously functioning in Romania for at least 12 years and that it gathers a number of

members of Romanian citizenship living in Romania that is equal to at least 0,1% of Romania's population, according to the most recent census .

The status of religious association is provided by Court decision, and the recognition of cult status is made by Government decision, based on the proposal by the Ministry of Culture, Cults and National Patrimony. The recognized cults are juridical persons of public utility and are given the rights and obligations specific to this status. At present, in Romania there are 18 recognized cults .

The law provides the representatives of religious cults with the right to participate in the Parliament, at debates on legislative projects regarding religious life, cults' activity, national patrimony related to cults, and projects on confessional education, and social assistance.

2. Resources and Structure

The income of nongovernmental organizations comprises of member subscriptions, (except for foundations), rates and dividends resulted from placing the available founds on the stock market, dividends of the commercial societies created by the respective associations or federations, income from direct economic activities, donations, sponsorships or legacies. Besides, the public authorities may support their activity by allocating non-reimbursable funds from the state budget or from local budgets. These funds are allotted on a competitive basis, taking as well into account the efficacy in using public funds, the transparency of the funds allocation mechanisms, the equal treatment in the selection procedure, the exclusion of cumulus, the non retroactivity and co-financing .

However, before Romania's accession to the European Union, the bulk of financing sources for the nongovernmental associations had been represented by external non-reimbursable funds coming from international organizations – the European Union, the United Nations Organization, international institutions – the World Bank – or from organizations or institutions from other states – the United States' Agency for International Development, the Federal External Ministry of Germany, Foundation Stuart Moss, Global Opportunities Fund (GOF) through the British Embassy in Bucharest, Embassy of the United States, Embassy of Canada, Financial Mechanism of the European Economic Space etc.

The income of employers' associations is made up of subscriptions, registration taxes, and contributions for the fund that is allocated to negotiation regarding collective labor contracts, but also of specific activities, donations, sponsorships . In addition, employers' federations and confederations may make use of public immovable property from the state' locative fund and enjoy favorable legal stipulations regarding the rent.

The main financing source of trade unions comes from members' subscriptions, which cannot exceed 1% of their gross income, and which is exempted from the income tax. Their patrimony may comprise of donations from third parties.

The costs of cults are mainly covered through their own income. The public authorities support the cults' activity by sustaining the remuneration of clerical and non-clerical personnel, and costs concerning the functioning of cult units, for repairs and new constructions, but also by offering fiscal facilities. The use of these funds and of other public goods, are subject to state control.

3. Accountability

The law does not stipulate for the above mentioned entities the obligation of having an ethics commission, but admits its suitability. As for disciplinary actions against employees, these are exercised according to the labour legislation.

Accordingly, the employees and members of civil society organizations can be criminally responsible for corruption acts, as any other Romanian citizen.

As already mentioned, the state's role in controlling the activity of employers' associations is relatively limited. Nevertheless, the law establishes a series of incompatibilities, as for instance the impossibility of any dignitary or person in a leading position within the structures of the public administration to be the leaders of any employers' association.

4. Integrity

In what may concern the mechanisms aiming at assuring public integrity, the legal framework does not contain direct stipulations for civil society organizations, except for conflicts of interest and incompatibilities clauses. By the same token, the legislation does not stipulate the obligation of the members or of the personnel to publicly submit wealth and interest statements, but, as a model of good practice, these are recommendable.

Regarding the aspect of assuring a minimum standard of integrity, the law states that the association member, who is personally or through relatives involved in an issue that is discussed by the association's general assembly or by the board of directors, cannot take part in deliberations and voting. Conversely, the concerned member is held legally responsible for the prejudices caused to the association.

By the same token, any person holding a leading position in a public institution cannot be part of the board of directors of any association or foundation that supports the activity of that public institution.

The law establishes as a mean of protection for the trade unions members and for the persons enjoying leading positions within trade unions, the impossibility of the employers to modify or close their labor contracts for reasons related to the trade unions' activities. In addition, in order to increase the role of trade unions and to make their actions more efficient, the law stipulates in their favor the right to address the Courts or other jurisdictional organs or public institutions in the name of their members in order to protect their interests, even when a special mandate does not exist.

Regarding the conduct of cults' personnel, this is controlled and censured, in case of infringement of the cult's doctrinaire or moral principles, by their own bodies of religious investigation. Nevertheless, the legislation concerning contraventions and infractions apply if this is the case. Yet, the right of the clerical personnel to keep secret the believers' confessions during their religious activities is legally recognized.

5. Transparency

Those civil society organizations holding legal personality have to respect the transparency requirements imposed by this status. Their signing on to the Register of associations and foundations,

as well as their dissolution act has a public character. As for the civil society organizations enjoying the statute of public utility, transparency requirements are stricter: for instance, the disclosure of the sources of financing of all their projects is a mandatory condition for obtaining and keeping this statute.

Accounting records are subject to the current financial legislation and are examined by auditors. In the case of organizations accepted as being of public utility, they are obliged to publish, in extract, during the first 3 months of each calendar year, the activity reports and the annual financial situations in the Official Monitor of Romania, Part IV, and also in the National Register of juridical persons without a patrimonial objective.

6. Complaints/ enforcement mechanisms

According to art 21 from the Constitution, any person can address to Court in order to defend their legitimate rights, liberties and interests. Free access to justice is guaranteed both for individuals and legal persons, be they civil society organizations or companies. This right can be exercised by the NGOs in their own name when they consider that their rights have been infringed by public authorities or by third persons.

When litigations concern the relations with public authorities, the NGOs follow a special procedure laid down in the administrative law: any person that considered that his/her rights have been violated by a public authority, following an administrative act or a failure in respecting the legal time limit for the resolution of an entitled request, "may address the competent administrative court for the cancellation of the detrimental act, for the recognition of the alleged right or the pretended legitimate interests and for obtaining compensation for the caused damage" .

The current legislation recognizes as well the right of the NGOs to address the Court when the rights or the legitimate interests of other persons have been allegedly infringed following an administrative act issued by the public authorities . Thus, the capacity of the NGOs to represent the claims of private persons in their litigations with the public institutions is legally recognized .

7. Relationship to other pillars

By the point of view of the law the relation of civil society with other pillars is mainly ruled by the regulations establishing public institutions relations with all citizens. The Freedom of Information Act and the laws regarding participation and right to petition are equally applicable to public institutions and NGOs.

Trade unions and employers associations are participating to the Economic and Social Council (ESC) . The law establishes the obligation of the initiators of normative acts to consult of ESC on those laws, programs and national strategies and sectorial activity covered by the ESC (economy, industry, education etc.). ESC is constituted by the social partners: trade union and employers' associations, by one hand, and government representatives, by the other. To solve problems within its competence, the Government may also set up consultative bodies (Law nr.90/2001 on the organization and functioning of the Romanian government and ministries) and it may invite NGOs to participate.

According to the legislation on the free access to public interest information, public authorities ought to guarantee the availability of this information to any citizen, be it ex officio or on demand, with the assistance of the departments of public relations.

Information requests can be formulated in written or verbally and a response is to be formulated during the first 30 days after their submission. If the concerned authorities refuse to provide the requested information or if the answer is incomplete or not the requested one, the interested persons, including civil society organizations, can submit a complaint to the section of administrative contentious law with the tribunal located in the residence area to which the plaintiff or the public authority is registered .

Civil society organizations can use as well the right to petition, as regulated by the Government's Act no. 27/2002 . According to art 1(2) 'the right to petition is also recognized to the legally constituted organizations, which can initiate petitions in name of groups that they represent'. The authorities are compelled to solve petitions in 30 days time, with the possibility of extending it with an additional 15 days. Petition is the generic name for any request, reclamation, notification or proposal, formulated in written or electronically, that a citizen or any legally constituted organization can address to central and local public authorities and institutions . When the process of solving petitions exceeds the legal term, or when the solution is unsatisfactory, the interested parties can follow the procedure of administrative contentious law.

B. Actual Institutional Practice

1. Role

In post communist Romania, as in all the Eastern Europe, civil society has been claimed to have been formed more as a response to outside pressures than as a consequence of internal necessity. The originators of civil society were considered to be mostly the nongovernmental organizations (NGOs). The expectations associated with the 'new independent sector' were very high. It was supposed to replace the discredited centralized bureaucratic state, decentralize services, and build democracy. External donors were the main agents supporting financially the development of NGOs. Therefore – and this was one of the most striking features of civil societies in post communist countries – the respective NGOs have been troubled by limited citizen participation and widespread civic disillusionment, while their activities have often remained donor-driven, thus raising concerns about the long term financial sustainability of civil society organizations' (NGO) work.

For their crucial role in building the National Integrity System we examined further manly the situation of watch dog and advocacy NGOs, the ones having the mission to participate to the consolidation of democracy, to work with and strengthen the capacity of public institution to accomplish their role, to encourage and organize civic and public participation as a way to ensure the democratic exercise of public power.

Romania's accession to the European Union has marked another stage for the NGO development. EU enlargement has provided new opportunities, but also challenged the NGOs in terms of financing options. The main challenge has been that international donors, who had represented the main source of funding for NGOs activities, prepared their exit. In this context, it has become crucial for NGOs to have a close relationship with state institutions in order to survive.

Although NGOs are not functioning on the framework of public institutions, therefore scoring low in capacity, and being a pillar consisting in a constellation of organizations, therefore scoring low in governance, the NGOs prove themselves to be one of the most active (not always effective and efficient, also) actor in promoting integrity at national and local level.

So far, internal interactions have been said to be relatively poor. The limited extent of communication and cooperation between civil society actors was mainly expressed by their reluctance to share information. Among the most invoked reasons was the wide perception of competition between NGOs, but also cultural aspects shared by the Romanian society where suspicion, individualism and mistrust prevail thus making the level of social capital very low . Still, improvements have been made in this area by putting into practice partnerships and coalitions, both formal and informal, on specific objectives. Most of the formal coalitions involved powerful organizations from large cities, especially Bucharest. The lack of resources and information prevented small or medium organizations to establish formal networks or coalitions, or to join the already existing ones. Among the alleged obstacles were scarce financial and human resources and insufficient, although increasing, information exchanges.

2. Resources and Structure

According to the last Romanian Civil Society Index Report , certain social groups have been particularly poorly represented in NGOs, such as "the poor people group" (representing 29% of the total population) or the "rural population group or rural dwellers" (making up around 40% of the Romanian population).

As NGOs had their agendas set by donors and not by the people they represented, rural dwellers, ethnic minorities - like Roma people, poor people in general have been seen as merely passive beneficiaries of projects developed and run by Romanian NGOs.

Most of Romanian NGOs have been concentrated in Bucharest and in the Western part of the country – a geographic area claimed to be better off in terms of economic and social standards. A possible explanation for the distorted distribution of NGOs in the country lies in the availability of resources, information about funding programmes and donors, and of NGO resource centers mainly in Bucharest and Timişoara

In Romania, NGOs' participation in a federation or network at the national level has remained rather uncertain. This has been a phenomenon specific mostly to trade unions and employers' associations, associations of small and medium-size enterprises and pensioner organizations but not so much for NGOs. According to the last Report on the state of civil society in Romania, this kind of umbrella organizations were included mostly in the area of child protection, health, environment, but also of promotion of democratic principles: the Federation of NGOs Active in Child Protection (FONPC), ProChild Federation, National Union of People Affected by HIV/AIDS Organizations (UNOPA), The Pro Democracy Association (APD).

Concerning the positioning of Romanian NGOs in an international context by participating in worldwide networks, according to the available information, trade unions, economic chambers, nationally representative employers' associations participate more in international networks than NGOs. They are affiliated to international bodies such as: the European Trade Union Confederation, the International Confederation of Free Trade Unions, the World Confederation of Labor or, respectively,

the International Organization of Employers, the Union of Industrial and Employers Confederation of Europe.

In terms of financial resources, civil society structures in Romania lacked sufficient internal financial support in order to pursue their own mission. Accordingly, they have been extensively dependant on external donors; this fact has created a state of relative insecurity with regard to their own existence from 2007 onwards. Indeed, after EU accession, the Romanian civil society sector was no longer able to rely exclusively on external funding. Since it is unlikely that it will gain substantial support from citizens it will have to search for other sources of funding, among which will be state financing. Still, public policies have not been pro-active in encouraging the development of the civil society sector, despite the slight increase of NGO sustainability, registered in the recent past. For instance, the NGOs funding mechanism comprising of the reallocation of 2% of the tax on the annual income of private individuals towards non-for-profit entities didn't have the expected results. In the fiscal year 2007, as stated by the National Agency of Fiscal Administration, only around 1 million of private individuals, representing on average 12% of the Romanian taxpayers, have destined the 2% to NGOs.

Furthermore, legislation regarding the possibility of NGOs acquiring the public utility status has become stricter: the Government has modified in 2007 the Ordinance 26/2000 on associations and foundations towards a more rigorous selection of the nonprofit organizations applying for the aforementioned status. Basically, this status has meant, on the one hand, the official recognition by the authorities of the nongovernmental organizations that distinguished themselves from others by promoting, through their activity, the general interest or that of the community. On the other hand, it presupposed that the public authorities could provide to these NGOs specific facilities, in a preferential way, without restricting whatsoever the access to public resources for other NGOs.

The enforcement of the law on the public utility status has raised critiques among the nonprofit entities as possible beneficiaries of this regulation. The major issues regarded the difficult procedure of acquiring this status, the lack of virtual fiscal facilities and the intervention of the political sphere in the application and obtainment process for this position. Indeed, political corruption influencing the process has been said to be the consequence of the Government's exclusive competence in granting the public utility status.

After EU accession, structural funds have been one of the main sources of funding for large projects aiming at having an INGO-term impact. Notwithstanding that structural funds have been an extremely discussed topic even before accession, little has been done to include NGOs at the discussion table. Most of the time, governments working under great pressure to develop plans for the administration of structural funds omitted to invite NGOs to the planning process and sometimes even failed to mention NGOs on the list of funds beneficiaries. As a consequence of this fact, 7 large Romanian NGOs had taken the initiative of forming a coalition for structural funds. The role of the coalition has been to monitor the process for the administration of structural funds and ensure that NGOs would become part of the scheme. One of the main achievements was the NGOs' inclusion in all of the sector operational programmes as eligible beneficiaries. In addition, all the monitoring commissions had to include representatives of NGOs acting as observers. Despite the reluctance of the public authorities regarding the provision or promotion of the access of NGOs to structural funds, the NGOs' participation in the stages of planning and evaluation of the projects applying for financing from structural funds, but also as eligible beneficiaries, has been generally accepted by the Romanian authorities.

In terms of human resources for NGOs, surveys carried out as part of the CSDF's Civil Society Index, along with ISRA Center Marketing Research, in 2005, showed that almost 60% of those interviewed declared that during 2004 they never attended a demonstration, march, strike or signed a petition. The rest of the respondents (around 40%) declared that they participated to such actions (around 30% rarely or very rarely, 7% sometimes and about 4% declared they took part to this kind of activities often or very often) . Furthermore, the 1998-2007 Public Opinion Barometer showed that the proportion of those participating regularly to voluntary activities ("several times a month or more often") was less than 2% .

It has been difficult to explain the poor level of voluntary action and the absence of a positive trend, but, apparently, the absence of an associative tradition has remained a strong handicap within the Romanian society.

