

**NATIONAL INTEGRITY
SYSTEM ASSESSMENT
ROMANIA**

3RD EDITION

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, TI raises awareness of the damaging effects of corruption and works with partners in governments, business and civil society to develop and implement effective measures to tackle it.

Transparency International Romania (TI-Ro) is a nongovernmental organization whose primary objective is to prevent and fight corruption on a national and international level, mainly through researching, documenting, informing, educating and raising the awareness level of the public. TI-Ro was founded in 1999. That same year, Transparency International Romania was accredited as a national chapter of the Transparency International movement.

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ACRONYMS

ACA - Anticorruption agencies

AEP/PEA – Permanent Electoral Authority

AmCham Romania – the American Chamber of Commerce in Romania

ANI – National Agency of Integrity

ANRMAP - National Authority for Regulating and Monitoring Public Procurement

BAAEAR/CECCAR – Body of Expert and Authorized Accountants in Romania

BVB – the Bucharest Stock Exchange

CAN – National Audio-visual Council

CFAR – The Chamber of Financial Auditors of Romania

CNI – National Council of Integrity

CNSC - National Council for Solving Complaints (Public Procurement)

CSM – Superior Council of the Magistracy

CSR – Corporate Social Responsibility

DB – Doing Business

DGA – General Anticorruption Directorate

DNA – National Anticorruption Directorate

EC – European Commission

EMB - Electoral management bodies

EU – European Union

FIC/CIS – Foreign Investors Council

ICCJ – High Court of Cassation and Justice

IP – Intellectual property

MCV – Mechanism of Cooperation and Verification

MF – Ministry of Public Finances

MIF – Monetary International Found

MJ – Ministry of Justice

MP – Member of the Parliament

NIS – National Integrity System

NSC/CNVM – The National Securities Commission

OUG – Emergency Ordinance of the Government
ONG – Non-governmental organisation
PPP – Private-Public Partnership
PS – Public sector
TI- - Transparency International
TI-RO – Transparency International Romania
TI-S – Transparency International Secretariat
UCVAP - Unit for Co-ordination and Verification of Public Procurement
WTO – World Trade Organization

1. ABOUT THE NIS ASSESSMENT

1.1. Introduction to the methodology

Romania continues to be monitored under by the European Commission the Mechanism of Cooperation and Verification for its performance in fighting corruption that stays one of the most important problems of the society, one of the top priorities on the government agenda² and one of the first limitations to economic development. In this context, analysing the National Integrity System is essential in assessing the vulnerabilities to corruption within the country's institutions.

Moreover, a series of high profile corruption cases in the private and public sectors has highlighted the urgent need to confront corruption in Europe. Seventy-eight per cent of Europeans surveyed for the EU Commission's 2009 Eurobarometer believed that corruption was a major problem for their country. Corruption undermines good governance, the rule of law and fundamental human rights. It cheats citizens, harms the private sector and distorts financial markets.

This report is part of a pan-European anti-corruption initiative, supported by the DG Home Affairs of the European Commission. The initiative looks to assess systematically the National Integrity Systems of 25 European States, and to advocate for sustainable and effective reform, as appropriate, in different countries.

1.2. The aim of the assessment

It is very important to underline that this is not a performance assessment and neither the assessment of the corruption level within each institution.

² At least in speech and in strategies.

The National Integrity System only assesses the vulnerabilities to corruption of the institutions and the study also provides a framework to analyse the effectiveness of a country's institutions in preventing and fighting corruption, but not other dimensions of their role.

The National Integrity System (NIS) concept has been developed and promoted by Transparency International as part of its holistic approach to countering corruption. A well-functioning NIS provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive, with negative knock-on effects on the goals of good governance, sustainable development and social cohesion. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society overall.

1.3. The variables, indicators and dimensions of the analysis

The NIS assessment is a qualitative research tool based on a combination of desk research, legal documents, in-depth interviews and secondary sources (reports, dissertations). The guiding questions for each indicator were developed by examining international best practices, existing assessment tools for the respective pillar as well as using the TI movement's own experience, and by seeking input from (international) experts on the respective institution.

To answer the guiding questions, the researchers relied on three main sources of information: national legislation, secondary reports and research, and interviews with key experts. Secondary sources included trusted reports by national civil society organizations, international organizations, governmental bodies, think tanks and academia. A minimum of two key informants were interviewed for each pillar – at least one

representing the institution under assessment and one expert external to it.

The analysis is carried on 13 functional pillars of the integrity system. We identified the most important social functions in fighting corruption and built the units of analysis upon this functions. This is meant to ensure that we use the same measures to assess institutions that have the same role. Within each pillar we studied one or several institutions or, in the case of some pillars we studied a large group of institutions and organizations having the same status and role. The defined pillars are:

Government	Public sector	Non-governmental
1. Legislature	4. Public Administration	10. Media
2. Executive	5. Law Enforcement Agencies	11. Civil Society
3. Judiciary	6. Electoral Management Body	12. Political Parties
	7. Ombudsman	13. Business
	8. Supreme Institution Audit	
	9. Anti-Corruption Agencies	

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather, it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between institutions to understand why some are more robust than others and how they influence each other. The NIS presupposes that weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars also helps to prioritize areas for reform.

In order to take account of important contextual factors, the evaluation of the governance institutions is embedded in a concise analysis of the overall political, social, economic and cultural conditions, the *foundations*, on which these pillars are based.

Each institution or group of institutions within these 13 pillars is assessed along three variables that are essential to its ability to prevent corruption.

- First, its overall **capacity** in terms of resources and legal status, which underlies any effective institutional performance.
- Second, its internal **governance** regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity, which are seen as essential to preventing the institution from engaging in corruption.
- Third, the extent to which the institution fulfils its assigned **role** in the anti-corruption system, such as providing effective oversight of the government (for the legislature) or prosecuting corruption cases (for the law enforcement agencies).

Together, these three dimensions cover the institution's ability to act (capacity), its internal performance (governance) and its external performance (role) with regard to the task of fighting corruption.

Each variable is measured by a common set of indicators. The assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground.

Variable	Indicators
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	<i>Between 1 and 3 indicators, specific to each pillar</i>

Each indicator is assessed along two different dimensions: the legislative framework and institutional practice.

1.4. Scoring system

While the NIS is a qualitative assessment, numerical scores are assigned in order to summaries the information and help to highlight key weaknesses and strengths of the integrity system.