Moreover, a minority of the Romanian citizens have belonged to at least one NGO. According to the Public Opinion Barometer from October 2006 and October 2007 an estimated 7,1%, respectively 7,2% of the Romanian citizens have said to be members of at least one NGO, whether professional association, political party, trade union, religious group, environmental group, sports association or any other organization and association which did not generate any income.

In order to raise their one capacity NGOs engaged themselves in partnerships, primarily with other NGOs, but also with local governments. Almost 80% of projects within the 2003 PHARE Civil Society Program, for instance, were implemented in partnership . This way of Coalition building within the nongovernmental field could be interpreted as a means to prepare for accessing funds, but also as a way of gaining legitimacy and sharing accountability.

The membership to trade unions has been estimated at around two million members , meaning that half of the Romanian working population belonged to a trade union. However, mass media have shown that these data were exaggerated. Some analysts also questioned the reliability of this information . In any case, trade unions have suffered substantial decreases in membership, as they have been heavily affected by the process of economic transition.

3. Accountability

Until recently, the heavy orientation of NGOs towards foreign donors has caused limited attention to opening up to public domestic scrutiny . In this framework the NGOs are reporting to their donors being accountable for the way of spending founds and for the results and impact of implemented projects.

Internal regulations of each NGO, by its statute, is making NGOs' staff accountable to members and elected boards and boards accountable to members. Actual low participation of members in NGOs is diminishing the effectiveness of the mechanisms.

4. Integrity

As a new and not well understood phenomenon, NGOs in Romania have suffered from bad publicity within the national and local mass media and were treated with suspicion and lack of trust by citizens. During the 2004, 2007, 2008 and 2009 elections campaign, for instance, some NGOs have been accused of being used by political parties or of receiving illegal funds from political parties.

By this point of view NGOs having as mission to fight corruption are regulating themselves concerning the conflict of interest of their board members and their staff, making the interest declaration a mandatory document in order to clearly stand the compliance with the law provisions. The regulations concerning conflict of interest do not apply to the regular members of the associations and foundations.

5. Transparency

According to the last Civil Society Indexes , although NGOs were active in promoting transparency in public affairs, the existence of genuine internal transparency and accountability within NGOs remained limited. This situation could possibly be related to the overall level of mistrust and corruption within Romanian society, as well as the dependence of NGOs on foreign donors, rather than on local constituencies. While NGOs generally complied with all transparency requirements towards international donors, they were less interested in opening themselves to public scrutiny domestically. Among the possible explanations of Romanian NGOs' reluctance to become very transparent would be their alleged engagement in a competition for scarce resources with other fellow organizations.

6. Complaints and enforcement mechanisms

In spite of suspicions and random media accusations of corruption, significant cases involving representatives of civil society in civil or penal processes have not reached the public sphere, with some noteworthy exception. The most important was in the context of the 2004 Romanian parliamentary elections, twelve Romanian NGOs were under libel accusation for trying to inform the voters, throughout a national informing campaign, about candidates with questionable records from each political party . As a group, they have been sued by representatives of the ruling party who looked for compensations of over Euro 120,000 for defamation. The Bucharest Tribunal rejected their claims as unfounded.

7. Relationship to other pillars

The relationship between the state and NGOs has been carried out on a largely ad-hoc basis. For instance, the need to enforce Romania's capacity to implement reforms for EU accession has constrained the Government to initiate cooperative working groups with NGOs across the country. Their mobilization around the judicial reform through expertise and contributions is worth mentioning. However, notwithstanding the improvements in the inter-sector state-civil society dialogue and the multiplication of NGOs' advocacy initiatives, after the EU accession, cooperation between these two sectors decreased and became rather hesitant and competition-based.

In the relationship between the private sector and NGOs, the general attitude of the business operators towards civil society actors has remained indifferent. Despite a series of positive private sector initiatives towards strengthening civic dialogue, only few economic agents have proven strategic thinking by involving themselves in corporate social responsibility initiatives. For instance, in June 2009, 46 companies were carrying out programmes of corporate social responsibility.

NGO access to media has varied significantly: a few NGOs benefited from weekly coverage, while the majority received no media coverage at all. Media coverage of NGOs has generally been more reactive than proactive, with journalists only interviewing NGO representatives about various political or social issues in order to back up their materials. According to an analysis carried out in 2007 by the Media Monitoring Agency, NGOs had an unclear identity in the press and secondary importance in the dissemination of news .

8. Past developments and future prospects

Romanian civil society took some steps forward in the last years. They became more professional than before 2005. They strengthened cooperation within the sector as well as with public authorities. They had sometimes decisive access to these institutions, especially due to the prospects of European integration. At the same time, they were able to go in opposition to these institutions.

On the other hand, it seems that their ongoing professionalizing endangers the contact with ordinary citizens. Apart from some well organized civil society structures, there have been no significant or visible civil society activities stemming from ordinary citizens initiatives or voluntary activities. The watchdog role of the public over state institutions has therefore been limited to the contribution of professional NGOs.

9. Stakeholders' recommendations

The main steps to be seriously taken into consideration in order to improve the functioning of civil society organizations and to strengthen their role generally regard getting closer to citizens by a largely grassroots approach, reducing the financial dependence from the traditional sources of external financing and imposing stricter practices on transparency, integrity and accountability.

In this context, the first steps to be taken towards a better governance and stronger role and capacity within society of the nongovernmental organizations should include the following recommendations:

- Professionalizing and specializing staff
- Improving the relationship with constituents and enhancing visibility so as to enlarge the membership
- Improving local representation of those organizations that act rather at the central level
- Finding multiple sources of financing so as to avoid donor capture
- Strategic partnership with similar civil society organizations on different projects (building coalitions)
- Running common advocacy efforts and Improving inter-organizational communication
- Concentrating activity on educating and awareness raising among the citizens
- Promoting voluntary actions amongst young people
- Building and adhering to a unitary code of ethics
- Drawing up incompatibility guides for civil society practitioners
- Setting up protection mechanisms for civil society activists that suffer from political retaliation

BUSINESS SECTOR

Capacity	Governance	Role
3 (moderate)	2 (small extent)	2 (small extent)

The business sector has been a weak pillar of integrity for two main reasons. Firstly, the instability and imprecision of the current regulations, and the deficient law enforcement mechanisms have hampered the Romanian economic environment from being completely fair and competitive.

Secondly, the scarcity of voluntary initiatives of the economic agents towards promoting transparency, integrity and fair competition have revealed that the business sector has yet to prove its engagement for improving the quality of the Romanian economic environment.

A. Legal Framework

Cornelia ROTARU

1. Role

The business sector is a basic pillar for the rebirth of the free market economy in Romania after December 1989. The current Constitution of Romania guarantees economic freedom, free access of persons to economic activity, free enterprise, and their exercise under the law .

In general terms, the business sector comprises all the entities, both individual and legal, performing acts of commerce in order to produce profit. According to statistics of the National Trade Registry Office (ONRC) the business sector included over 1,847,143 incorporated entities within the Trade Registry from December 1990 to December 2008, out of which 0.54 per cent were in liquidation and dissolution and 29.03 per cent have been erased .

Foreign Direct Investment (FDI) cumulated over 21.8 billion euro between 1990 and 2008 originated from the Netherlands (18.49 per cent), Austria (12.2 per cent) and Germany (10.49 per cent). The first ten ranked countries represent 68.34 per cent of the total FDI (4). FDI has been oriented towards manufacturing (52.3 per cent), agriculture, forestry and fishing (22.1 per cent), financial and insurance activities (10 per cent), wholesale and retail trade (6.0 per cent), real estate (4.7 per cent) and construction (1.7 per cent) .

According to "Doing Business – Full Report 2009" issued by The World Bank, Romania registered a positive evolution in terms of ease of doing business, moving from the 71st position in 2006 to 49th position in 2007 and 47th place in 2008.

In terms of the main legislative stipulations regulating this sector, several laws have a particular attention. The Law no. 31/1990 (amended in 1996, 2001, 2003 and 2007) governs the formation, administration, restructuring and liquidation of the companies. This law regulates the relationships between partners as well as their ethic behaviour based on good faith. It provides that the initiators, partners or administrators of a company must be persons who have not previously been convicted of certain crimes. The law mentions the respective and the afferent sanctions, applicable under the civil or penal code. Thus the founder, manager or the legal representative of the company can be sentenced to jail for offences such as: the act of submitting public reports, statements, prospectuses, financial statements in bad faith that present unreal facts on the company, with the purpose to hide its real situation; borrowing, in any form, directly or by third party, from the company he is managing; spreading false news or use other fraudulent means leading to the increase or decrease in value of the company's shares or bonds with the purpose of obtaining for him/herself or for others a profit at the expense of the company; paying dividends out of false profit; fraudulent bankruptcy, etc.

Concerning the liquidation of the companies Law no. 31/1990 stipulates that the shareholder or administrator who, by defrauding creditors, abuses the limited character of his/her liability and the company's distinct legal personality shall be unlimitedly held responsible for the outstanding obligations of the dissolved or liquidated company. A member's liability becomes unlimited especially when he/she uses the company's assets as if they were his/her own, or if he/she decreases the company's assets for his/her or third parties' benefit, whether aware, or supposedly unaware that by doing this the company will no longer be able to carry out its obligations.

This law has been recently improved especially by GEO no. 44/2008. Modifications were made towards simplifying formalities for registering and giving authorizations for starting business entities (reduction of the number of procedures and the duration for performing administrative procedures, setting up and improving the one stop shop, introducing the unique identity code and simplifying fiscal registration). The expected efficiency of these amendments consisted in the reduction of the number of procedures for starting a business at six procedures and at five days for registering a company with the Trade Registry and fiscal bodies . A simplification of the administrative procedure has been performed in the case of authorized persons, individual enterprises and family associations by eliminating, for instance, the city hall authorization.

The insolvency procedure has been also harmonized with the international standards and with the principles of free market economy, as for instance, the attempt to recover the company through reorganization and the organization of proceedings enabling all creditors to recover their receivables. Law no. 85/2006 on insolvency procedure that replaced the former Law no. 64/1995 on judicial reorganization and bankruptcy increased the transparency of the process by publishing on the Internet the companies undertaking the insolvency procedure. Since August 2006 the National Trade Registry Office issued the Insolvency Proceedings Bulletin that can be also accessed on-line . However the bankruptcy procedure still has many weaknesses in the existing law and many procedural and administrative bottlenecks in the bankruptcy process.

The new Law against tax evasion (Law no. 241/2005 amending the Law no. 87/1994) makes tax evasion a criminal offence on the same level as a crime against individuals.

Improvements of the competition legislation after 2005 have been brought mainly with regard to state aid issue: EO no. 117/2006 regarding the national procedures in the State aid field, approved with amendments by Law no. 137/2007; GD no. 946/2006 on the maximum amount of the regional

State aid for initial investment that can be granted in Romania to undertakings that are not considered small and medium-sized enterprises (SMEs) as they are defined in the State aid regulations; Order no. 175/2007 of the President of the Competition Council for implementing the Regulation regarding the procedures for monitoring the State aids.

The decision-making process in the field of antitrust consisted in the adoption of 154 decisions in 2006 and of 63 decisions in 2007. (24), (11). The objects of the decisions revealed a high percentage of decisions on economic concentrations (notifications and other types of decisions) – 77.9 per cent in 2006 and 71.4 per cent in 2007 followed by sanctioning decisions with 16.2 per cent in 2006 and 4.8 per cent in 2007. In 2006, the fines applied by the Competition Council for infringements of the competition regulations amounted to EUR 15,671,729.36, out of which approximately 81% represented fines applied for abuse of monopoly .

A particular attention was paid to the protection of the Intellectual Property Rights (IPR) sanctioning severely the counterfeit and piracy of goods. The corruption of customs officers appeared in many cases related to counterfeiting and piracy. The enforcement of the mechanism provided by the Law no. 344/2005 for ensuring the protection of IPR within customs control decreased the entry of counterfeit goods on the Romanian Market. A positive impact in curbing the piracy of software and copyright had the enforcement of the Law no. 8/1996 amended in 2004, 2005 and 2006 by creating and publishing on the web site of the Romanian Office for Copyrights (ORDA) the public registers of software products, private copies, multipliers, as well as the increasing of control measures finalized with fines, seizures and public destruction actions of the pirated goods.

2. Resources and Structure

The Government expected to reduce the grey economy, fiscal evasion and corruption by introducing in 2005 the flat tax system. This measure had simplified bureaucracy, evidence and costs and only in a certain proportion reduced tax evasion.

Specific "tax evasion" crimes provided for in the law include: booking or registering in legal documents fictitious expenses or operations; altering, destroying or hiding accounting documents, fiscal cash register memories or other data storage supports; hiding taxable goods or income sources; not recording in accounting or other legal documents all or a part of the operations carried out or the income earned; keeping two sets of accounting records; avoiding financial, fiscal or customs authority audits by not declaring or making inaccurate or false statements regarding the taxpayer's main or secondary offices. The sanction for tax evasion crimes supposes 2 to 11 years of detention and the interdiction of exercising certain rights.

The percentage of illicit work has increased despite the sanctions provided by the Labour Code and the simplification of evidence due to the flat tax. The monitoring measures of the Ministry of Labour and its territorial entities have been inefficient and the position of the business sector vague. The entrepreneurs claimed constantly that the social contributions' level is too high.

3. Accountability

The accountability of business entities consists of respecting the general and specific regulations governing each domain of activity and performing the obligations stipulated by the laws. The

performance of unauthorized economic activities constitutes a criminal offence. Entrepreneurs have to pay particular attention to the environment and consumers' protection. During last 3 - 4 years many companies have been certificated by the competent authorities in implementing management quality, environment, social systems, etc. This action had a positive effect on the productivity, efficiency and quality of the enterprises' activity and also contributed to reduce corruption.

The oversight of some parts of the business sector is governed by special legislative and institutional framework. In this case the banking sector overseen by the National Bank of Romania, capital markets overseen by the National Securities Commission, insurances overseen by the National Insurance Commission, audiovisual sector supervised by the National Audiovisual Council in Romania, fair competition and consumer protection overseen by the Competition Council can also be included. The mentioned institutions are independent and public, solely accountable in general to Parliament and regulatory bodies for issuing the secondary legislation for the respective sector. They are also in charge of ensuring the integrity of regulated markets, the protection of operators and investors against unfair, abusive, fraudulent practices and market manipulation, establishing standards of financial soundness and honest practice in the market.

Other tasks include authorizing and keeping the register of the players on the supervised market, monitoring the market, establishing the contraventions in the matter and providing sanctions according to the law in force. In addition, the Competition Council can initiate criminal actions and solve the complaints on the abuse of a dominant position (for instance, in 2007, there were two cases). Based on the Competition Council's decision, supplementary profits or revenues acquired owing to the violation of the law are to be confiscated and given to the State budget. Increased efforts were also deployed by the Competition Council towards the detection of those practices that could significantly distort a competitive environment. In this context, Competition Council opened 11 new proceedings in 2007 in the area of antitrust, including one on an alleged infringement of art. 81 of the EC Treaty, regarding the administration of compulsory private pension funds in Romania. In 2007 the Competition Council adopted a number of 63 antitrust decisions .

In addition to the National Authority for Consumers' Protection as state body having supervision and control powers, several private organizations in close connection with the business sector are responsible for protecting consumers' rights. Consumers' Protection Consulting Councils based on public private partnership comprise of the representatives of both public administration and associations and are established both at national and local level. They aim at the unitary enforcement of consumers' protection policy.