First scores were assessed on a scale from 1 to 5 and then the scores were transformed onto a 0-100 point scale, more clear and easy to evaluate, in 25-points increments (0, 25, 50, 75, 100). Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for the pillar. The difference in practice versus law can also be calculated at both dimension level and for an institution as a whole.

1.5. Background and history of the NIS approach

The concept of a “National Integrity System” originated within the TI movement in the 1990s as TI’s primary conceptual tool of how corruption could be best fought, and, ultimately, prevented. It made its first public appearance in the TI Sourcebook, which sought to draw together those actors and institutions which are crucial in fighting corruption, in a common analytical framework, called the “National Integrity System”. The initial approach suggested the use of ‘National Integrity Workshops’ to put this framework into practice. The focus on “integrity” signified the positive message that corruption can indeed be defeated if integrity reigns in all relevant aspects of public life. In the early 2000s, TI then developed a basic research methodology to study the main characteristics of actual National Integrity Systems in countries around the world via a desk study, no longer using the National Integrity Workshop approach. In 2008, TI engaged in a major overhaul of the research methodology, adding two crucial elements – the scoring system as well as consultative elements of an advisory group and reinstating the National Integrity Workshop, which had been part of the original approach.

While the conceptual foundations of the NIS approach originate in the TI Sourcebook, they are also closely intertwined with the wider and growing body of academic and policy literature on institutional anti-corruption theory and practice.³ The NIS research approach is an integral component of TI’s overall portfolio of research tools which measure corruption and assess anti-corruption efforts. By offering an in-depth country-driven diagnosis of the main governance institutions, the main aim of NIS is to provide a solid evidence-base for country-level advocacy actions on improving the anti-corruption mechanisms and their performance. It is

³ Rose Ackerman, Susan *Corruption and Government: Causes, Consequences, and Reform*, Cambridge: Cambridge University Press, 1999; OECD *Public Sector Integrity: A Framework for Assessment*, Paris: OECD publishing, 2005; Head, Brown and Connors (eds) *Promoting Integrity*, Surrey: Ashgate, 2008; Huberts, L. W. J. C., Anechiarico, F., & Six, F. *Local integrity systems: world cities fighting corruption and safeguarding integrity*. Den Haag: BJu Legal Publishers, 2008.

complemented by other TI tools, which are more geared towards raising public awareness of corruption and its consequences via global rankings (e.g. Corruption Perception Index, Bribe Payers Index) or via reporting the views and experiences of the public (e.g. Global Corruption Barometer). In addition, the NIS approach fills an important gap in the larger field of international governance assessments, which are dominated by cross-country rankings and ratings (e.g. Global Integrity Index, Bertelsmann Transformation Index), donor-driven assessments (which are rarely made public) or country-specific case studies, by offering an in-depth yet systematic assessment of the anti-corruption system, which is based on a highly consultative multi-stakeholder approach. This unique combination of being driven by an independent local civil society organisation, involving consultations with all relevant stakeholders in-country, and being integrated into a global project architecture (which ensures effective technical assistance and quality control), makes the NIS approach a relevant tool to assess and, ultimately, further anti-corruption efforts in countries around the world.

2. EXECUTIVE SUMMARY

2.1. Overview

The assessment of the Romanian National Integrity System offers an evaluation of the legal basis and the actual functioning of the national government functions (“pillars”) and institutions ensuring these functions. They are assessed in the context of the basic political, social, economic, and cultural foundations of the country and taking into account the corruption profile and the anticorruption activities in the last two years in Romania. The assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and assessing their contribution to the integrity at national level and their inter-linkages in this respect. The study, based on the methodology provided by the Transparency International Secretariat, reviews the period from 2008 to 2011⁴. The implementation of the NIS assessment project included a number of steps: desk research, key informant interviews and verification of the findings by the reviewers from the Advisory Group, TI-Secretariat, and an external reviewer.

Romania is, along with Bulgaria, the most recent member state of the European Union. During the negotiation process before accession, some of the chapters and files under discussions remained only a promise from the Romanian part. This generated a unique mechanism, without precedent in the EU. Romania, along with Bulgaria, becomes a member state of the European Union under a safeguard clause. The performance of the country concerning the Judiciary chapter, and its main corruption related institutions and mechanism, is monitored by the European Commission through the Mechanism of Cooperation and Verification (MCV).

⁴The study refers sometimes to previous changes in the system, when these changes are important and generate an important long-term impact.

The MCV established four benchmarks for Romania: the transparency, efficiency, independence and accountability of the judiciary; the effectiveness of an independent anti-corruption agency to verify assets, incompatibilities and conflicts of interest; professional and impartial prosecution of high corruption cases and progresses in preventing and fighting corruption, mainly in local administration. Most of the anticorruption activities in the last three years are shaped by these benchmarks of the EC. However, the EC reports under the MCV are more regarding the formal progress in the Romanian public policies and less the actual results and impact of these policies.

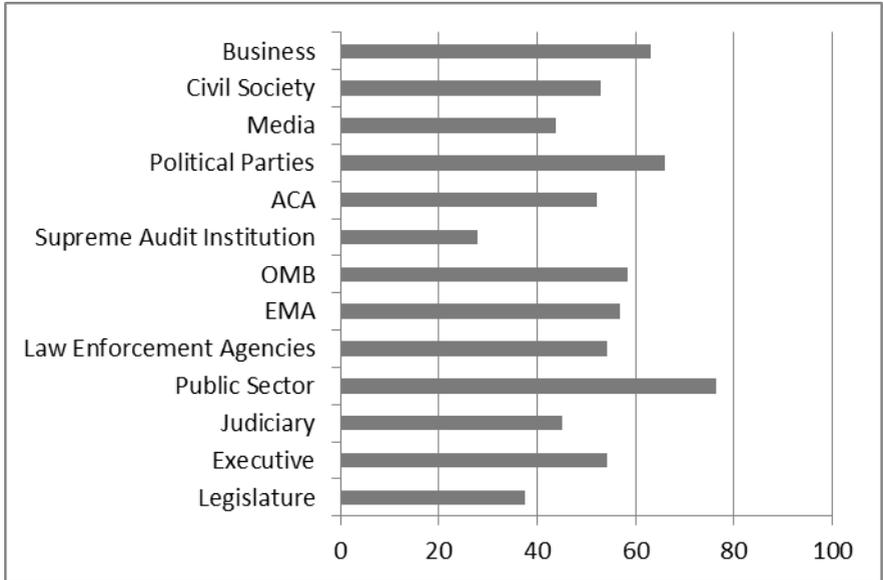
Moreover, the financial and economic crisis generated even more vulnerabilities to a country constantly situated among the last two or three European countries in the Corruption Perception Index, with less than 4 points until 2010 on a scale from 1 to 10, where 1 is a captive state and 10 is an entirely free of corruption state.

2.2. Key findings of the NIS assessment

2.2.1. The foundations of the NIS

The diagram below illustrates the relevant key findings in term of the pillars' relative strengths and weaknesses in building an integrity system at national level. The graphic shows the pillars' possibilities, vulnerabilities and strengths to prevent, fight and sanction corruption within the institutions composing the pillar – capacity and governance variables – and the power of the pillar to prevent, fight and sanction corruption at a general level within the broader system – the role variable.

The diagram illustrates the achievements that are still to be made by Romanian institutions in order to reach a strong integrity system.



The foundations of the integrity system, the political, social, economic and cultural profile of the country are shaped by the communist heritage and moreover by the difficult and slow transition of the country. The politics and parties' activities are formally democratic. However an important attention has to be given to the patronage networks developed within the parties, as the most respected political theorists and analysts of the country show in their works and research. The socio-cultural tradition and low involvement of the people in civic movements is a vulnerability in this context. Moreover, the economic transition and the privatisation process left behind some sectors of the economy with a high risk and exposure to corruption. From a social point of view, the discrimination of some social and national categories can generate abuses and breaches of the rule of law.

2.2.2. Key Strengths and Weaknesses of the NIS

In order to address all of these weaknesses of the foundations a strong institutional framework had to be created. The Romanian Constitution adopted in 1991 and the constitutional regime since then ensured a relatively strong rule of law, including limits for the vulnerabilities, risks and exposure to corruption in politics and economy. However, the formal limits are not enough to ensure the actual effectiveness of the integrity system and the risks are sometimes higher than tolerable. The weaknesses of each pillar show where these vulnerabilities and risks have to be urgently addressed.

The dominance of the Executive over the Legislature, the extensive use of Emergency Ordinances and the procedure of assuming the responsibility of the Cabinet⁵, the inefficiency of the motion of censorship⁶ and the avoidance or misuse of the parliamentary debate put in danger the parliamentary regime and the democratic foundation of the country. To all these we should add the low trust of people in the Parliament and MPs, generated by the low level of accountability and mainly by the endless investigations or trials involving MPs under corruption charges.

The same low level of accountability for corruption and low level of effectiveness of integrity mechanisms constitute the most important vulnerability of the executive. Bearing in mind the fact that the executive limits the independence of the legislature and also other pillars of governance, vulnerabilities of the executive are generating huge vulnerabilities across the system at large; in other words, systematic vulnerabilities to corruption.

In direct connection with the vulnerabilities of the Legislature and the executive, we identified serious vulnerabilities of the political parties concerning all of the indicators assessed. In summary, the parliamentary

⁵ Constitutional procedure that allows the Cabinet to pass a bill without debate in Parliament if a motion of censorship is not voted.

⁶ As it will be described under the Legislature pillar, chapter 6.1.

parties are imposing limiting conditions for establishing a new party. At the same time, the internal regulations of parties concerning transparency, accountability and integrity mechanisms leave room for abuses of power within parties and impunity. The most important risks are generated by the lack of a transparency and integrity mechanism concerning the finance of political parties, but also by the impossibility to control, through transparency and accountability, the candidates of the parties for public offices.

In the same vein one should add the electoral management bodies' capabilities concerning the control of the political parties and electoral processes. The electoral management is carried out by two types of Romanian institutions: The Permanent Electoral Authority (PEA) and the electoral bureaus, active only during elections. As a general observation, after its first years (2006-2008) when affected by internal conflicts, the PEA is performing better from the transparency and integrity point of view than the electoral bureaus. Still, its resources and independence are limited. The effectiveness in party financing regulation and control is still very limited. The electoral bureaus register problems related to the training of its members, the independence of the appointments, the accountability of the members and the transparency of its work, determining a low surveillance of the electoral processes.

This NIS assessment finds that the institution most affected by corruption, but also the least independent pillar, is the public sector. Its resources and independence are decisive for ensuring its integrity and, both in law and practice assessed as creating a huge vulnerability of the whole system.

The public procurement system is also at risk, as the practice shows there are constant and many times undiscovered breaches of law.

The judiciary, as well as the anticorruption agencies and the law enforcement agencies are being monitored under the MCV. While there has been some formal progress in terms of the independence,

transparency and accountability of these pillars, their resources are affected by the economic crisis and rash public policies.

Moreover, maybe the most important thing to say about these pillars - the judiciary, ACA and the police - is that we are still waiting for the results of their investigation, prosecution and trials against corruption, as the impunity of corruption is a recognised problem at a national and international level through the MCV.

Some institutions, namely the control bodies (Ombudsman and Supreme Audit Institution) exhibit pretty strong governance, but they are neither visible nor effective in the system. Their quasi absence is generated first by their lack of efficiency in tracking their results and second by the lack of interest of the Parliament in ensuring their accountability.

The non-state pillars of the integrity system - media, civil society and business - are facing a common vulnerability: the lack of capacity, meaning both the lack of resources and the limits of their independence. The self-regulation concerning transparency, accountability and integrity mechanisms generates incoherent and diversified practices within each pillar. Among the three private pillars the media is the most successful in meeting its role in fighting corruption, having a good performance in investigating corruption and informing the public about it.

The grade given for business freedom in Romania by the evaluation performed by The Heritage Foundation & The Wall Street Journal is 72.0 out of 100, with a loss of 0.5 points since last year⁷. The Romanian evolution (among all the world's economies evaluated by the DB Rank) over the last two years is a poor one, considering the economic climate from the global perspective. As there are no important obstacles to start and enter a business, the Romanian private sector faces, especially during the last years, important obstacles in operating their business, as the legislation is unclear, incoherent and unstable legislation.

⁷ 2011 Index of Economic Freedom

On another hand, the breaches of the rule of law and of the parliamentary regime by the executive and the worsening of the budget situation, generating austerity measures taken by the government without public consultation are indicators of the absence of the political will of the public and political officials to cooperate with the civil society during these troubled times. As expected, the risks and exposure to corruption have increased with these worrying developments.

2.3. Recommendations

Overall the Romanian National Integrity System is assessed as 'average' in this report. Joining the European Union helped to strengthen the integrity system, but the economic crisis, affecting resources and the independence of the institutions has increased the vulnerabilities at all levels.

Two main recommendations should cover all the pillars. The rules of the game, including laws and other bills should be adopted in a transparent manner, respecting the normal legislative process, without rush and procedures to avoid debate. All this rules should be adopted after public debates and participative process and only after analysing the impact and proper parliamentary examination.