The Anti-money laundering issue has as regulators the National Bank for the banking sector, the National Securities Commission for the securities market, the National Insurance Commission for the insurance market and the National Office for the Prevention and Control of Money Laundering (ONPCSB) a governmental agency for reporting the money-laundering facts. The Third EU Directive was fully implemented by the GEO no. 53/2008 and GD no. 594/2008.

The crime of money laundering is also treated in Romanian law as a possible "crime directly related to corruption offence. Generally, money laundering is punished with 3-12 years of prison.

4. Integrity

Business sector has paid less attention to applying elements of corporate governance, except multinational companies, large joint stock companies, autonomous and listed companies. Law no. 441/2006 amending Company Law no. 31/1990 introduced provisions on corporate governance. Thus it stipulates the separation of ownership and control for avoiding conflicts of interests between the shareholders and managers of the large joint-stock companies. The law prohibits managers (within the one-tier system) and the Supervisory Board's members (within the two-tier system) from being employees of the company they manage. The general meeting of shareholders has the obligation to approve the agreement and the payment to Board's members and managers. The managers have to conclude a management contract with the company to administer it. No management duties can be delegated to the Supervisory Board whose role is to control the company's activities. The Directors, the Management Board and the Supervisory Board members must take a professional liability insurance coverage. There is no legal obligation to publish the management contract.

To avoid conflicts of interest, many regulators also prohibit their employees from holding shares in companies that they regulate. For example, the Romanian Telecommunications Law prohibits the regulator's employees, including the president and vice-president, from having shares or participating as board members in any company under the regulator's competence.

With respect to financial statements, joint stock companies are under the obligation to set up an audit committee and maintain an internal audit function. Law no. 441/2006 for the modification and completion of the Law no. 31/1990 on companies states that the Board of Directors or the Management Board (for two-tier systems) have to present to the censors, auditors respectively, at least 30 days prior to the date set for the General Meeting, the annual financial statements together with their report and supporting documents. Moreover, companies which are subject to financial audit shall organize the internal audit according to the norms drafted by the Romanian Chamber of Financial Auditors for this specific purpose. In the case of the companies which are not subject to financial audit, the general meeting of shareholders may decide to contract the financial audit or to appoint the censors.

Conflicts of interest were dealt with by the Company Law (Law no.31/1990) in the case of experts, independent and internal auditors. It is not possible to appoint as independent internal auditors or experts for carrying out the report of evaluation of all contributed goods; relatives or kinsmen up to the fourth rank including and spouses of those who came up with a contribution in kind or the founders themselves; the persons who receive, in any way, for the positions they fulfil other than that of an expert, a wage or a remuneration from the founders or from those who came up with contribution in kind.

The Parliament modified by Law no. 278/2006 conflicts of interest in the Penal Code and allowed for it to be criminalized. The same law introduced provisions regarding the criminal responsibility of legal persons.

Codes of conduct are not mandatory by law. A set of rules serving as a national code of corporate governance does not exist. Professional associations, chambers of commerce and employers' associations have devised various codes of conduct. The main provisions of these codes focus on fair, anti-corruption behaviour, prevention and combating the monopolist practices. The associations tried to make members aware of the necessity of adopting and implementing the codes of conduct within their companies but they did not monitor the feed-back process. For instance the Business Conduct

Code of the Romanian Business Associations stresses on business ethics in developing personal and professional relationship (business based on trust, moral principles, integrity, respect of partners, non-corruption).

Corporate governance is reviewed according to provisions in the Securities Law and National Security Commission's and Bucharest Stock Exchange's (BSE) regulations and procedures.

The companies admitted to trading on the regulated market of the BSE must adopt and comply with the provisions of the Corporate Governance Code. The issuers adopting wholly or partially the Code, shall disclose yearly to BSE a Corporate Governance Compliance Statement, specifying which recommendations of the Code have actually been implemented by the specific companies and how. The BSE Corporate Governance Code contains provisions regarding the issuers, their directors, auditors, shareholders or other company's bodies, appointment and remuneration of directors, transparency, financial reporting, internal control and risk management, conflicts of interests , corporate social responsibility, management and control systems; no provisions referring directly to anti-corruption and anti-bribery behaviour.

A Code of Conduct for the Electricity Wholesale Market Participants has been written up in line with the World Energy Council's Action Ten. One area of it stipulates that corruption adds to the cost of energy and ethics is a way to foster equality, fair competitive practices and respect of the spirit of the law. Promoting transparency, fairness, ethics and identifying potential cases of market abuse are several of the objectives of the Code. In practice, after liberalization, the Electricity Market is highly criticized by the entrepreneurs and media due to its lack of transparency and anti-competitive practices.

The Romanian Labour Code contains two post-employment restrictions which are concluded in the individual employment contract or during its performance: non-compete clause and confidentiality clause. The parties may negotiate and include a non-compete clause in the contract, requiring the employee, after the cessation of the contract, to abstain from performing, in his/her own interest or for a third party, an activity competing with that performed for the employer, against a monthly non-compete benefit the employer undertakes to pay during the entire non-compete period (of maximum 2 years from the cessation of the employment contract). When wilfully infringing the non-compete clause, the employee may be required to return the benefit and, as the case may be, pay damages according to the harm caused to the employer

Under the confidentiality clause, the parties shall agree, for the entire length of the individual employment contract and after its cessation, to refrain from disclosing data or information they took knowledge of during the performance of the contract, under conditions laid down in rules of procedure, collective labour agreements or individual employment contracts. A breach of this clause by any of the parties shall incur the obligation of the liable party to pay damages .

5. Transparency

The Law no. 31/1990 on company establishes the rules on disclosure and publicity for the players of the business sector. The institutions in charge are the Trade Registry and the Official Monitor. All the constitutive deeds and the modifications are registered with Trade Registry and published in the Official Monitor. Anyone interested may ask the Trade Registry for a copy of the needed document or any other kind of information.

Financial statements can also be published by the Trade Registry and the Ministry of Finance. The electronic versions are also available on the institutions' websites.

At the request of the Trade Registry Office or of any interested person the judge could decide the dissolution in the case when the company did not submit for 3 consecutive years its financial statements or other documents which, according to the law should be submitted with the Trade Registry Office.

For the prevention and suppression of corruption, Law no. 161/2003 deals with the transparency of information related to overdue budget obligations and charges the Public Finances Ministry and other public bodies disclose the list of legal persons that are taxpayers and register overdue debts to the public budget and to the social security public budgets. The National Authority for Fiscal Administration publishes on its website the public registries regarding the companies licensed for distributing energy, alcohol, etc. as well the cancelled authorizations. The list of companies that did not fulfil their fiscal duties is also published on the website of the National Authority for Fiscal Administration. A recent regulation (Public Finance Minister's Disposition no. 819/2008) declares inactive taxpayers who do not fulfil consistently their fiscal duties. The list of inactive companies is to be published on the website.

The public procurement domain is regulated by GEO no. 34/2006 on the award of public procurement contracts, public works and services concession contracts (amended by GEO 94/2007 and GEO 143/2008). Certain provisions of the GEO 34/2006 are criticized such as the suspension of public auctions until a court decides on the fairness of the assignment delaying large contracts. The procedure of negotiation with a single source is appreciated as a potential corruption's source. Romania is perceived both at home and abroad as being a country where public procurement, private-to-public partnership, concession and privatization is widely affected by private or political interests as well as by corruption. The remedies system under the Administrative Litigation Procedure contains two courses of actions: the administrative-jurisdictional and the Judicial Course. The administrative-jurisdictional course of action was intensely used (over 5000 complaints in 2008). The National Council for Contestations Settlement, an independent institution, specialized in complaints against acts issued in procurement procedure in first instance. The appeal is solved by the Court of Appeal. The judicial course is the only one to rule on the award of damages.

Electronic public procurement (e-licitatie) reduced face-to-face contacts between officials and bidders increasing competition, transparency and efficiency and reducing corruption. The transparency of public acquisitions has been improved by making it compulsory for local and central administration to publish announcements, winners and complaints on their web-sites.

The e-government procedures started with the launching of the portal www.e-guvernare.ro, a unique point of access to services and information of the central and local public administration has opened the way to a real desk reform with a relevant impact on preventing and fighting corruption electronically . Few e-services already implemented are: The Virtual Payment Office, The Electronic System for Issuing Licenses for International Carriers, Electronic Payment of Local Taxes and Intelligent Forms System of Trade Register, on-line payments of fiscal duties through www.ghiseul.ro. Meanwhile a new category of offences appeared in the field of IT&C, opening new horizons for the offenders able to defraud networks for their profit.

In order to protect minority shareholders and in line with transparency rules law no. 441/2006 introduced the company's obligation to provide information about its economic and financial situation at the request of shareholders and to make available to them the decisions as well as the annual financial statements, the annual report of the Board of Directors, the Supervisory Board and the proposed dividend distribution. If the company owns a website, it is obliged to publish on it in an electronic form all the decisions of the general assembly of the shareholders. Minority shareholders have the legal right to request the cancellation by court of the decision of general meetings that are against the minority shareholders' interests and breaching the provisions of the law and the statutes. Art. 136 of Law no. 441/2006 stipulates that shareholders representing at least 10% of the registered capital have the right to ask the court to appoint an expert to verify the management operations of the company. The report is to be submitted to the Board of Directors or to auditors to analyze it.

There are specific market transparency and investors' equality requirements related to stock exchange listing companies. Publicly owned companies shall draft and make available quarter, biannual and annual reports to National Securities Commission, the market operator and the public. In the case of a material event, companies shall prepare current reports in 48 hours .

Access of companies to procedures/documentation significantly improved in the last 2-3 years as a result of implementing the provisions of law no. 161/2003 regarding transparency in the management of information and of public services by electronic means. Each public institution at the local and national level must have web-sites for delivering public information to any interested person. The draft of laws, regulations and decisions are published on the issuer's web-site being available for public debate. In Bucharest the City Hall's General Council's meetings can be followed by video live transmission.

6. Complaints and Enforcement Mechanisms

Law no. 359/2004 on simplifying the traders' registration formalities introduced declarations on bona fide basis for getting basic authorizations. The inspectors of the Sanitary Veterinary and Food Safety National Authority, Public Health Authority, Ministry of Environment, Labour Inspectorate, Fire prevention and Civil Protection Authority have the right to visit the enterprises' location in order to control compliance with the law. The range of enforcement tools used by inspectors includes: withdrawal of authorization, enterprise closure, fines or in certain cases prosecution leading to imprisonment. Actions taken for non-compliance are decided on a case-by-case basis.

The Financial Guard, the public body in charge with the enforcement of the tax law, prevention and investigation of tax evasion and tax-related fraud identified in 2008 353 ghost-type companies engaged in operations of committing fraud on VAT in intra-Community transactions affecting cereals, fruit & vegetables, meat, cement, timber, tobacco, textile, oil, filed 281 criminal complaints. The multi-annual evolution of the Financial Guard's activity has shown an increase in control as well as in offences and crimes .

Indicator / Year	2004	2005	2006	2007	2008
Penal notifications (number)	1.720	2.009	2.334	2.375	4.391
Damages (thousand lei)	362.000	697.000	746.000	1.400.000	2.194.000
Established fines (thousand lei)	108.000	162.000	193.000	273.000	251.000
Fines paid (thousand lei)	89.000	122.000	139.000	178.000	156.000
Seizures (thousand lei)	154.000	124.000	89.000	104.000	131.000

In order to enforce fiscal discipline and discourage tax evasion within small traders, the Fiscal Guard intensified the control of this category. During 2008 over 53 thousand entrepreneurs were checked and a number of 38,116 of them were fined. A phenomenon broadly met in trade, services and rural area is the avoidance of using cash registers.

Enforcement mechanisms in certain cases have been created by the business system itself. An example is the banking sector which set up two mechanisms: the Romanian Credit Bureau for collecting from the banks and processing negative information on debtors, fraudulent and on individuals providing false statements and The Payment Incidents Register (PIR). The latter was initiated by the National Bank of Romania managing information specific to payment incidents both from the bank's point of view (overdraft) and from the social point of view (loss/theft/destruction).

An overview on the effectiveness of the private enforcement mechanisms in countries in transition was delivered by EBRD Legal Indicator Survey 2007. On a scale from 1 to 10, Romania received value 2 for institutional integrity and value 4 for liability standards. Institutional support was scored with value 6 , whereas speed was considered very low (close to zero) .

The complaints mechanism has been improved by using IT&C tools. Public authorities have developed streamlined complaints procedures and a person can find the answer to petitions and claims via Internet such as in the case of Bucharest City Hall, National Authority for Consumer Protection, Audiovisual National Council, etc. In addition the National Authority for Fiscal Administration has advised clients to state on-line if they are dissatisfied by any behaviour of the civil servant. Law no. 262/2007 modifies and completes the law of administrative dispute no. 554/2004. The prior petition – for court actions having as object administrative contracts – represents an act of conciliation in the case of commercial litigations; therefore the provisions of the Civil Procedure Code are applicable accordingly.

Payment Summons procedure under GO no. 5/2001 allows faster recovery of receivables which are certain, expressed in a currency and due, originating either from acts/deeds proven by documents or from the law. However, the Emergency Government Ordinance no. 119/2007 allows also other evidences to be produced in view of proving the claim/defenses.

Within European Union SOLVIT unit addresses problems arising from misapplication of Internal Market Rules. It was implemented by all the ministries but is less known and used by the business sector.

The mediation's legislative and institutional frameworks have been also set up (Law 192/2006 on mediation, Creation of the Mediation Training Institute, Setting up the Union of Mediation Centres). Regulated markets have set up their own alternative dispute resolution (ADR) like the Arbitration Committee for Electricity Market Disputes, Consumer Centre, the Arbitral Bodies on the financial regulated market for the disputes between intermediaries and companies issuing securities; the Arbitration Commission of disputes between suppliers of medical products or services and the Health Insurance Entities; Arbitration of conflicts of interest in the matter of labour conflicts between employees and employers, functioning through regulation approved by the Minister of Labour, the Family and Equal Opportunities; the Arbitration body of the Stock Exchange, etc. There is also ad-hoc arbitration organized by the parties based on procedural rules tailored by them or the rules of a certain arbitration institution but which is not administered by an arbitration institution. On line dispute resolution, a new trend in solving the disputes between companies has not been applied yet by the business sector.

7. Relationship with other NIS pillars

Corruption is linked with the interest of business sector and the quality and accountability of the public administration and politicians.

As it is unanimously recognized in the corruption act, the entrepreneur could represent the party offering bribes (active corruption) to a civil servant, politician or official (passive corruption - the part receiving a bribe).

The contact between entrepreneurs and civil servants is the origin of small corruption. The administrative bureaucracy, excessive regulation or poor law enforcement generates undoubtedly corruption. Administrative harassing influences the entrepreneurs to pay bribes for getting needed public services in a reasonable time (mainly small and medium size).

Professional associations and employers' associations consider that deregulation by withdrawing totally or partially the restrictions and authorizations to specific activity, reducing or simplifying certain regulations could be efficient measures in combating corruption.

A close interaction exists between the business sector and control bodies like Financial Guard, Labour Inspection, Environment Guard, Customs Authority, Sanitary – Veterinary Agency, etc.

Business sector is not subject of the Court of Auditors or the National Anticorruption Prosecution's control except in the case when they have used public funds.

The relationship of the business sector with the judiciary is criticized. The entrepreneurs claim two issues: long proceedings and the leanings of Court decisions towards one party by political factors or the party itself. The business community is interested in having a justice system and in a reasonable time frame for the resolution of complaints against public agencies covering procurement, utilities and concessions or the minority's shareholder rights.

The self-organization of the business community is still weak and divided around groups of interest. The professional associations representing free-lancers (accountants, auditors, practitioners in judicial reorganization and liquidation, evaluators, etc) are more active and visible in promoting legitimate

interests in the regulatory process. The foreign investors' organizations are also concerned with the regulatory initiatives as well as associations of large companies. A National Business Agenda of the business community in its relationship with decision-makers is not a goal both for short and long term proving a lack of organizational capacity and advocacy expertise.

According to Law no. 346/2004 regarding the stimulation of establishment and development of SMEs, a group assessing the economic impact of regulation on SME was set up in 2006 within the National Agency for SME. This regulation represents an implementation of the OECD's Regulatory Impact Analysis (RIA), a policy tool widely used in OECD countries. The Group should be a consultative body, without legal personality consisting of the representatives of business and employers' associations, members of Economic and Social Council, researchers, professors, as well as the representatives of the administration drafting the regulation. The Group should apply the principle "Think small first" and the main task of it was to carry out recommendations for the draft regulation based on the impact analysis, cost-benefit analysis and an evaluation of a deregulation option .

B. Actual Institutional Practice

1. Role of the sector

According to the World Bank's "Doing Business – Full Report 2009" , which ranked 181 of the world's economies on the ease of doing business in accordance with their respective regulatory frameworks, Romania registered a positive change since the previous years: if in 2006, it was on the 71st position, in 2007 it was ranked the 49th and in 2008 the 47th. According to the last Report, Romanian regulations allowed for easy procedures in terms of getting credit and starting a business, but lacked a user-friendly approach with regard to employing workers and also imposed a high level of taxation (the 146th place out of the 181 ranked economies).

Yet, in the last four years, the business sector has witnessed a deficient and unstable regulatory environment: notwithstanding their changing character, the laws governing this sector, such as the labour code and the fiscal legislation, have been claimed to be imprecise, unclear and debatable. This state of affairs increased the vulnerability and incidence to corruption and precluded the business environment from being coherent and predictable. In addition, provisions on private sector corruption were said to be insufficiently and not clearly regulated.

In addition to these flaws, precarious law enforcement mechanisms have stemmed from complicated and overlapping control procedures and from a lack of will and professionalism of the authorities responsible with the control and verification of the economic activity. If the registration of companies has not raised particular problems, the insolvency procedures were allegedly extremely complicated.

Furthermore, the role of the business sector in promoting integrity has been very limited as well. However, it is worth mentioning the 'Partnering Against Corruption Initiative', initiated by the World Economic Forum and signed by 14 Romanian companies, along with other 126 other companies around the world; and the Program "Social Responsibility" which involved 46 companies operating on the Romanian market and signatories of a commitment on investing in social and community development .

2. Resources and Structure

Since 2005, the Romanian business sector has faced two major resource-related problems. Firstly and as already mentioned, the legal framework governing this sector had yet to provide effective regulatory mechanisms so as to ensure a fair and competitive market. Secondly, law enforcement has been deficient especially for reasons of human resources: those responsible with the oversight of the economic operators were claimed to be insufficiently prepared and not accountable enough for their activity. Accordingly, tax evasion and illegal work have remained at high levels.

Furthermore, in spite of the general allegation of a free Romanian market, the practice of counterfeit goods and illegal commerce has induced distortions in the national business environment. However, in what may concern the organization of the Romanian market, its relative openness to foreign investments have prevented it from monopolies and compelled it to adapt to international standards: they adopted, for instance, the practice of internal and external audits as a way of attesting a fair competitive behaviour and a manner of acquiring consumer trust.

3. Accountability

The business sector has been alleged to be accountable in front of two different instances: customers and public authorities. If the first type of accountability was claimed to be self-regulating, as it depended on the relationship between consumers and suppliers on the market, the accountability in front of public authorities seemed to be problematic for several reasons. Foremost, the lack of coordination between public authorities involved in the control and verification of the economic operators (as, for instance, the representatives of the Ministry of Finance, Ministry of Labour, Consumer Protection Agency etc.) and their sometimes overlapping competences have determined disproportionate oversight activities in some areas and insufficient ones in others. Other than that, the mechanisms of control and verification were claimed to be conceived on an essentially coercive basis: the lack of intermediary stages of voluntary conformation to the rule before applying direct sanctions were claimed to contribute to the increase in the propensity to corruption.

4. Integrity mechanisms

Apparently, social corporate responsibility has yet to penetrate the bulk of the Romanian market. Within the national business sector, promoting integrity within the relations between the economic operators has been merely marginal. Generally, big companies and especially those with foreign capital have shown an interest in advancing anti-corruption or anti-bribery stipulations in their labour conventions and codes of conduct. Since codes of conduct were not mandatory by law, they have been a matter of voluntary initiative of economic operators. Professional associations, chambers of commerce and employers' associations have contributed to the promotion of this type of acts among their members. Their main provisions concerned fair trade. For instance the Business Code of Conduct of the Romanian Business Associations stressed on business ethics in developing personal and professional relationship: business based on trust, moral principles, integrity, respect of partners, zero tolerance to corruption.

5. Transparency

Companies disclosed their financial records as much as they were compelled to do by law. As for making public their ownership, they had to declare it at the Trade Registry Office. Yet, this matter was questionable, as no mechanisms were in force so as to verify whether the declared ownership corresponded to the real one. Besides, the operations conducted by the National Trade Registry and the trade registers from the tribunals had to be paid for.

6. Complaints and enforcement mechanisms

Generally, companies chose the mass media as the privileged way to complain about acts of corruption, and especially about those related to public authorities. Complaints to Court or memoirs to public authorities were of little incidence because they were claimed to be ineffective.

The Financial Guard, the Romanian National Securities Commission and the Competition Council were claimed to have little effectiveness in dealing with wrongdoings within the market. Still, statistics show that their amount of activity has increased since 2005. For instance, in 2008, the Financial Guard within the National Agency for Fiscal Administration, had twice the number of penal notifications compared to 2005, and increased the amount of established fines by nearly 50%.

In recent years the Alternative Dispute Resolutions that generally supposes mediation, conciliation and arbitration have gained more users within the business sector for solving commercial cases.

7. Relationship to other pillars

The business sector has been mainly interacting with the public authorities responsible with the control and verification of the economic operators' activity: the Ministry of Finance, the Ministry of Labour, the Ministry of the Environment, and the National Council for Export, the Consumer Protection Agency etc.

One of the most problematic dealings was related to public procurement, since it was claimed that the tenders were organized in a way that would assure the award of contracts to specific bidders.

Last year, the business sector was particularly interested in fiscal and labour regulations being closely linked to the level of taxes. Few public hearings initiated by the Advocacy Academy debated Law no. 441/2006 draft for amending Law no. 31/1990 on trade companies. Private operators acting on securities market, energy and utilities market, real–estate had also an active role in the regulatory process.

The dialogue of business sector representatives and public administration within the Social Economic Council and Social Dialogue Committees of ministries has been very formal and inefficient. In certain emergency cases regulatory initiatives were debated in the Social Dialogue entities after their publication in the Official Monitor.

Overall, the relationship between the business sector and public authorities were claimed to be still deficient and corruption-inducing. However, a certain improvement in the dialogue with the Government, for instance, has been noticed, as the institutionalized dialogue with employers' associations and trade unions has become more frequent.

The involvement of the representatives of the business sector has still been weak in relation to local administrations, despite the useful tool and provisions offered by the Transparency Law.

8. Past developments and future prospects

In recent years progress has been made, both in legislative terms and in terms of economic behaviour of market operators. This was frequently related to exterior inputs: the necessity of harmonizing the Romanian law with the European acquis communautaire, and the model of good practices promoted by foreign investors pressured the national market to adapt to European and international standards. Still, the most problematic issue has remained the relation between the economic agents and public authorities, which was constantly claimed to be corruption-inducing.

Accordingly, the improvement of the Romanian business sector in terms of transparency and integrity presupposes stable, clear and predictable legislation and procedures, but also effective law enforcement mechanisms. Furthermore, simplifying procedures in the sense of reducing direct contact between economic agents and civil servants, withdrawing the bulk of restrictions and authorizations to specific activities and unifying the control and verification procedures would contribute to a fairer economic environment.

9. Stakeholders' recommendations

In this context, the first steps to be taken towards the increase in performance and integrity of the business sector refer not only to legislative measures, but also to good practice recommendations that apply both to economic operators and civil servants. More specifically, the following recommendations need to be taken into consideration:

- The reduction of the administrative burdens by simplifying fiscal procedures and by introducing the electronic means of carrying them out
- The clarification of the public contracting regulations and unifying their application
- The increase in the number of voluntary initiatives related to promoting transparency and integrity within the business system itself
- The promotion of corporate social responsibility agendas
- The introduction of ethics codes within the companies and of integrity-related provisions in the labour contracts
- The involvement of the Chambers of Commerce and Industry in the activity of promotion of clean business
- The establishment of electronic platforms of discussions and public debates on the legislative and public policy changes that affect the business sector, through Chambers of Commerce in Romania
- The organization of public hearings and public debates on integrity and transparency in business.

PUBLIC PROCUREMENT

Capacity	Governance	Role
2 (small extent)	3 (moderate)	2 (small extent)

The public contracting system has been subject to a slow overall improvement. In spite of notable legislative modifications and amendments aiming at rendering a clear and independent system of public procurement, practice has shown that, on the field, it remained quite intricate and unsafe in terms of integrity. Active from 1998, the CFCU has proven to be, at least from 2005 onwards, a stressful working environment, facing pressures both from the inside and the outside. Internally, the heavy work volume was augmented by difficult responsibilities. Externally, pressure was caused by other public authorities with competences in the management of European structural funds.

Created in 2005, the ANRMAP showed an ascendant course, even though, generally, it has proved little effectiveness in regulating and disciplining agents involved in the public procurement process.

Functional since 2007, the CNSC has faced particular problems in terms of human and financial resources, which made it difficult and time-consuming to handle increasing numbers of contestations and giving rulings.

A. Legal Framework

Carmen STECKO

Introduction

General considerations

Public procurement represents in any country a vast opportunity for corruption as vast amounts of public money must follow complex and intricate procedures in order to achieve a public good. The same vulnerabilities can be identified in Romania as well. However, confidence in the national public procurement system has increased during the past years due to legislative efforts to achieve full alignment with the acquis communautaire i.e. the transposition of the 2004 public procurement directives as well as the elaboration of a fully coherent and comprehensive legal framework for public procurement including harmonised rules on concessions and public-private partnerships, a fully aligned framework for e-procurement and an independent remedies mechanism.

The legal and institutional developments of the public procurement system brought significant improvements regarding the respect of the main principles of open competition, transparency, equal treatment and conflicts of interest thus ensuring the compliance with the European standards in

public procurement and raising the responsibility of the contracting authorities and/or legal/private persons which have the obligation of applying the awarding procedures, in the process of engaging the public funds.

Until 2006, the Romanian public procurement system was covered by different legal acts for the classical procurement system, electronic procurement system, public-private partnership and concession contracts which proved to be deficient. However, due to the accession to the European Union, the completion of a credible and effective public procurement system was one of the basics of Romania's integration process, having an impact on all other fields of the acquis communautaire related to the Internal Market. Within this context the Government played a vital role in amplifying the efforts for the issuance of a new legislation, fully harmonized with the latest European legislation and also for ensuring an appropriate implementing capacity.

The process started in 2005 with the adoption of a strategy to reform the public procurement system for 2005-2007 approved by the Romanian Government in August 2005. The strategy aimed at legislative and institutional adjustment, the adoption of the EU practices in the field and at streamlining the efficiency, transparency and competitiveness of the public procurement system in order to address the shortcomings noticed during the 2001-2004 period:

- legislative overlap and a blurry distribution of competencies of public institutions involved in the management of the public procurement system, leading to a dissolution of authority and, implicitly, of responsibilities;
- ad-hoc derogations from the provisions of public procurement legislation in the case of the award of high value contracts;
- insufficient staff members within the institutional structure that have the main role in regulation and monitoring;
- a relatively weak capacity of the contracting authorities to apply the procedures for the award of the public procurement contracts in a correct and effective manner;
- an inappropriate system for the ex-ante domestic control;
- the lack of coherence in approaching the needs for training of the dedicated staff within the contracting authorities;
- an inefficient mechanism to collect information regarding the operation of the public procurement system;
- a slow and ineffective remedies system.

The actions included in the above mentioned strategy follow a series of principles whose observance was essential for the improvement of a public procurement system intended to be viable and operational. Those principles refer to:

- full compatibility at the legislative and institutional levels with the acquis communautaire and the similar public procurement systems in Europe;
- the adoption of the best European practices regarding the operation of the public procurement system;
- creating the prerequisites for increased efficiency, transparency and competitiveness of public procurement.

The improvement of the legislative framework in the field of public procurement arose due to the need to transpose in the national legislation the provisions of the new legislative European package – Directive 2004/17/EC and Directive 2004/18/EC . As a strategic approach, the transposition was

performed by elaborating and adopting a new Law regarding the award of the public procurement contracts, intended to regulate both procurement in the "classic" sector (Directive 2004/18/EC) as well as, procurement in the utilities sector (Directive 2004/17/EC). The provisions corresponding to the Remedies Directive , as amended by Directive 2007/66/EC , would also be included in the scope of the new law.

As such, the Government Emergency Ordinance no. 34 regarding the award of public procurement contracts, public works concession contracts and service concession contracts was adopted on 19 April 2006 and approved with modifications by Law 337/2006 . The adoption of a new legislation in the field of public procurement meant that previous provisions would no longer be applicable.

Due to the need to improve the public procurement system with the view to make it more effective and efficient as well as to overcome the difficulties that arose in the course of application of the procedures, the Government Ordinance no. 34/2006 was subsequently amended by:

Law no. 128/2007 amending the provisions for the nomination of the President of the National Council for Settlement of Disputes (CNSC);

- Government Emergency Ordinance no. 94/2007 aiming to adopt measures for the improvement of the public procurement system in order to avoid the delays in the implementation of major projects
- Government Emergency Ordinance no. 143/2008
- Government Emergency Ordinance no. 228/2008 regarding the adjustment of time frames in order to avoid delays in the implementation of projects of public interest
- Government Emergency Ordinance no. 19/2009 in order to make the public procurement system more flexible by reducing deadlines and time frames.

The legal framework for public procurement is supplemented by Government Decision no. 925/2006 establishing the application norms of the provisions on public procurement, subsequently amended by Government Decisions no. 1056/2006 and 1337/2006 . However, due to modifications of the primary legislation in the field of public procurement and in order to ensure full compliance with the provisions of the EU Directives, a modification of the Government Decision no. 925/2006 was under approval at the moment in which the research was completed, the draft project being available on the National Authority for Regulating and Monitoring Public Procurement (ANRMAP) website.

Practical aspects include templates addressed in the Guide for awarding public procurement contracts approved by Order no. 155/2006 of the President of ANRMAP, however the provisions contained therein are to be considered recommendations with no legal obligation for application. Secondly, Order no. 183/2006 of the President of ANRMAP regards the application of the provisions referring to media advertising contracts.

The application norms of the provisions referring to public works concession contracts and of service concession contracts from GEO 34/2006 were approved by Government Decision no. 71/2007 whereas Decision no. 1660/2006 establishes the application norms referring to the award of procurement contracts by electronic means as provided for in GEO 34/2006.