On the other hand, the fight against corruption needs the adoption, implementation and miniaturisation of the National Anticorruption Strategy, under the coordination of the Ministry of Justice but with the participation of all public sector and all actors in the civil society.

3. COUNTRY PROFILE

3.1. Political foundations

To what extent are the political institutions in the country supportive to an effective national integrity system?

As a Member state of the European Union the Romanian state of democracy and the rule of law in Romania cannot be easily contested. The international intergovernmental organisations of which Romania is a member, as the UN, OSCE, NATO and the EU are recognizing the quality of Romanian political system and practice. However, even these intergovernmental organisations and, also, national and international NGOs in the field of human rights, developing and consolidating democracy and the rule of law stress in several reports that there are still some problems to be addressed in Romanian politics.

One of the most useful elements to characterise the Romanian politics and probably the most important issued by an international actor is the *Mechanism for Cooperation and Verification (MCV)*. The MCV is the safeguard measure invoked by the European Commission in case some new member of the EU has failed to implement its commitments undertaken in the context of the accession negotiations in the fields of freedom, security and justice or internal market policy. While the internal market safeguard clause has not been invoked so far, the safeguard clause for criminal law and civil matters was invoked for the first time in regards to the countries of the 2007 enlargement: Bulgaria and Romania. Under the Cooperation and Verification Mechanism the Commission issues reports every 6 months on the progress with the judicial reform and the fight against corruption. The benchmarks of the MCV for Romania are⁸:

⁸ The European Commission Decision of 13 December 2006. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0056:0057:EN:PDF>.

1. Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.
3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.
4. Take further measures to prevent and fight against corruption, in particular within the local government.

Concerning the political competition, for the first time after 2000, in 2009, the *Office for Democratic Institutions and Human Rights (ODHIR)* of the OSCE undertook an observation mission in Romania. Although limited, the attention the ODHIR paid to the Romanian Presidential election shows the fragility of the political competition equilibriums. The general and diplomatically formulated conclusion of the ODHIR report published on the 17th of February 2010 was that “while the authorities took steps to remedy certain shortcomings noted during the first round of voting and to investigate allegations of irregularities, further efforts are required to address remaining weaknesses in order to improve the election process and strengthen public confidence.”⁹ The OSCE observers, as the domestic observers, stressed the multiple vote problem, the issue of vote buying, the lack of transparency of the political parties funding, mainly during electoral campaigns, and the corruption vulnerability created by this aspect, the aggressiveness of the electoral campaign, including the media campaign.¹⁰

⁹ *OSCE/ODIHR Limited Election Observation Mission Final Report*, 17 February 2010. Available at: <http://www.osce.org/odihr/elections/romania/41532>. P. 3.

¹⁰ *Ibidem*. P. 25, “Recommendation”.

Concerning party competition, the electoral system was changed during the last years in Romania. The proportional representation system with closed party list for the Parliament was replaced by a system with proportional representation but single member constituency in 2008. With the contribution of the public speech of some political parties and media, the public opinion was slightly confused and it needed to differentiate the single member constituency with proportional representation and the “first pass the post” system, with single member constituency with the representation of the simple majority (plurality) winner. The confusion between the two in December 2008 and first months of 2009, immediately after the first parliamentary elections under the new law generated a significant mistrust in the democratic tool of elections.

As a consequence of low trust, the voters’ turnout diminished constantly for all types of elections. The only electoral events that mobilize more the 50% of voters are the Presidential elections, with 58.02% in 2009. On the other hand, the turnout at the European Elections was 27.67% in the same year.¹¹

The human rights are stipulated under the Romanian Constitution and the respect of the Human Rights is generally recognized to Romania. However, the European Court of Human Rights received in 2009, 2010 and 2011 more than 8.5% (and more than 9% in 2009) of the applications were from Romania, and the only two countries giving the court more applicants were Russia and Turkey.¹² In 2008 Romania was the country who had to pay the biggest compensation as result of the CEDO decisions: 12.2 million euro. The majority of the cases sent to CEDO are generated by the disrespect of the right to property and the failure of the Romanian state to protect it effectively in the process of property restitution and reparations of communist property nationalisations during the 50s.¹³

¹¹ http://www.idea.int/vt/country_view.cfm?CountryCode=RO.

¹² *CEDO Analysis of statistics 2010*, January 2011. Available at: http://www.echr.coe.int/NR/ronlyres/0A35997B-B907-4A38-85F4-A93113A78F10/0/Analysis_of_statistics_2010.pdf.

¹³ *Ibidem*.

International and national civil society organizations have also focused on the issue of the respect for the human and civil rights of the minorities and mainly of Roma population and of poor people in Romania. A recent report of Amnesty International acknowledges that “in Romania, the right to housing is not effectively recognized or protected by national legislation. This often leaves people without access to justice for the human rights violations that they experience”.¹⁴ Basically the registration and paper issue is difficult and inaccessible for many poor people and moreover for Roma people, facing a double discrimination, for their ethnicity and social condition. The lack of official papers eliminates these people from the exercise of their civic and social rights.

In 2010, the Freedom House rating on the freedom of press gives Romania a score of 43 out of 100, generating an evaluation of a partly free press, having in mind that Defamation remains a criminal offense, and politicians have used civil lawsuits to combat media criticism, the unbalanced representation of parties in media, mainly during electoral campaigns, and the pressures the editors put on the journalists’ shoulders, more or less aggressively.¹⁵

From a quantitative point of view, the Government efficiency and the rule of law, as they are aggregated by ***the Worldwide Governance Indicators (WGI) project***¹⁶ have average scores for Romania. **51% is the aggregate per cent for the Government efficiency, a lower score than all the other EU member states. The rule of law in Romania has 57.5, under the regional average of 61.0.** Moreover, as expected, the government’s bad habit of passing legislation via ordinances and thereby bypassing the parliament has continued even after EU accession.¹⁷ Another important menace to the rule of law in Romania is the contested position of the

¹⁴ *Romania: Mind the legal gap: Roma and the right to housing in Romania*, June 2011, Available at: <http://www.amnesty.org/en/library/info/EUR39/004/2011/en>.

¹⁵ <http://www.freedomhouse.org/template.cfm?page=251&year=2010>.

¹⁶ <http://info.worldbank.org/governance/wgi/index.asp>.

¹⁷ *Bertelsmann Transformation Index. 2010 Romania Country Report*. Available at: <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/romania/#difficulty>.