The second course of action taken into consideration within the Action Plan for the implementation of the Reform Strategy of the public procurement system 2005-2007 was strengthening the capacity for implementing the legislation, both at the level of the contracting authority as well as at the level of the institutional structure having the regulation and monitoring role.

At central level, the first issue to be clarified was the decision regarding the institution to represent the authority in the field of public procurement, which was supposed to be independent in order to fulfil a very "sensitive" task. To this end, the measures proposed within the Action Plan were concentrated around the creation of a new structure which would benefit from the necessary resources for carrying out such functions – ANRMAP was set up by Government Emergency Ordinance no. 74/2005 adopted on 29 June 2005 and approved by Law no. 111/2006, having as a fundamental role the creation, promotion and implementation of the public procurement policy.

With the adoption of GEO 34/2006, the framework of public procurement integrates in a single document the classical system of procurement, the electronic system of public procurement, the public-private partnership, concession and sectoral agreements in full compliance with the EU Directives in the field of public procurement whereas the application norms are included in separate legal documents. The public procurement law clearly makes reference to the ground principles for the award of public procurement contracts: non-discrimination, equal treatment, mutual recognition, transparency, proportionality, efficient utilization of public funds and accountability . On the other hand, respect for other essential principles is equally ensured by different provisions: incompatibilities and conflicts of interest , confidentiality and intellectual property and right to administrative and judicial review .

1. Role

As mentioned above, one of the main points addressed in the process of alignment of the public procurement legislation with the EU provisions was the set up of ANRMAP in order to guarantee efficient policy-making at central level. On the other hand, the transposition of the EU Directives in the field of public procurement imposed also the harmonization of the remedy system. Thus, a specialized body was created by GEO 34/2006 – CNSC . Whilst ANRMAP is the policy making and monitoring body, CNSC is the review body.

In addition to the two main institutions, the contracting authority, as it is generically referred to in the law is, according to GEO 34/2006, responsible for the award of the contract and thus accountable for the application of the law in the field of public procurement. The role of the Contracting Authority may be held by any public authority or institution, other bodies with legal personality which were founded with the scope of serving a public interest, associations of contracting authorities, public enterprises or private companies that implement projects financed in a proportion of more than 50% from public funds . The contracting authority is responsible for ensuring sound financial management and the respect for the principles stated by law when using the allocated budget. Therefore, the contracting authority has the obligation to observe the legal provisions in the field of public procurement whenever it intends to conclude a contract for a given purpose.

Finally, the Ministry of Public Finance was designated the specialized body of the central public administration for the ex-ante control system in the field of public procurement as a commitment taken during the negotiations for Chapter 21 – Regional Policy during the accession negotiations, highlighting thus the importance of the ex-ante control system reiterated by the European Commission representatives.

ANRMAP, a public institution subordinated to the Government and in direct co-ordination with the Prime-Minister, was set up in July 2005 and became fully operational in November 2005. CNSC was

set up by GEO 34/2006 as the review body initially functioning beside ANRMAP but independent from an administrative and decisional point of view. With the latest modifications brought by GEO 19/2009, CNSC was transferred under the Government General Secretariat while maintaining its independence.

The Unit for Co-ordination and Verification of Public Procurement (UCVAP) was created within the Ministry of Public Finance on the basis of GEO no. 30/2006 and Government Decision no. 942/2006 for approving the application norms of GEO 30/2006. Performance of the ex-ante control by the Ministry of Public Finance ensures independence (from the operational point of view) from all structures/bodies involved in the management and contracting of public funds, as well as from the main regulation bodies (ANRMAP and the CNSC), thus providing methodological coherence and the unitary approach in performing the ex-ante controls at the central and local level.

The main functions of ANRMAP cover the following aspects:

- Policy making: elaborating the adequate strategies on developing the public procurement field; evaluate the risks and the assumptions; drawing the action plans for implementing the strategies;
- Draft and improvement legislation: elaborating the framework legislation; elaborating the secondary legislation; issue legal interpretation regarding the public procurement legislation;
- Monitoring, analysis, evaluation and supervision of awarding process of public procurement contracts;
- Representation of Romania within the consultation committees, working parties and communication networks organized by the European institutions;
- Initiation/maintenance of projects or training actions of the personnel involved in the specific activities of public procurement, with supportive role in developing the administrative capacity for the implementation of the legislation at the level of the contracting authorities;
- Methodological counselling of the contracting authorities in the awarding process of public procurement contracts, with supportive role in the correct application of the legislation in this field: elaborating operational tools; developing the operational tools; help-desk – consultancy on web, phone and in person; provide consultancy on organizing internal procurement offices at contracting authorities' level; edit guides based on study cases.

CNSC functions on the basis of its own Regulation for organisation and functioning, approved according to the provisions of article 291 GEO 34/2006 which stipulates its competencies which are accomplished by observing the principles of independence and stability in the functions of its members, of transparency and impartiality as well as the principles of legality, celerity and of the right to being protected, according to law :

- rendering decisions on the complaints submitted during an award procedure, before awarding the contract;
- pronouncing whether the procedure and operations conducted by the contracting authority in the award of a public procurement contract are legal or not;
- issuing opinions regarding the litigation submitted to the Court, if the Court so requests .

The set-up of UCVAP was meant to bring flexibility and not lead to delays in the process of tendering and contracting, offering a procedural control only. However, the responsibility would remain, exclusively, the prerogative of the contracting authority and thus the opinion issued by the ex-ante control units is advisory . After the opinion (for or against) is issued by the ex-ante control units, the

contracting authorities have the final responsibility either to sign the contract or to suspend the tendering and contracting procedure .

The institutional mechanism is envisaged to be flexible, taking into account that the ex-ante control is performed only once during the public procurement process, based on a risk analysis, and that the responsibilities are clearly separated (value based thresholds) between the two levels (central and local level) in order to avoid any overlap or delays related to the issuance of opinions.

2. Resources and structure

Government Decision no. 525/2007 stipulates that the maximum number of ANRMAP employees is 96 that are functioning within the following directorates: Directorate General "Policies and Regulations", Directorate General "Analysis and Operational Development"; Directorate General "Supervision, Monitoring and Evaluation"; "Economical - Administrative" Directorate; the President's Cabinet; Department Strategies and Communication; Internal Audit Compartment. According to Government Decision 525/2007, the President of ANRMAP is responsible for the appointment, promotion and dismissal of the staff of the institution .

The CNSC members are selected following a public contest and are nominated by order of the Prime-Minister. The President of CNSC is elected by secret vote, with an absolute majority, by the 33 members of the Council for a period of 3 years and his/her mandate may be renewed only once . The members of the Council are assisted by 64 employees as technical-administrative staff. Their employment, the modification or the dismissal of the technical-administrative personnel is made by order of the President, according to law.

According to Government Decision 942/2006 , the verification of the procedural aspects in the field of public procurement is performed by the Ministry of Public Finances through UCVAP (central level), which has the status of general directorate, as well as through the subordinated structures within the county general directorates of public finances (named units for the verification of public procurement) and the Directorate General of Public Finances Bucharest (Unit for the verification of public procurement).

The budget of the institutions with responsibilities in the field of public procurement is generally available on the individual websites. As public institutions, ANRMAP, CNSC, and UCVAP are financed through resources allocated from the state budget. ANRMAP is also financed through its own sources , the President of the institution being in charge of the projecting and allocation of the budget.

3. Accountability

Order no. 113/2008 establishes the procedure for the supervision of the awarding process of public procurement contracts by observing the respect by the contracting authorities of the legal provisions governing the public procurement process, a task which falls under the ANRMAP responsibility. According to the regulation, the monitoring is pursued by ANRMAP, monthly or spontaneously by notification and covers finalized public procurement procedures only . The persons responsible with the evaluation/ verification of the application of the public procurement law have the right to observe and record the facts which constitute a breach of the legal provisions and apply legal sanctions and to

recommend to the President of the institutions measures to prevent, stop and correct the effects brought by the legal violation.

CNSC solves the complaints formulated within the awarding procedure, before the termination of the contract, through specialized panels formed by 3 members, one of which being the president of the panel. According to the law, the cases regarding the legal disputes are randomly distributed to the panels . The submission of the complaint to the Council suspends the procedure of public procurement until it is resolved by the Council and its decision is mandatory for all parties. Therefore, the contract concluded in the period of suspension of the awarding procedure is null and void .

The Council examines the disputed act and may render a decision that annuls in part or in whole the respective act, forces the contracting authority to issue an act or orders any other necessary corrective measures to remedy the aspects of unlawfulness that affect the procedure for public procurement. In the situation when the Council considers that other infringements of the legal provisions regarding the disputed act exist, besides those invoked by the plaintiff, it may order ex-officio the solution of the respective infringements .

The panel for solving a complaint may be held responsible for the rendered decision in case it does not take into consideration the relevant documents attached to the case file, in bad faith or favouring one party or for misinterpretation .

According to the legislation, the contracting authority is responsible for the award of the contract and, by extension, for the way the awarding procedure is organized in order to ensure the respect for the principles stipulated by law. Hence, when organizing an awarding procedure, the contracting authority has the obligation to select the correct procedure , to ensure the transparency of the procedure and the equal access to all potential tenderers , fair competition and the confidentiality, whenever required , in order to avoid conflicts of interest , to ensure the equal treatment of all candidates/ tenderers , to inform all candidates/ tenderers about the result of the procedure and to ensure the access to information to all interested parties .

Each contracting authority has the obligation to observe the provisions of the law in the field of public procurement but also the right to choose the necessary means for their application. Thus, the contracting authorities have individual internal procedures and own organization of resources in line with the general guidelines provided for by GEO 34/2006 and Government Decision 925/2006, as they were subsequently modified.

As mentioned above, the procedural control of the awarding processes organized by each contracting authority is performed by UCVAP that designates a representative to participate at the tendering sessions as observers. Thus, they do not have to right to issue opinions or decisions during the evaluation stage . Nevertheless, the UCVAP representatives have the obligation of preparing reports on the individual procedures which are forwarded to the contracting authority and to ANRMAP and, in the case of European funds, to the Management Authority.

As mentioned above, ANRMAP is performing its tasks under the direct coordination of the Prime Minister whereas CNSC is functioning under the Government General Secretariat. Regarding UCVAP, having the status of general directorate within the Ministry of Public Finances, it reports to the Minister.

The public procurement law does not mention any specific measures on consultation/oversight. Nevertheless, the law ensures equal access to the tendering documentation and the right of the

interested parties to request clarifications and modifications. Moreover, such provisions are provided for by Law no. 544/2001 on free access to information of public interest .

4. Integrity mechanisms

The integrity mechanisms are generally provided for by Law no. 161/2003 on the measures for guaranteeing transparency in the exercise of public dignities, public functions and in the business environment, preventing and sanctioning corruption . However, incompatibilities and conflicts of interest are also subject of the public procurement law . The natural or legal person that has participated at the elaboration of the tender documentation, as an economic operator, has the right, to be tenderer, associated tenderer or subcontractor, only in the case when his/her involvement in the elaboration of the tender documentation does not distort the competition. Therefore, the analysis of the possible effect on the competition conditions should be assessed on a case-by-case basis.

Secondly, persons involved in the evaluation / verification process are not allowed to have economic interests with any of the tenderers or subcontractors or own equity shares within the bidding companies or be relatives up to the forth degree inclusively with any of the tenderers. Moreover, persons whose impartiality during the evaluation/ verification process could be affected may not be members of evaluation committees. However, the law does not provide additional information on the way this provision should be interpreted.

As provided for by Government Decision no. 925/2006, in all cases, the contracting authority has the obligation to eliminate the effect the abovementioned situations might produce and take all necessary measures to correct, modify, revoke or annul those acts that affected the correct application of the procurement procedure.

When considering integrity, we must take into account the confidentiality requirements as an element which, if not used, may cause damage to the other principles (transparency, fair competition, equal treatment); on the other hand, if used abusively, it may harm the same principles as it may turn the same procedure more opaque and uncompetitive. Accordingly, the contracting authority must not disclose information that may harm the commercial secret or the intellectual property . Alternatively, all offers are confidential until the opening session and all information with the exception of the data communicated during the tendering opening session or information provided by the tenderers following requests for clarifications should be confidential until the tendering process is finalised. Consequently, the members of the evaluation committees and the personnel of the contracting authority must ensure the confidentiality of the content of the offers and clarifications during the tendering process .

The codes of conduct of public servants and contractual staff employed in the public structures are regulated by Law 7/2004 and respectively Law 477/2004 . Alternatively, public institutions have their own internal procedures specific to its functions and responsibilities and in line with the general guidelines provided by law.

GEO 34/2006 stipulates clear provisions regarding incompatibilities and conflicts of interest . Thus, the members of CNSC have the obligation to submit the declarations of wealth and interests and are not allowed to carry out commercial activities, directly or conducted by other persons; be associates or members in the executive, management or control bodies in civil companies, trading companies, including banks or other credit institutions, insurance or financial institutions, national companies,

national associations or state enterprises; be members of economic interest groups; be members of political parties and carry out political activities or participate in political activities; hold any public or private function, with the exception of didactic activities, of scientific research and of literary-artistic creation; carry any other professional activity or of consultancy. On the other hand, they are not allowed to participate in solving a legal dispute if they are subject to one of the following situations: when he/she, their spouse, their ascendants or descendents have a particular interest in solving the legal dispute or when he/she is married, related or in-law, up to four times removed, with any party involved; if he/she was under criminal trial with any of the parties involved up to 5 years prior to the legal dispute in process; if he/she issued a public position on the legal dispute in process; if he/she received goods or promises to receive goods or any other advantages from any of the parties involved.

The ANRMAP representatives responsible with the evaluation and verification of the application of the public procurement law have the obligation to prove their objectivity and impartiality and to assure the confidentiality of the facts, information and documents As for the UCVAP observers designated for the performance of the procedural verification are obliged to observe the legal provisions regarding the incompatibilities and conflicts of interest as they are mentioned in GEO 34/2006, as modified , as well as the confidentiality of the procedures under verification .

Specific rules on gifts and hospitality are provided for in codes of conduct which are regulated by specific laws (Law 7/2004 and Law 477/2004) and translated in the internal procedures. Thus, public servants and other contractual staff are not allowed to request or to accept gifts, services, favours or any other advantages which are addressed to them, their family, friends or persons with whom they had business or political relations, which may affect their impartiality in the exercise of their functions of may constitute a reward in relation with these functions.

GEO 34/2006 clearly stipulates that a contractor is not allowed to employ for the purpose of execution of a contract a person who was involved in the evaluation / verification of the respective award procedure for a period of at least 12 months.

5. Transparency

The public procurement system legislation ensures the premises for good transparency, competition and equal treatment of the procurement procedures. All procurement processes that exceed EUR 15,000 must be made available to all potential candidates / tenderers by publication of the forecast notice and corresponding tender announcement and award notice into the electronic system for public procurement (ESPP) and the Official Gazette. In case the value of the individual contracts exceeds certain thresholds per type of contract (services, supplies, works), publication of the notices in the Official Journal of the European Union is mandatory .

The law also includes clear provisions on the communication with the tenderers to ensure the confidentiality of the information provided by each tenderer as well as equal treatment by providing equal access to the tender documentation and subsequent clarification notes and by ensuring the evaluation of each tender based on the same requirements and without altering the information provided in the original documentation. Secondly, in order to ensure a fair competition the tender documents should provide clear information on the services / goods / works to be procured, any indication of brand names or specifications leading to a single producer being clearly prohibited .