Constitutional Court, sometimes ignored, sometimes contradicting its own decisions and accused by various political actors, media and civil society of having political bias.

With a score of 53.8 in the field of control of corruption¹⁸ and having the corruption perception index decreasing first time after 2002, the mistrust of Romanians in the efficiency of the government, and manly in the efficiency of the anti-corruption measures increased dramatically in 2010 to 83% of the population.¹⁹

As a positive trend, the eroding popularity of anti-democratic, extremist parties demonstrates the consolidation of democratic institutions and a democratic political culture. Nevertheless, polls indicate that the general level of trust in these very institutions is low.²⁰

3.2. Social foundations

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

No major social cleavages are present in Romanian society. Three ethnic groups constitute the main minorities: the Hungarians, the Germans and the Roma.²¹ Roma remain under-represented at national and local levels, but EU integration and the engagement of domestic and international civil society organizations have kept their problems on the Romanian agenda. An important development remains the Decade of Roma Inclusion, initiated by the World Bank, the Open Society Institute and the Hungarian government in summer 2003, to which the Romanian government has

¹⁸ *Ibidem*

¹⁹ *Global Corruption Barometer 2010.*

http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/index_en.html.

²⁰ *Bertelsmann Transformation Index. 2010 Romania Country Report.* Available at:

<http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/romania/#difficulty>.

²¹ <http://www.minorityrights.org/3521/romania/romania-overview.html>.

signed up. It is set to run from 2005 to 2015 and has four priority areas: education, employment, health and housing, and two cross-cutting areas, gender and non-discrimination. To date, however, the record has been mixed. In 2007, Romania's most senior officials offered reminders of the deep hostility towards Roma that still permeates much of Romanian society. In May 2007, President Traian Basescu called a reporter 'a filthy Gypsy', a comment judged as defamatory by the National Council for the Fight against Discrimination. Then in July, Prime Minister Calin Popescu Tariceanu was reported to have made remarks generalizing Roma as criminals.²² On the other hand, the relations in some isolated areas between the Hungarians, the Roma and the Romanians are tense. In May-June 2009 in a village in Harghita County the Hungarian inhabitants chased the Roma inhabitants from their houses, setting some houses on fire.²³

The political organization representing the Hungarians, the Democratic Union of Hungarians in Romania, has been part of many government coalitions, taking an active part in the government constantly since 1996. Their presence in the government ensured important rights for minorities, mainly concerning their education, the use of their mother tongue in schools and universities, and the right to use their language in administration and justice.

It is difficult to say how stable and socially rooted the party system is. Most specialists agreed that the Romanian party system, as the majority of the party systems in the Eastern Europe post-soviet world, was based on the cleavage between anti-communists and post-communists. This cleavage disappeared after 2000, and even if the party system has become more stable and the parties structured themselves, becoming stronger, their articulation with the society has become weaker and weaker.²⁴ The low

²² *Ibidem*

²³ The report of a Roma representing NGO, ROMANICRESS. Available at: http://www.romanicriss.org/Annex%2012%20Rap%20dr%20omului_RCRIS10dec09.pdf.

²⁴ Stefan Stanciugelu, Andrei Taranu, *Resursele puterii. Statul neopatrimonial in Romania*, Bastion, Timisoara, 2009.

turnover is one of the indicators of the situation. The very low trust rate in the political parties is another indicator of the situation.

The main cleavage threatening social cohesion and coherence in Romania concerns the growing socioeconomic disparities between the urban and rural population as well as between the winners and losers in the transformation process. The disparities have an increasingly apparent regional dimension: Whereas the Bucharest-Ifov development region has long reached 75% of the EU average standard of living, predominantly rural regions in the north-eastern and south-western parts of the country have barely reached the 25% mark. Market mechanisms within the EU common market and the so-called four freedoms – rather than targeted governmental policies and strategies – actually manage the growing cleavages and conflict potentials. Partly illegal emigration of the labour force and human trafficking combined with the importation of remittances substantially contribute to upholding subsistence and economic consumption for the rural population.²⁵

The revision of the electoral laws to a single member constituency, even if with proportional representation, had to increase incentives to create broadly based parties rather than political parties dependent on a single or only a few political leaders. However, the evolution of political representation and elite structure took a completely different direction. The changes in the electoral system helped the “local barons” to get stronger.²⁶ Basically the electoral campaigns became more expensive and successful local business men started to participate into the local, and then national, political life. However, their only purpose in the political participation was not the public interest and national representation, but the pursuing of personal, business and financial interests. It became more difficult to access the political elite, as this both social abilities and network

²⁵ Bertelsmann Transformation Index. 2010 Romania Country Report. Available at: <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/romania/#difficulty>.

²⁶ Stefan Stanciugelu, Andrei Taranu, *Resursele puterii. Statul neopatrimonial in Romania*, Bastion, Timisoara, 2009.

and the resources to finance its own campaign. On the other hand, the relationship patron-client became stronger and stronger, and for a good reason the most important local political responsible were called by the press, and later by the politicians themselves, "local barons".²⁷

The development of the Romanian civil society appears to be very positive. According to the Freedom House Index, there is a clear trend in the rating on civil society from 3.75 in 1997 to 2.25 in 2006, representing the top rating in the intra-regional comparison of Balkan countries. Some civil society organizations are able to exert influence on the decision making process. However, they are not always pursuing the public good: they are sometimes acting in response to financing opportunities or instigated by political interests.²⁸ On the other hand, a minority of the Romanian citizens have been part of at least one NGO. According to the Public Opinion Barometer from October 2006 and October 2007²⁹ 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. Moreover 49% of the NGOs have less than 10 members. On the other hand, only 3.7% of Romanians ever volunteered for NGOs.³⁰

²⁷ *Ibidem.*

²⁸ Aurelian Muntean "Romanian Civil Society and Its Active Role in the 2004 Elections: From Monitoring to Blackmail Potential" 2005, Paper prepared for the Annual Meeting of the American Political Science.

²⁹ Civil Society Development Foundation (CSDF), *Dialogue for Civil Society. Report on the state of civil society in Romania 2005*, p. 87.

³⁰ *Ibidem.*

3.3. Economic foundations

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

With a GDP per capita of \$11.860 in the International Monetary Fund ranking, Romania is the 69th out of 183 countries, having the lowest GDP per capita in the European Union. The country was heavily affected by the economic crisis and it needed several loans from 2009 until now from the International Monetary Fund and the European Union to be able to maintain the economic and financial stability.