Transparency is also ensured by the requirement to provide all potential tenderers with clear information on the technical requirements of the offer, the selection and award criteria and by communicating to all tenderers the result of the evaluation process and award decision as well as all reasons of complaint that arose during the tendering procedure. The law also allows the participation of all interested tenderers at the opening session of the offers in order to ensure the respect for the principle of transparency. On the other hand, access to the procurement dossier is granted to all interested bodies once the tendering procedure is finalised and the contract has been awarded .

The above mentioned provisions are equally applicable in the case of concession contracts .

As an anti-corruption measure,, the employees of public institutions have the obligation to submit their statements of wealth and interests in the beginning of each year outlining the financial results of the previous year.

The ANRMAP Activity Report 2007 provides a statistical overview on the main activities performed by the institution during 2007. The results of the supervision activities, seen as an important tool for monitoring the anti-corruption measures, show that a number of 519 cases were sent for analysis to the department in charge with the supervision, monitoring and evaluation of the application of the public procurement law, 75% of the cases referring to award procedures launched by contracting authorities operating in the health, local public administration and public utilities domains. On the other hand, the number of procurement procedures verified reached 1029 which were formalized in 187 control notices. Regarding the applied penalties, ANRMAP issued 59 finding reports: 45 cases in which there were applied fines totalling RON 403,500 and 14 cases which were finalized with admonitions.

CNSC keeps a number of registers, on paper and electronically : the general complaints register, the informative register, the register of the archive's terms, the alphabetical list, the register for recording the decision-making process, the register for recording the remedies at law, the register for recording the courts practices, the incoming-outgoing register of the correspondence. All decisions for the period 2006-up to date are available on the CNSC website providing information on the contester, the contracting authority, requested act formulated by the contester and the resolution of the Council but without offering the reasons of complaint or those that led to the decision.

6. Complaints/enforcement mechanisms

The right to administrative and judicial review is ensured in all cases of procurement procedures . The latest modification to GEO 34/2006 clarifies the procedure for complaints and stipulates important additional provisions on the legal proceedings. The reasoning for those modifications was to ensure a viable and flexible public procurement system and to avoid unnecessary delays in the implementation of major projects. The most important changes refer to:

- the right of those economic operators that were involved in the tendering process to request the adoption or annulment of an act issued by the contracting authority to reduce the number of complaints addressed to the CNSC that unnecessarily delay the finalization of the procurement process and thus of the project implementation;
- the reduction of the period to issue a decision on the reasons of complaint;
- the economic operation should notify the contracting authority in case it intends to bring the matter to court and the right of the contracting authority to take those measure considered

appropriate to remedy the matter ; nevertheless, it is also provided that the absence of the notification does not exclude the submission of the request to the competent judicial authority ;

- in case of tender procedures per lots, the submission of a complaint suspends the procedure for the award of the respective lot without affecting the entire procedure ;
- provisions referring to the applicable procedure for solving the matter in court

Law no. 571/2004 stipulates the legal mechanisms for the protection of the personnel of the public authorities, public institutions and other units who are signalling breaches of law , generically named whistleblowers. According to Law no. 571/2004, all public authorities or institutions are obliged to harmonise their internal regulation with the provisions of the present law.

The public procurement law clearly stipulates the sanctions applicable in case of legal violations. Considering that the contracting authority is ultimately responsible for the application and respect of the public procurement law, the sanctions provided by law are generally directed to the contracting authority.

Moreover, the internal regulations on the basis of which each institution performs its functions also provide sanctions against breaches of internal procedures, for bad performance or for non-observance of the rules on incompatibilities and conflict of interest. These sanctions are also provided for by Law no. 188/1999 on the Regulation for public servants .

7. Relationship to other pillars

The developments in the field of public procurement and the alignment of the national legislation with the EU directives are meant to ensure a clear and transparent system to address the risk of corruption in the public procurement area. The respect for the principles of transparency, fair competition, equal treatment and non-discrimination are clearly provided for by the legal provisions. Thus, the anti-corruption measures are bolstered by the legislation itself as well as by the internal procedures developed by the contracting authorities.

The public procurement system interacts with most of the other NIS pillars. However, it interacts mostly with the private sector as the main actor for the implementation of the actions launched by the contracting authorities. On the other hand, it also interacts with the Court of Accounts having the role of verifying the manner in which the public funds were efficiently used and therefore whether sound financial management was ensured. Last but not least, the executive and legislature have an obvious influence on the evolution of the public procurement system whereas the media and the civil society organisations are permanently monitoring the developments and implementation of the public procurement framework by the public authorities and institutions.

B. Actual Institutional Practice

Introduction

As it can be seen from the legal description of the pillar, the public procurement system is extremely complex; it involves the contribution of many institutions, be they specific or complementary to the public procurement system, and it is characterised by a constant interaction (and influence) with other

pillars. Thereby, it goes without saying that an extensive analysis of the public procurement system within the limits of this chapter would be practically impossible.

In this context, the choice of certain public entities with significant standing in the procurement process proved to be necessary. Thus, the institutions that were chosen for the practice assessment at the level of public procurement were the National Authority for the Regulation and Monitoring of Public Procurement (ANRMAP), the National Council for Solving Complaints (CNSC) and the Central Finance and Contracting Unit (CFCU).

The ANRMAP was included in the evaluation of practices in public contracting thanks to its basic functions, both of whom are essential for an appropriate functioning of the public acquisition processes: monitoring and regulation. The CNSC was also subject to evaluation because of its role of remedy inside the procurement system.

Considering the CFCU, as it can be seen from the previous section of this chapter, this institution has not been referred to in the legal description, as this part of the study considered the general legal and institutional framework of the Romanian public procurement system. However, its integration in the practice assessment of the study proved to be necessary for two main reasons: first, because of its particularly important role in the management of the Community funds allotted to Romania before and after its accession to EU; and second, because of its experience in terms of applying both the national legislation and European standards in public procurement since its establishment in 1999.

1. Role

Overall, the main entities that operate in the public contracting system have partially acted on the basis of transparency, integrity, open competition and equal treatment principles. The interviewed practitioners' perception of corruption regarding the public acquisitions system, suggests that assisting, monitoring and dispute settlement activities throughout the process of public auctioning need to be strengthened. .

Although the National Authority for the Regulation and Monitoring of Public Procurement (ANRMAP) and the National Council for Solving Complaints (CNSC) have proved to be properly regulated in what may concern their prescribed fields of activity, the overall capacity to ensure a proper functioning of the system needs to be further developed. That would further secure the premises for fully exercising their role in the public procurement cycle.

2. Resources and Structure

Regarding the budget allocation and administration in the concerned institutions, tasks were similarly distributed. Their managers were those who generally assumed, if not delegated, the allocation and administration of the established budget. Still, differences were visible, as these establishments had different institutional profiles: ANRMAP was subordinated to the Government and has been placed under the coordination of the Prime – Minister, while CFCU has been functioning under the authority of the Ministry of Public Finances. On the contrary, CNSC has been working independently, as an administrative-jurisdictional organism.

ANRMAP's manager, as secondary credit release authority administered the allocated budget along with the economic department within the institution. Similarly, within CNSC, the president had the same budgetary competences and has been assisted in its administration by the economic department.

For CFCU, the Ministry of Public Finances has dealt with the allocation of the budget and partially with its administration. It is worth mentioning that salaries have been established by the Ministry, but the extra-payments (stipulated in the Law no. 188/1999 on the Statute of civil servants) were decided by the manager of the CFCU. These wage growths had an upper limit that was equivalent to three salaries of the employees. They were not registered in the Record of Employment, but they did appear on wage certificates. In addition to these extra-payments, the personnel from CFCU automatically benefited from wage growth of 75% for dealing with the administration of European funds.

In terms of appointments, promotions and dismissals of staff, the three institutions have faced specific problems regarding the human resources policy.

Within the ANRMAP, the appointments and promotions have been pursued according to the law of civil servants, namely by competitions. From 2006 onwards, a number of contests did not concluded in any appointments, mainly because of the weak preparation of the candidates.

Within the CNSC, the appointments were made according to the same procedures. Besides that, the offers of employment were made public both on the website of the institution and at its headquarters. Dismissals were decided by the President of the CNSC, and generally on reasons of incompetence or irresponsible behaviour.

In the CFCU, appointments and promotions were done following written examinations and interviews with the candidates. The interview commissions were composed generally by CFCU managers, representatives of the National Agency of Civil Servants and of the Ministry of Public Finances. They were claimed not to raise sensible problems, as the competition was not so high so as to raise the susceptibility of influencing results. Still, the transfers from CFCU to other institutions within the Ministry of Public Finances or vice versa raised questions in terms of motivating this kind of decisions. As for dismissals, they were not a current topic. The high level of protection of the employees by virtue of their statute of civil servants, but also the insufficient number of recruits in the CFCU reported to the volume of work might assumingly explain this state of affairs in the period of reference of the research.

In what may concern the issues of internal controls and internal audits, all the three institutions have been claimed to regularly be subject to one of both of these activities.

The CFCU proved to be the most monitored of the three institutions by virtue of the financial nature of its activity. In the period of reference, external audits from both Romanian and European authorities were regularly made. Those ordered by the Ministry of Public Finances were claimed to be particularly difficult on reason of the modest expertise of the Romanian auditors. On the contrary, the European Commission's audits did not raise any specific concerns. As for the internal controls, they were usually handled by the heads of departments and, finally, by the manager of the CFCU.

Within ANRMAP internal audits have been claimed to be pursued periodically; as for the external ones, they were conducted annually by the Court of Accounts. Generally, reports were said to be favourable.

Within CNSC, internal audits failed to be made by reason of lack of personnel. In terms of external controls, the most recent one within the period covered by the research was run by the Government's General Secretariat and did not put forward any particular problems.

3. Accountability

ANRMAP and CNSC employees have been accountable for their activity to their hierarchical superiors and to the managers themselves. Generally, they had to fulfil the assigned activity plans, for which they responded in front of the seniors. For instance, in the CNSC, the councillors who solved contestations and worked in panels of three members had to handle the randomly assigned files according to a weekly activity plan, for which they were accountable to the CNSC president. The accomplishment of the allotted periodical tasks depended on the working volume and on the complexity of the files.

As for the CFCU employees, they were first accountable to the hierarchic superior and, finally, to the CFCU manager. As for the managers, they responded directly to the Ministry of Finances' State Secretaries and, ultimately, to the Minister of Finances himself. Besides, a high number of reports that had to be delivered to public institutions such as the Authority for the Coordination of Structural Instruments, belonging to the Ministry of Public Finances, and the ANRMAP, under the Government's subordination contributed to enforcing accountability.

4. Integrity

Within the ANRMAP, the activity of the department of analysis and operational development was related to increasing integrity and transparency by setting up working tools such as guides, offering free consultancy, be it in written, electronically or telephonically.

In the CNSC, the random distribution of the files to the complaint-hearing panels proved to be a favourable way of removing suspicions of discretionary attitudes with regards to the employees' behaviour. Indeed, not even the President had access to files, as the complaints were registered randomly and directly sent to panels which were responsible for their rulings. The President signed only the communications of the decisions that had to be sent to the concerned parties.

Within the CFCU, the current high responsibilities of the employees and the high applicable sanctions are perceived as sensible integrity promoters. The risks of integrity-related issues were assessed to be relatively low, despite the personalized accountability relations between employees and seniors.

5. Transparency

In terms of transparency, ANRMAP and CNSC made available on their respective websites their staff's and management's wealth and interest statements. Within the first mentioned institution, the monitoring of the assets and incomes of the personnel in charge with the analysis of the complaints has been claimed to be automatically carried out by the economics and administrative department, before making them available electronically. Within the CNSC, the wealth and interest statements were said to be made public online after their submission, the only public entity being competent to verify them being the National Integrity Agency. As for the CFCU employees' statements, they were sent for registration to the Ministry of Public Finances.

In terms of transparency in the daily activity of these institutions, some remarks ought to be mentioned. First, all the institutions provided on their respective websites activity reports for the previous years. Furthermore, within CFCU, lists of recurrent errors identified by the Technical Quality Control Unit and of a correspondent list of preventive measures, along with activity and evaluation reports, statements on reasons of rejecting the tenders and periodical lists of irregularities were available online. Still, face to face interactions proved to be much more difficult: transferring the task to provide information to the hierarchic superiors has acted as an implicit refusal to provide information to entities other than the representatives of public authorities. This could be explained by various factors, among which the fear of giving information that might enter the confidentiality area and of the potential consequences.

As for the ANRMAP, what was worth noting in terms of transparency was the availability of an electronic helpdesk aimed at giving technical assistance to the economic operators and to the contracting authorities being involved in the process of public acquisitions. With regard to the CNSC, it assured transparency by making public on the website all the decisions since 2006 onwards. Still, the statements of reasons of the respective decisions were not freely accessible, as they fell under the confidentiality clause. Nevertheless, they were claimed to be communicated to the concerned parties.

6. Complaints and enforcement mechanisms

Of the three institutions analyzed in the field research, ANRMAP and CNSC had direct competences regarding complaints and enforcement mechanisms correspondent to the public contracting system. Accordingly, the results and assessment of their overall activity could be taken as performance indicator in terms of the already mentioned mechanisms.

However, strictly speaking about internal complaints and internal enforcement mechanisms in the three institutions, these proved to be rarely used. Generally, the complaints between employees were mostly informal and were handled accordingly by the direct hierarchic superiors or by the managers of the institutions themselves.

As for external complaints, mostly on procedural errors, they were generally resolved by rectification or renewal of the respective administrative acts. However, within CNSC (legally instituted since January 2007) there have been no internal complaints registered yet.

7. Relationship to other pillars

The institutions belonging to the public procurement system interacted mostly with pillars like the public sector (to which the contracting authorities belong) and the business environment (through the bidders). Specifically, the CNSC interacted with the justice system and with the supreme audit institution, while CFCU mostly dealt with the Executive pillar through the Ministry of Public Finances and its subordinated authorities like the Authority for the Coordination of Structural Instruments (ACIS) or the Authority for Certification and Payment (ACP). Besides, ANRMAP interacted with the National Management Centre for Information Society belonging to the Communications Ministry (thanks to the electronic system of public acquisitions) and other ministries and their agencies acting as with management authorities and intermediary organisms respectively for operational programmes financed by Community funds.

8. Past developments and future prospects

Since 2005, the system of public contracting has undergone significant legislative and structural changes. The main weaknesses that had to be overcome were legislative overlapping and the unclear distribution of competencies between the different public institutions involved in the management of the public procurement system. Moreover, an insufficient and under prepared staff and the weak capacity of the contracting authorities to apply correctly and effectively the procedures for the award of the public procurement contracts contributed to a deficient public contracting process.

Nevertheless, and despite an obvious improvement of the legislation, the bulk of the already mentioned shortcomings persisted. For instance, in all three institutions, complaints regarding insufficient staff compared to the high work volume were recurrent. The need for training of the staff was also claimed to be a persisting, particularly in ANRMAP

The most sensitive issues within CFCU were related to an unclear balance between competences and accountability. The high level of responsibilities has induced the tendency of devolving tasks from one hierarchic level to another. As a result, the fear to accomplish tasks that could easily be deferred, along with other factors such as the institutional pressure from other public authorities, determined a stressful work environment, in spite of the motivating wages.