The Gini coefficient, as it is calculated by the UN, is 31 for Romania (or 0.31 on a scale from 0 to 1)³¹. Having in mind the speed of economic and social transformation, first in the '90s during the transition to democracy and market economy and then during the last 10 years in the process of European accession, the social and economic disparities have become stronger and bigger and social exclusion is still an important problem of the Romanian society, government and economy. The UNDP poverty-related indices indicate that poverty, though not extreme, is a serious and substantial problem, with almost 30% of the population living below the national poverty line. Moreover, the HDI for Roma people in Romania is well below the national average and similar to Botswana's—despite Romania ranking almost 50 places higher than Botswana in the HDI. The Roma people's income is a third the national average, and their infant mortality rates are three times higher.³² Gender is hardly a factor, as the Gender Development Index is close to 100% of the Human Development Index.³³

³¹ *Human Development Report 2010*. Available at:
http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf.

³² *Human Development Report 2010*. Available at:
http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf. P. 75.

³³ *Bertelsmann Transformation Index. 2010 Romania Country Report*. Available at:
<http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/romania/#difficulty>.

The basic necessities of life are generally guaranteed. But the cleavage between the urban, and namely the big cities and the rural areas or very small cities in the less developed regions is significant. 88% of the inhabitants of the cities and towns have improved sanitation facilities.³⁴ Still only 50% of the population is urban, and the World Bank has no data concerning improved water source in rural areas. This will only mean that the attention paid to the rural development is still weak in Romania. According to the Romanian National Statistical Institute 47% of the Romanians don't have access to improved sanitation facilities and 35% don't have access to water facilities.³⁵

The healthcare system suffers from under-budgeting and petty corruption. 72% of the Romanians have access to improved sanitation facilities and the life expectancy is 73 years³⁶. Officially the number of infections acquired in Hospitals is 50 times lower than the one in UK. However, the system design discourages reporting and the result is the low level of investment in the healthcare infrastructure, as the official sources say everything is all right. Journalistic investigations and civil society campaigns reveal, however, a sad reality of a very badly managed and maintained system.³⁷

The capacity of the social safety nets to compensate for poverty and other risks such as old age, illness, unemployment or disability can be evaluated as being rather weak and very unsatisfactory compared to the European or the region average performance of those systems. In 2009 6.9% of the active population was unemployed and 31.6% of the unemployed persons were long term unemployed. Moreover, 20.7% of the young people were unemployed.³⁸ Adding this data to the aging of the population and to the fact that there are 1.3 retired persons to 1 employed person and it is clear

³⁴ <http://data.worldbank.org/topic/urban-development>.

³⁵ http://www.euractiv.ro/uniunea-europeana/articles%7CdisplayArticle/articleID_12922/O-treime-din-populatia-Romaniei-nu-are-acces-la-apa-potabila-din-sistemul-public.html.

³⁶ <http://data.worldbank.org/country/romania>.

³⁷ <http://www.antena3.ro/romania/medicii-nu-raporteaza-infectiile-intraspitalicesti-oficial-avem-de-50-de-ori-mai-putine-cazuri-ca-englezii-131869.html>.

³⁸ <http://data.worldbank.org/topic/urban-development>.

that, without a reform of the retirement system the social safety network will not be able to cover the largest group in need, the elders.³⁹ On the other hand, all the other social security indemnities have diminished in the last two years, because of the economic crisis that shook Romania.

With EU accession, the institutions of a market economy are in place and include the freedom of trade and currency convertibility. Whereas in the first phases of the transformational process, Romania was rightly criticized for reserving too large a role for the state in economic development, since then, overregulation has turned into laissez-faire and excesses of capitalism. Legal and illegal immigrant workers and their remittances contribute substantially to the subsistence of families back home, although not to sustainable macroeconomic development and sustainability. Foreign Direct Investments and economic growth are strongly focused on the capital, a handful of major cities and the Western regions, whereas rural underemployment persists as a structural problem.⁴⁰ The country overall score of economic index is 64.7, and with this score Romania is the 63rd out of 179 evaluated countries all over the world. Romania scores worst in the sub-indicators of: freedom from corruption, property rights (as there is likely to invest in properties subject to a revindication after the communist nationalization) and financial freedom, because of the weak judicial system lacks the capacity to enforce laws efficiently or impartially, an because perceptions of implicit state guarantees for municipal bonds and poor market infrastructure undermine the soundness of capital markets, which remain underdeveloped. Despite the relatively stable and open banking environment, Romania's financial intermediation rate remains one of the lowest in the region.⁴¹

³⁹ http://economie.hotnews.ro/stiri-finante_banci-8145244-raportul-pensionari-salariati-ajuns-1-31-1-incotro-indreptam.htm.

⁴⁰ *Bertelsmann Transformation Index. 2010 Romania Country Report*. Available at: <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/romania/#difficulty>.

⁴¹ 2011 Index of Economical Freedom. Available at: <http://www.heritage.org/index/country/romania>.

The country's infrastructure covers almost the whole territory. 36.2% of the Romanians are Internet users, and the mobile cellular subscriptions per 100 people come to 118. However the transport infrastructure still needs important investments. The National Company of Railways is losing and spending much more money than it makes and it has been in near bankruptcy form a long period of time. Although the modern road covers the territory, highways network is highly underdeveloped. After 1990 219 km of highway were built, in Romania up to a network of 332 km in total. In the last twenty years in Spain the investments generated 8800km of highway and in France 4250km.⁴²

Concerning the business sector in general, 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.⁴³ 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, and a high number of local business men enter politics, making the relationship between business and decision making less transparent.

3.4. Cultural foundations

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

The notion of 'social capital' (i.e. social trust, civic norms and social networks) is highly underdeveloped in Romania. Romanian citizens do not

⁴² <http://www.informatiiauto.ro/oficial-de-la-transporturi-autostrazile-din-romania-se-construiesc-la-fel-de-repede-ca-in-orice-stat-ue-sid7852.html>.

⁴³ See: BTI, 2008, p. 13.

volunteer much of their time, do not trust other citizens and authorities.⁴⁴ This makes communication among people less probable and the main reason for this is related to pre-democratic development. 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.⁴⁵

The last Public Opinion Barometer undertaken in Romania in 2007⁴⁶ stressed the curious balance between the optimism of the people and the dissatisfaction related to the Romanian institutions, politics, social situation and economic development.

The personal integrity became less and less an ethical norm valorized by the public, as the hope that appeared in the relation optimism-dissatisfaction is more generated by the idea that problems can be passed using incorrect tools, more than by being correct and valorising integrity.