As for the CNSC, it has been claimed to have a particularly ascendant evolution, despite the still low number of employees. The main concerns have remained the insufficient personnel compared to the increasing volume of work.

Considering the main steps that should be taken in all the three institutions, supplying qualified personnel and organizing training sessions for the existent one ought to be mentioned.

Strictly speaking of the CFCU, setting up an institutionally clear balance between responsibilities and accountability, along with keeping the practice of task devolution within clear bounds is a necessity.

Regarding the ANRMAP, strategic reforms should take into account the objective of assuring the development of the contracting authorities' implementation capacity through instructions and assistance, as well as making more effective the mechanism of collecting information on the functioning of the public contracting system so that it represents a valid premise for its monitoring and evaluation, and, therefore, its improvement.

In order for the CNSC to improve its effectiveness in fulfilling its mission independently within the public contracting system, the provision of human and financial resources is required.

9. Stakeholders' recommendations

Taking into consideration the above mentioned aspects, the standing of the public procurement system as an integrity pillar needs to be improved. Both legislative and institutional practices measures should be taken.

- With regards to improving the standing of the ANRMAP within the national integrity system, the recommendations are as follows:
- Improving the administrative capacity and the internal governance of the institution and of the actors it interacts with
- Enhancing the accountability and skills of both the contracting authorities and the economic operators that participate to the process of public procurement

- Thorough needs analysis in terms of human and financial requirements
- Establishing by law minimal transparency and integrity standards, applicable to all the participants to the public contracting process
- Readjusting the daily financial costs for the staff with control attributions to their needs (travel, accommodation etc.).
- Improving the unitary application of the ANRMAP's Code of Ethics in public procurement by all the actors involved, be they contracting authorities, economic operators, or institutions that regulate, monitor, verify procedures, or solve complaints within the public contracting system.
- Regarding the CNSC, the following recommendations are to be mentioned:
- Assuring a system of constant training of the practitioners
- Adapting a personnel scheme in accordance with the amount and complexity of the activity of the institution
- Giving to this institution the competence of main credit release authority
- Strengthening the application of individual accountability
- Unitary application of a code of good practices
- Establishing, by law, minimal transparency standards that should apply to all the entities that are involved in the process of public contracting (CNSC recommends the implementation of an electronic platform that allows the on-time visualisation of the information regarding the process of solving complaints)
- Applying an electronic system of rendering anonymous the complainants
- Clear and transparent information with regards to the procedures that should be followed in the case of jurisdictional solutions
- Improving inter-institutional collaboration with the other relevant authorities from the public procurement system through protocols.

LOCAL GOVERNMENT

Capacity	Governance	Role
1 (not at all)	2 (small extent)	1 (not at all)

The local government has played a weak role in the national integrity system.

Firstly, its legally ensured autonomy in decision-making on local matters has practically been restrained by centralized financial and political factors.

Secondly, the considerable influence of local barons acting as virtual veto players at the national level favoured a low responsibility of the local political leaders towards the electorate and an enduring discretionary approach in distributing resources from the central government.

Thirdly, shared or common competences between central and local authority levels on specific governance areas caused responsibility devolution and an overall poor administration.

Fourthly, its weakness in terms of holding accountable civil servants under its authority, which was due, particularly, to the high stability in office, has undermined the propensity of effective integrity and transparency.

A. Legal Framework

Mihaela CĂRĂUŞAN

1. Role

The autonomous administration of administrative-territorial units is carried out by local councils, county councils or the General Council of Bucharest, which have deliberative authority, and by the presidents of county councils and mayors, who have executive authority to exercise their tasks.

The institutional design at the local level is built on similar institutions to those at central level: decision-making authorities – local councils and county councils - and executive authorities - the mayor, the vice mayor and the president of the county council represent local governance. The responsibility to accomplish the enforceable documents adopted by the deliberative local authorities belongs to the executive authorities at the same level.

Regarding local authorities, the Constitution of Romania states in Article 121 that: "the public administration authorities, through which local autonomy in communes and towns is implemented, shall be the Local Councils and Mayors elected, in accordance with the law". Public administration authorities function as autonomous administrative authorities, solving the public problems in communes and towns. The county council is the public administration authority coordinating the

activity of the commune and town councils, aiming to carry out public services in the county's interest.

The general normative framework of local administration is represented by: Law No. 215/2001 on local public administration, republished in The Official Monitor of Romania No. 123 on February 20th, 2007 and Law No. 195/2006 on decentralization, published in The Official Monitor of Romania No. 453 of 25 May 2006.

Public administration in territorial-administrative units is organized and operates according to the principles of local autonomy, decentralization of public services, eligibility of local public administration authorities, lawfulness and integration of citizens in solving local problems of special interest (Article 2, Law 215/2001).

Decentralization represents the transfer of authority and administrative and financial accountability from central level to local level (Article 2, Law 195/2006). The process of decentralization is meant to be conducted for the benefit of the citizens by strengthening the power and role of local public administration in order to achieve the socio-economic development of territorial-administrative units.

Local autonomy, according to art. 3 of Law 215/2001, stands for the right and the concrete capacity of local public administration authorities to solve and manage public problems, on behalf and in the interest of local communities that they represent. This right is exercised by local councils and mayors, as well as by county councils and the president of the county council, authorities of local public administration elected by universal, equal, direct, secret and freely-expressed vote.

In order to promote integrity, transparency and accountability, it is necessary to identify the general principles of decentralization, which are listed in the decentralization law (art. 3):

- The principle of accountability of local public administration authorities according to their competences, which imposes the obligation of striving for quality standards when providing public and public utility services;
- The principle of ensuring a stable, predictable process of decentralization, based on objective criteria and rules that do not constrain the activity of local public administration authorities or limit their local financial autonomy;
- The principle of equity, which involves ensuring the access of all citizens to public and public utility services;

When applying these principles, the Romanian legislator considered it necessary to establish the Registry of interests for local public officials. It is recognized that they cannot take part in the deliberation and in the adoption of decisions if they or their spouse or relatives four times removed have a patrimonial interest regarding the problem under discussion in the local council. Decisions adopted by the local council without respecting these conditions are declared null and void.

According to art. 87 of Law no. 161/2003 any management or executive functions within commercial societies, banks or credit institutions, insurance and financial societies, autonomous agencies of national or local interest, national companies and societies, as well as any other public functions or remunerated activities, in the country or abroad, except teaching positions or positions within non-governmental organizations are considered incompatible with the position of local public official or any other public function or public dignity.

2. Resources and structure

The autonomy of local institutions can be measured by the extent to which they have their own interests and values, different from those of other institutions. Therefore, at the level of local communities local councils have been established which are meant to support and promote local democracy and represent both the majority and minority groups. These institutions use deliberation as a means of working, specific to consensus based democracies, and are recognized as representative bodies of the local community in the administrative-territorial unit where they are established.

The number of members of each local council shall be established by order of the prefect, depending on the population of the commune or town . It should be noted that their number, relative to the number of people living in the administrative-territorial unit, was increased after recent legal changes .

This adaptation, required by legal regulations at the time, has given the councils the opportunity to adjust their organization in order to achieve its particular way of working - by deliberation, while trying to ensure at the same time the celerity of its acts. Thus, the smallest council for a local community of up to 1,500 inhabitants has 9 counsellors and the largest, 31 counsellors. Given the activity and large number of inhabitants in the capital, the General Council of Bucharest consists of 55 counsellors. (Art. 29, Law 215/2001).

The number of members in the county council was established at minimum 30 counsellors for a county community of up to 350,000 inhabitants and a maximum of 36 counsellors for communities with more than 650,000 inhabitants. The composition of the county council is completed with the president of the county council, who has the right to vote and conduct meetings. (Art. 88, Law 215/2001). Yet, the need to adapt to the efficiency criteria of this body has brought about the modification of legal regulations which did not refer to the number of county inhabitants, but to the reduction of counsellors reported. Therefore, a large county council of 45 counsellors shrank to 36 counsellors, the lowest limit of counsellors in the previous law.

Speaking of the legal framework for local public finance, it is based on Law no. 273 on June 29th, 2006, published in the Official Monitor of Romania no. 618 of 18/07/2006. The total budget of counties and Bucharest is represented by all the local budgets in communes, towns, municipalities and the county's own budget, and of all the sectors in Bucharest. The local budget is the document in which each year the incomes and expenditures of territorial-administrative units are stipulated and approved. The budget approval process, according to art. 8 of Law 273/2006, has to be open and transparent, and is carried out by:

- publication of the draft local budget and of its annual execution account in the local press, on the public institution's internet page or at the headquarters of the local public administration authority;
- public debate of the draft local budget, on the occasion of its approval;
- presentation of the annual execution budget during public hearings.

Budgets at the local level may be subject to a balancing (Article 2, Law 195/2006), which may be:

- vertical, involving the transfer of financial resources of the state budget to the local budgets in order to complete or guarantee the necessary financing for providing decentralized public services and public utility services;

- horizontal, leading to the transfer of financial resources from certain revenues of the state budget to local budgets in order to cover the differences of financial capacity between the administrative-territorial units.

In order to ensure horizontal and vertical balancing of local budgets, the administrative-territorial units receive from the state budget funds with special destination (art. 33, Law 195/2006).

Local budget revenues (Article 5 of Law 273/2006) consist, firstly, of their own revenues, namely taxes, fees, contributions, other payments, other revenues and shares from the income tax. Secondly, it may consist of sums from certain revenues of the state budget, subsidies received from the state budget and other budgets, or of donations and sponsorships. The budget revenues cannot be earmarked for specific budget expenditures, except for donations and sponsorships which have set destinations (Art. 7, Law 273/2006).

3. Accountability

Local or county counsellors, as appropriate, mayors, the general mayor of Bucharest, the mayors of administrative-territorial subdivisions, presidents of county councils are legally accountable, either in administrative, civil or criminal law, as appropriate, for acts committed in the line of duty. But local public officials cannot be legally accountable for political opinions expressed during their mandate (Art. 21, Law 393/2004).

Many times decentralization, which is usually accompanied by measures and mechanisms that allow citizens' participation in the management and administration of local communities, was also called "democratic decentralization" or "local democratic decentralization". Meetings of local/ county councils are public (art. 42, Law 215/2001) so that any member of the local community participate. Moreover, deliberative authorities in the local public administration, as Law 215/2001 art 55 stipulates, may be dissolved after a local referendum organized by the Prefect at the request of at least 25% of citizens with a right to vote registered on the electoral lists of the administrative-territorial unit. Also, the County Council, according to art 99, can be dissolved at the request of at least 20% of citizens with a right to vote. The referendum is valid if 50%+1 of the total number of inhabitants entitled to vote cast their ballots. The activity of the council ceases only if at least 50%+1 of the total number of validly expressed votes were in favour of dismissing the council. Also, by the same token art 102 stipulates that the president of the county council is responsible for the proper functioning of the county public administration.

4. Integrity mechanisms

A legislative framework and monitoring mechanisms were created to allow for the assessment of conflicts of interest resulting indirectly in the prevention and combat of corruption. Although in this area there is no code of conduct, we can identify several legal rules that constitute the legal basis for fighting corruption at the local level:

- Law No. 115/1996 regarding the statement of wealth belonging to dignitaries, magistrates, civil servants and persons with positions of leadership, published in The Official Monitor of Romania no. 263 on October 28th, 1996;

- Law No. 544/2001 on free access to information of public interest, published in The Official Monitor of Romania, no. 663 on October 23rd, 2001;
- Law. 52/2003 on decisional transparency in public administration published in The Official Monitor no. 70 of February 3rd, 2003;
- Law No. 393/2004 on the Status of elected local public officials published in The Official Monitor of Romania no. 912 on October 7th, 2004;
- Law No. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, published in The Official Monitor of Romania no. 359 on May 25th, 2007;
- Government Decision No. 609/2008 approving the National Anticorruption Strategy regarding vulnerable sectors and local public administration for 2008 - 2010 published in The Official Monitor of Romania no. 514 on July 8th, 2008.

According to art. 74 of Law 393/2004, the local public officials are obliged to make their personal interests public through a written declaration submitted in copy to either the Secretary of the commune, town, municipality, the sector of Bucharest, or to the General Secretary of the county or Bucharest, as appropriate. At the level of the Secretary of the administrative-territorial unit, the Registry of interests is created which is public and can be consulted by any person, under the terms of Law no. 544/2001 on free access to information of public interest.

Local public officials are considered to have a personal interest in a particular matter (art. 75) if they have the possibility to anticipate that a decision of a public authority to which they belong could present a benefit or a disadvantage for themselves or for:

1. their spouse and second degree relatives;

2. any individual or juridical person with whom they have a relationship of commitment, regardless of its nature;

3. a company to which they are associates, administrators or from whom they obtain income;

4. another authority they are part of;

5. any individual or juridical person, other than the authority to which they belong, that made a payment to them or made any kind of expenditure to them;

6. an association or foundation they are part of.

If the county and local counsellors have a personal interest in the matter of debate, they are obliged to announce at the beginning of discussions that they cannot take part in the deliberation and adoption of decisions, fact which shall be recorded in the written record of the meeting (Article 77).

Law no. 393/2004, article 76 concerning the content of the statement of interest, includes the income obtained from collaboration with any individual or juridical person, gifts and any material benefits or advantages made by any individual or juridical person, arising from or related to the function held in the local public administration authority. It is established that any gift or donation received by local public officials during a public or festive occasion become the property of that institution or authority. Undeclared gifts and any material benefits are subject to confiscation (art. 83). The situation when local elected officials make statements about personal interests which are not true has been regulated in art. 84 of the same law. It is considered to be the crime of false statements, punishable according to the Criminal Code.

According to art. 2 of Law 115/1996, county and local counsellors, mayors, civil servants who carry out their activity within local public authorities, members of administrative councils and people in leadership positions within the autonomous agencies of local interest, have the obligation to declare their assets. Declarations of assets are written affidavits and include personal goods, common goods and goods held in joint possession, as well as those of children in their care.

The National Integrity Agency (ANI) was constituted by Law no. 144/2007 in order to guarantee the exercise of public functions in an impartial, responsible and transparent manner through the uniform organization of the control activity over assets acquired during a mandate or the time in office of a public official and the examination of conflicts of interest, as well as the activity of investigating incompatibilities. Thus, ANI is called to establish the veracity of the declaration of assets. If it determines the illicit character of assets or part of the assets, the agency shall notify (Article 48) the local public officials the local council or, if necessary, the county council, which will apply a disciplinary sanction, according to the law.

Statements of assets and of interests must be declared within 15 days from the date of appointment or election or from the starting date of the activity. Public officials are required to submit or to update their statements of assets and of interests annually, no later than May 31st, for the previous fiscal year. Within no more than 15 days since the date of completing the mandate or of ending their activity, Public officials are obliged to submit a new statement of assets and interests (art. 42 Law 144/2007).

5. Transparency

The Law on Free Access to Information of Public Interest allows for all persons to have access to information of public interest - meaning information in the possession, regarding or generated by public institutions (entities using public money and being active on Romanian soil). Exceptions from the free access are listed. The law makes it clear that the protection of the classified information is the sole responsibility of those who hold the information (a change for the best compared to the previous legislation regarding the state secrets); it also states that no information regarding a wrongdoing of a public authority or institution can be classified as "secret".

The law states the obligations of the public authorities and institutions concerning the release - ex officio or by request - of the information, as well as the procedures and the deadlines for releasing such information: 10 days or 30 days for complex information. The public authorities and institutions are required to create special departments to deal with public information. An information request can be submitted in writing, orally or in electronic format. The petitioner has to pay, if the case, the costs for copying the requested documents, but no additional taxation can be establish for public information.