However, the integrity standard is required to public actors and the pressure for correctness and the support for anticorruption measure is very high.

⁴⁴ See: Badescu, Gabriel/ Sum, Paul E./ Uslaner, Eric M. (2004): Civil Society Development and Democratic Values in Romania and Moldova., in: East European Politics and Societies, Vol. 18, No. 2, p. 316-341.

⁴⁵ Mungiu-Pippid (2006): Democratization Without Decommunization in the Balkans. URL: http://www.hertie-school.org/binaries/addon/399_democratization_without_decommunization.pdf.

⁴⁶ <http://www.soros.ro/ro/publicatii.php?cat=2#>

4. CORRUPTION PROFILE

The economic crisis of the last two years significantly raised the vulnerabilities to corruption. These added to other vulnerabilities to corruption having two identified main causes: on the one hand, the communist legacy and the adaptability in the transition period⁴⁷, and, on the other hand, the party system developed more on patronage networks, than in pursuing representation of citizens.⁴⁸ This makes corruption present both locally and centrally. "Local barons" became, starting with the '90s a common used concept both by press and politicians. It expresses the existence of patronage networks and the fact that the power entrusted to local government is used for the management of public resources far from the general interest but for the benefit of small groups.

In the pre-accession period, following the conditions of accession according to the deficiencies identified by the EU - lack of legal reform and weak administrative capacity, public integrity has been promoted and the national integrity system improved.

Thus, elements of justice reform, reforms to increase the administrative capacity, the functioning market economy development, programs involving the pillars of national integrity system, including anti-corruption agencies were adopted. Romania has adopted standards in the pursuit of national project to join NATO and the EU. Their achievement was meant to ensure compatibility between Romanian institutions and policies and those of the Member States of the two international bodies. Expertise and external pressure, as well as the documents through which these standards were formally integrated in the Romanian system provided

⁴⁷ Ken JOWITT, „Moștenirea leninistă”, in Vladimir TISMĂNEANU (coord.), *Revoluțiile din 1989. Între trecut și viitor*, Polirom, Iași, 1999, trad. Cristina și Dragoș Petrescu, p. 233. De asemenea, Katherine VERDERY, „What was socialism and why did it fall?”, în *Contention*, Vol. 3. Nr. 1, 1993, pp. 1-18.

⁴⁸ Daniel BARBU, *Politica pentru barbari*, Nemira, București, 2009.

decision-makers the necessary conditions for effective alignment. However the effectiveness degree of such harmonization was never assessed, ie the real impact and results.

After Romania joined the European Union, public commitment of central and local authorities has declined considerably, and efforts to combat corruption of non-governmental organizations were affected by the withdrawal of major funding programs. Thus, the tools created by formal accession began to be abandoned at the moment implementation by policy makers.

The slowing rhythm of reforms affecting the state institutions is reflected in the perceptions of citizens or businesses and experts regarding the effectiveness of anti-corruption measures or incidence of corruption in society.⁴⁹

In addition, the following anti-crisis governmental actions initiated in 2009, in 2010 the background vulnerabilities generated by the important limits of the state budget were accompanied by a number of procedural vulnerabilities in the adoption of anticorruption measures, seriously affecting the public integrity climate. On the other hand, most of the identified developments can be characterized as hasty measures, without being part of a coherent and comprehensive policy in the area. The need to adopt laws, strategies, policies, forms of organization to meet the challenges brought by the crisis cannot be disputed, but the procedures used, lack of prior consultation and the impact assessments made initially well-intentioned policies have adverse unforeseen effects strongly challenged.⁵⁰

⁴⁹ Global Corruption Barometer, http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/index.html, Corruption Perception Index, http://www.transparency.org.ro/politici_si_studii/indici/ipc/2010/index.html.

⁵⁰ National Report on Corruption , May 2010, București.

If we look at the external statements and documents emblematic for national integrity system vulnerabilities we can see that the formalism and inconsistency of government decisions, on the one hand, and resignation Romanians, on the other hand, are identified as main causes for the inefficient fight against corruption in Romania. Regarding the passive attitude of the citizens, this was caused by lack of transparency and availability of public institutions to dialogue. The decreasing quality of implementing laws, that ensure transparency of documents⁵¹ and transparency of decision process⁵², as well as the complete absence of innovative initiatives to encourage participation in consultation increases mistrust, suspicions, disappointment and ultimately encourages corruption.⁵³

In addition, the climate of legislative inconsistency, discourages investment and seriously affects substantial business and European projects, adversely affecting the economy, society and position for in international context in the EU. This climate of normative inconsistency is caused by procedural improvisations in the adoption of fundamental laws such as legal codes, flagrant, repeated and harmful abuse of government accountability procedure for adoption of draft laws, questionable legislative innovations, such as laws implementing the legal codes⁵⁴ that are substantially amending legislative texts before their entry into force.⁵⁵

Finally, the large number of regulations adopted under Government accountability suffers not only procedural flaws, but serious content issues, highlighted throughout this report. The period referred to in the report was therefore marked by concentration of Government actions to counter the economic crisis "at any price and in any way" in the shortest time

⁵¹ Law no. 544/2001 regarding free access to information of public interest.

⁵² Law no. 53/2003 regarding decision process transparency

⁵³ National Report on Corruption, May 2010, București.

⁵⁴ A law substantially amending the initial text was adopted for the unitary wage of staff from the state budget, also.

⁵⁵ National Report on Corruption, May 2010, București.

possible, without considering the consequences. Such concern has decreased public confidence in public institutions, with direct and immediate consequence of the depreciation of the whole climate of public integrity. Aggravation of problems reported is felt in each of the measures and sets of measure analyzed.⁵⁶

After the previous year's index gave a sever signal on freezing the fight against corruption, Romania gain 3.7 points of 10 in the 2010 CPI and 3.6 in 2011 Romania occupies a flattering place 25 among the 27 European Union member states, followed only by Bulgaria and Greece

Moreover, in 2010 Transparency International Romania launched the diagnostic analysis of the National Integrity System⁵⁷ where it proves the link between the degree of corruption and indicators such as quality of life, sustainable development and functioning rule of law. As a general analysis, based on studies in recent years, Transparency International Romania considers that this decrease is the result of lack of strategic coordination in the legislative and institutional measures, which led to excessive vulnerabilities in all the pillars of integrity and damaged the credibility of reforms and Romania in general. The waning credibility for Romania is even more evident given the fact that the composite index⁵⁸ for the country consider very realistic assessment of influential organizations such as the Country Risk Service and Country Forecast the Economist Intelligence Unit, Global Risk Service of IHS Global Insight, World Competitiveness Report of Institute for Management Development and Global Competitiveness Report of World Economic Forum. Transparency International's CPI strongly underlines the alarm signals of reports of prestigious institutions and also joins the Worldwide Governance Indicators line evaluation of World Bank showing a decrease in corruption control index and the one on the

⁵⁶ Ibidem.