A special chapter is dedicated to the media and journalists' access to information. The authorities and the public institutions are required to create specialized structures for their media relations. The media outlets are subject to positive discrimination, as the deadline for the release of information to them is 24 hours, compared to 10 days for ordinary requests.

Those who consider that their rights to freely access the information have been breached – either by denial of the information or by failure of meeting the deadlines – can appeal the decision, by administrative (to the superior of the employee who has denied the information), or to the Court. The

Court can rule in favour of the disclosure of the information and can also sentence the public authority or institution to moral or patrimonial damages. Still the Court may also agree with the public authority's position.

A coalition of NGOs headed by TI-Romania set out to enhance public participation in government and assisted in the development and introduction of Romania's so-called "Sunshine Law". The Law 52/2003 regarding Transparency of Decision-making in Public Administration offers a comprehensive set of guidelines and regulations for public participation in policy-making and government in Romania.

Transparency of the decision-making process at the local level is also given by ensuring citizens and other interested parties full access to the meetings of the local and county councils, that are generally opened to public. The access to information on the elaboration and implementation of decisions of public administration authorities includes the transparency of the process of income collection and execution of accounts belonging to local public administration authorities at all levels (art. 2, Law 195/2006).Draft decisions may be proposed by local/county counsellors, the mayor /the president of the county council, the vice mayor/vice presidents of county council or citizens. (Articles 45 and 97, Law 215/2001).

6. Complaints and enforcement mechanisms

There are internal administrative procedures for solving complaints within the institutions assimilated to public administration. Law 554/2004 on administrative litigation stipulates that any person who considers that his or her right has been infringed by a public authority through an administrative act or by not solving in the legal limit of time his or her request, may address the competent administrative court in order to annul the act, to recognize the claimed right or the legitimate interest and to repair the damage that was caused to him or to her. Legitimate interest may be both private and public.

These procedures are regulated by Law 554/2004, through art. 7. The fulfilment of prior procedures constitutes an essential condition for starting the judicial stage of evaluating illegal administrative acts. It also protects the aggrieved party by avoiding a possible trial in court if during the prior proceedings the respective public authority proceeded to revoke its own act.

Another possibility of citizen complaint for the activity of public authorities, including the local governments is the appeal to the Ombudsman. The representatives of this institution receive requests and issue recommendations for the authorities or for the civil servants working within to restore the rights of the petitioner and to repair the damage (art. 13, Law 35/1997).

Holding public authorities responsible for their actions can be achieved through an action directed exclusively against the civil servant (as a natural person) who elaborated, issued or signed the act or, as appropriate, who is guilty of refusing to resolve the request regarding a subjective right or a legitimate interest; or an action directed against both the authorities and the physical person who elaborated, issued or signed the act or, as appropriate. In court, the individual may call in his or her defence his or her hierarchically superior, from who he or she received written order to elaborate or not to elaborate the act. At the same time, the head of the public authority can also sanction the guilty ones (art. 26).

After examining the legal texts already cited above, two observations can be drawn. First, the illegal administrative acts that have been revoked are a form of reparation, which means that the

Constitution acknowledges the principle of repairing the damage as a form of accountability for public administration authorities. Second, courts have the competence to judge claims of the parties that were aggrieved through administrative acts and may rule – according to law - on their legality, which means that the Constitution recognizes the need for judicial oversight of certain legal acts of the public administration authorities, including local governments.

The conditions under which public administration responds financially for damages caused by its illegal acts are those which result from the provisions of the administrative litigation. These conditions are: the illegality of the administrative act causing the damage, the existence of damages caused by the illegal administrative act, the causal relation between the administrative act and the damage and the improper functioning of the administrative authority.

7. Relationship to other NIS Pillars

The Law 215/2001 regarding the local public administration prescribes and describes in detail what is meant by local autonomy. The institution of this governance principle brought about a further differentiation of the way in which local governments should interact with other public authorities, with civil society and the business sector.

The interaction between the local governments and the authorities at the central level has to be facilitated, according to the Law 240/2004, republished in 2008, by the institution of the Prefect, which is supposed to act as the representative of the government at local level.

The relationship between the local government with the nongovernmental sector, including citizens, associations of citizens and the mass-media, is regulated through a series of provisions that go across many normative acts. For instance, the Law 544/2001 on the free access to information of public interest institutionalizes the interaction between citizens and local authorities by laying down the obligation of the public authorities to set up specialized compartments of information and public relations or to designate persons with attributions in this field. Besides, the Law 52/2003 on transparency of decision-making in the public administrations guarantees the citizen right to participate to the process of making decisions in the local communities.

The local government's interaction with the mass-media is ensured by the legal provisions that guarantee the public character of the meetings of the local councils and by the transparency legislation (the already mentioned Law 544/2001 and Law 52/2003, as well as the Law 161/2003 on some measures to ensure transparency in the exercise of public dignities, public offices and business, preventing and sanctioning corruption).

The local governments' interaction with the business sector was regulated until 2006 by Law 470/2002 approving the Government Ordinance no. 16/2002 on public-private partnership, as modified. This Law was abrogated by the GEO 34/2006 regarding the award of public procurement contracts, public works concession contracts and service concession contracts. Any other law didn't replace the abrogated one.

B. Actual Institutional Practice

1. Role of Institution

Local government has been claimed to enjoy relative autonomy in decision making regarding its sphere of action, within the limits set by the law. The main domains that have been said to be rather autonomously managed by the local authorities were the administration of the private and public property of the respective administrative-territorial unities, elections, citizen consultations, normative local initiatives, associations between the local authorities and other public institutions, public order and management of emergency situation, ensuring the material resources for institutions in charge with education, culture, youth, sport, welfare services, medical assistance, environment.

2. Resources and Structure

The budget of the local government institutions has mainly come both from specific incomes such as taxes, rates and other contributions, and from the state budget through subsidies (especially for social assistance) and other similar allotments. Generally, the mayors have administrated the budget, after its approval through the local councils.

The level of decentralization has increased in the past few years, several public services being transferred from central to local authorities. Although this process has proved to be positive and in line with the democratic procedures, experience has shown that decentralization is not the answer to all problems of local government: the situation of local communities doesn't necessarily improve following the transfer of problem solving responsibilities at the local level of governance, especially if there is no concern for a balanced shift of normative and technical competences and for a correspondent reallocation of knowledge, logistics and financial resources.

First, it isn't obvious that an ex-ante evaluation of the decentralization process has been made. This would have given the possibility of a better approximation of the number of tasks to be assumed by the local entities and of the necessary time frame for the transfer of competences. Secondly, despite additional allocations of financial resources, which were however considered insufficient, the effective receipt of money by the local authorities was delayed. As a result, these authorities faced serious problems in offering those public services that fell under their competence.

Furthermore, a series of drawbacks determined a rather negative impact of the decentralization process. The most stringent impediments were the scarcity of financial and logistical resources, the obscure and ambiguous allocation of resources, the insufficient proficiency of civil servants in handling activities, and unclear standards of verification. Besides, the fragmentations of decision-making at the level some public domains as the education and the supply of thermal energy produced confusions and a deficient management of these public services areas. For instance, a local government cannot make substantiated budgetary drafts as the managers of public educational institutions don't have the legal obligation of making budgets for their institutions and of submitting periodical financial situations to the local governments. As well, the decisions on subsiding payments for the thermal energy belonged to the Government, but the responsibility was transferred to the local authorities.

In terms of human resources, the final decision on appointments, promotions and dismissals belonged to the head of the local government, meaning the mayor.

Internal audits, though regularly made, have been deemed ineffective due to a lack of professionalism from the respective auditors. Besides, the general persistent feeling among the civil servants was that they were acting against the employees and not along with them, or in their long-term favour.

3. Accountability

The main supervisory responsibility within the local government institutions belonged to the mayor and to the heads of departments, services and offices within their respective fields of activity. However, the general oversight has been said to be rather ineffective, due to a loose accountability mechanism.

As for political accountability of the locally elected officials to the citizens, it is sensibly different from the political accountability of the nationally elected officials. Probably with the exception of the vote for the mayor of Bucharest, citizens do not express political preferences to local elections, but design a map of measurable and direct community interests. Taking into account a number of 360,000 candidates to an electoral population of 18,000,000 and a vote presence rate around 50%, it can be said that 2% of the electorate and 4% of the voters were candidates. When applying to these percentages the coefficient of 4.5 that the demographists usually apply in order to numerically consider the typical familiar group, it results that one out of five effective voters were candidates or direct relatives of the candidates. Thus, the motivation and the interest for voting with a particular candidate or his or her party prove to be very strong. And so does the correspondent accountability.

Weak accountability lies also with the civil servants, whose daily activities have been claimed as excessively slow, due to intricate and redundant bureaucratic procedures.

4. Integrity

The integrity issue related to conflicts of interest, gifts and hospitality within the local authorities has been generally seen as a particularly sensitive issue due to the relatively high propensity of allegations on this topic that have not been investigated. Only the integrity and corruption issues related to notorious persons within the local government and covered by the local press were said to have been dealt with. Yet, and generally, cases of conflicts of interest, gifts and hospitalities, if suspected, have not been further investigated, except for the famous cases visible in the media.

A recent study conducted by two nongovernmental organizations, the Centre for Juridical Resources and the Monitoring Press Agency showed that the local officials are the most frequent bearers of conflicts of interests . The most publicised public institutions affected by conflicts of interest were the city halls, the county councils and the local ones. The mayors, their relatives, business partners, acquaintances and party colleagues appeared as the most frequently mentioned actors involved in situations of conflicts of interest. Some examples of specific cases cited in the report are facilitating the awarding of public procurement contracts, concluding public contracts with "certain" companies, fraudulent rental of real estates, illegal land awarding, illegal approvals of urban plans or public services contracts awarding with no prior bidding procedures.

Other aspects related to public integrity are the statements of interests and of assets. Unfortunately, the legislation does not describe any clear relationship between the two types of declarations and they are rarely analysed in separately, without any cross-reference between them.

A final feature of the local government pillar in terms of integrity refers to the incompatibilities of the public office with other statuses and functions. According to a another study that focused on the incompatibilities at the local level that were made public in the local press, the most frequent cases involved the local councils, the county councils, the city halls and the prefectures. The elected officials, the public servants, the contractual personnel and the prefects were repeatedly cited as being in situations of incompatibility. Considering the most frequent incompatible positions, were mentioned the status of manager or director of private companies, agencies or societies, membership in the board of directors of certain public institutions, shareholding or other public offices.

5. Transparency

In terms of transparency and free access to public information, local authorities have been seen as deficient in their relations with the citizens, firstly, because of a lack of professionalism and adequate preparation of the civil servants, but also because of a weak interest to respond to citizens' demands.

With regard to transparency in decision-making within the local government, the most used means of fulfilling this principle were the publication of the local councils' debates and decisions on the website of the respective authorities. Generally, the propensity of responsiveness to public information demands and of transparency with regard to decision-making was lower at the local and county level than at the municipal level .

6. Complaints and enforcement mechanisms

Generally, the external and internal complaints against the civil servants from the local governments have been handled directly by the mayors, particularly in cases of written grievances, or by special discipline commissions. Usually, the applied sanctions were verbal and written warnings. Dismissals, salary diminutions or civil/penal charges were of a rare incidence. This was allegedly due to the high level of protection that the civil servants enjoyed by virtue of their status.

7. Relationship with other pillars

Local governments have generally interacted with all the public institutions from the local level (education and cultural institutions, police, social assistance offices etc.), but also with NGOs and economic operators, especially regarding public procurements.

In terms of autonomy, practice showed that it has yet to prove its effectiveness. One of the main reasons has been the financial aspect related to insufficient funds and to their distribution among the local authorities based on political criteria.

Regarding interactions of the local governments with other public institutions, sensitive problems occurred in cases of dual coordination of both the central government authorities and the local ones concerning public spheres such as education, health or police. In addition, the relationship of the elected local authorities with the prefects, acting as territorial delegates of the central government, have been allegedly highly circumstantial, because it depended on the political colour of the respective county councils. However, this relationship has been counterbalanced by the opposite influence of strong local political leaders: the so-called 'local barons' , have been a considerable force

at the national level. They could block or change policies and they had to reach agreement in order to affect change.

Local authorities had a strong relation with the economic operators in the process of public procurements, granting subsidies, contracting private companies etc. The link between local business interests and local politics has proven to remain in the grey area of integrity and transparency.

8. Past developments and futures prospects

Since 2005, local government has been as rigid and resistant to change as in the previous legislature. There were insignificant legislative and practical changes, but the high stability of the civil servants in their offices remained as such. These factors tended to contribute both to the lack of progress in terms of administrative and management modernization and to the inflexibility in the present daily activity. This could explain why the credibility of local governments in terms of integrity has continued to be weak. Indeed, a 2008 poll on the corruption perception showed that the courts and the county councils were on the second and third place in the ranking of the most perceived corrupt public institutions.

As for the steps that must be taken towards accelerating the progress of local government as an integrity pillar, political will should be the first step. In order to cope with the backward stage of administrative and management progress in local governments, to put in place clearer regulations on administrative and audit procedures and processes, political will is mostly needed. The revision of the public servants' statute towards creating a balance between office stability and protection, at one hand, and their accountability, on the other, should lead to more responsible public servants, and, correspondently, to better local governance. The same balance has to be set up for the elected officials: mayors and local and county councillors.

9. Stakeholders' recommendations

In this context, increasing the standing of local governments within the national integrity system should mean not only making legislative amendments, but primarily determining change regarding the institutional practice in the local governments. More specifically, the following recommendations need to be taken into consideration:

- improving the professional preparation of the civil servants through constant training sessions, especially on the level of small communities
- improving coordination between local governments and the deconcentrated structures of the central administration
- reducing the arbitrary or discretionary use of local budgets through periodic need assessments among the citizens of the local constituencies
- improving communication between the citizens and their locally elected representatives
- enhancing transparency of the expenditures from the local budgets and of decision-making process
- encouraging citizen participation to local decision-making
- constantly applying unitary consultation tools for the evaluation of citizen satisfaction regarding the quality of public services delivery

List of abbreviations

Central Financing and Co-ordination Unit	CFCU OPCP
Cooperation and Verification Mechanism	CVM MCV
Economic and Social Council	ESC CES
European Union	EU
High Court of Cassation and Justice	ICCJ
Inspectorate General of the Romanian Police	IGPR
General Anticorruption Directorate	GAD DGA
Ministry of Internal Affairs	MIA MAI
Ministry of Justice	MoJ
Ministry of National Defense	MAPN MApN
National Agency of Fiscal Administration	ANAF
National Agency of Public Servants/ National Agency of Civil Servants	ANFP
National Anticorruption Directorate	NAD DNA
National Anticorruption Prosecutor's Office	PNA
National Authority for Regulating and Monitoring (of) Public Procurement	NARMPP ANRMAP
National Broadcast Council	CNA
National Council for Solving Complaints/ National Council for Solving Litigations	NCCS CNSC
National Council of Integrity/National Integrity Council	CNI
National Integrity Agency	ANI
National Integrity System	NIS
Permanent Electoral Authority	PEA AEP
Superior Council of Magistracy	SCM CSM
Supreme Audit Institution	SAI
Transparency International	TI
Unit for Co-ordination and Verification of Public Procurement	UCVPP UCVAP

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