⁵⁷ National Integrity System for 2009 launched in 2010.

⁵⁸ Corruption Perception Index,

http://www.transparency.org.ro/politici_si_studii/indici/ipc/2010/index.html

effectiveness of the governance and evaluation of the national integrity system of Transparency International Romania.

According to the Global Corruption Barometer 2010 (GBC) of Transparency International that one of three Romanians recognizes that he paid a bribe in 2010. Over 87% of Romanians believe that corruption has increased in Romania in the last three years and 23% of Romanians recognize that during the last 12 months have paid a bribe at least once. The barometer assesses the extent to which key institutions and public services are perceived as corrupt and identifies the views of citizens on government efforts to fight corruption. Like other reports of Transparency International, the instrument is designed to complement the views of experts on public sector corruption provided by the Corruption Perceptions Index and information about international bribery flows reflected in the Bribe Payers Index. It also aims to provide information on trends in corruption in public perception. Thus, while the Corruption Perceptions Index allows a comprehensive picture of corruption and an indirect picture of grand corruption, and societal barometer allows a direct image of small corruption and policies to combat it.

5. ANTICORRUPTION ACTIVITIES

Romania's anti-corruption reforms in the last three years have been fundamentally influenced by the Cooperation and Verification Mechanism, an instrument approved by the Romanian Government and the European Commission representing the way in which monitoring is performed for Romania after its accession to the European Union in 2007, accession which completed under a safeguard clause without precedent in the justice chapter, where the candidate did not fulfill all criteria for membership until becoming a Member State of the EU.⁵⁹

Priorities set by the Cooperation and Verification mechanism are: (1) ensuring an act of justice more transparent and efficient, especially by strengthening the capacity and accountability of the Superior Council of Magistracy, reporting and monitoring the impact of new civil and criminal procedure codes, (2) to establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, with the role of issuing mandatory decisions on the basis of which dissuasive sanctions can be applied, (3) based on the progress made so far, continue to pursue professional investigations regarding allegations of high level corruption, (4) adopting additional measures to prevent and combat corruption, particularly within local government.⁶⁰

The judicial system continues to have limited performance in the fight against corruption, but the statistics are insufficient to determine its causes: poor handling of cases by prosecutors, courts lack of capacity or lack of structural reforms in human resources policy within the system.⁶¹ Moreover, the lack of substantive analysis or impact analysis regarding the proposed solutions for reforming the judiciary and fight against corruption

⁵⁹ The safeguard clause and the Cooperation and Verification Mechanism has specific objectives for in each country Bulgaria and Romania.

⁶⁰ http://ec.europa.eu/dgs/secretariat_general/cvm/romanian_en.htm

⁶¹ http://ec.europa.eu/dgs/secretariat_general/cvm/romanian_en.htm

are recurring issues for which TI-Romania has made several recommendations and requests for settlement, which remained without response from the authorities. The Commission notes the existence of progress, but this should not be regarded as a good win, but as a process and an ongoing effort. Moreover, regarding the first objective, the codes were adopted in 2009 by disregarding any democratic and legal standards of debate and public consultation, the government imposing them to the parliament, judiciary and litigants, through accountability procedure.⁶²

Regarding integrity agency with responsibilities for verifying assets, this was created in 2007, after three years of negotiation and under the high pressure of the EU, and fundamentally reformed in 2010. Declaring as unconstitutional a significant number of articles of the law the National Integrity Agency (ANI) in its original form reveals a legislative act without legal backbone. Given the obvious shortcomings of the regulation, a different approach to the problem it regulates is required; designing a new law free from constitutional defects must be one of the priorities of the legislature. National Integrity Agency deflected from its purpose housing many abuses⁶³, the mechanism established and especially the institutional practice being negatively sanctioned by the Constitutional Court. Please note however that the current form of the law deals with integrity in a much more careful way regarding the person assessed. The speed to which the normative act, putting in accordance the functioning law of the Agency with the Constitution, was prepared calls into question the compulsory studies to be achieved before the adoption of a law, especially one of the importance of that dealing with corruption, institutional transparency and civil servants integrity.⁶⁴

⁶² http://www.transparency.org.ro/stiri/comunicate_de_presa/2010/21iulie/index.html

⁶³ ANI was the target of many whistleblowing actions, some received by the ALAC center for anticorruption assistance for the citizens, part of TI-Ro. Also, press investigations revealed many of ANI's issues.

⁶⁴ National Report on Corruption, May 2010, București.

In terms of objectives three and four, the European Commission positively noted the increasing number of investigations started, but points each time that all these investigations and lawsuits started must be completed with final and irrevocable decision of acquittal or prosecution. Also, over time, to the Commission warnings, comments on the supervision and verification of public procurement procedures were added, which constitute one of the most significant vulnerabilities at both central and local level.

TI-Romania found that for the periods four and five of reporting within the Cooperation and Verification Mechanism (CVM) Romania has not registered real developments in terms of reforming the judiciary and the fight against corruption. The only elements of progress noted by the Report of the Commission are purely statistical or descriptive, but there is not, in any of the reports, an assessment of measures taken or proposed. Moreover, the simple check of convictions in corruption cases merely show that interventions focus on specific cases rather than systemic measures to secure the system against corruption. All these seriously affect the reforms credibility and Romania's credibility in general and contribute to further reducing Romania's competitiveness in European public funds market. The situation is even worse as Romania is confronted with problems including management of funds which have already been accessed, funds that could compensate some of the financial crisis effects and could support efforts to regulate and to fulfil obligations.⁶⁵

The Status of civil servants⁶⁶ underwent several changes from the launch of the latest National Report on Corruption, some of these amendments were declared unconstitutional by the Court, being repeated in other regulations and eliminated again through constitutional control. Instability generated by all these changes regarding public office and especially for management position and the high possibility of politicization of the public office, illegal, is one of the most significant vulnerabilities of the national

⁶⁵ http://www.transparency.org.ro/stiri/comunicate_de_presa/2010/21iulie/index.html.

⁶⁶ Law no. 188/1999.

integrity system created in 2009-2010 continuing to have severe consequences. We do not need to mention the costs of the politicization of public administration. It is obvious that this is intrinsically linked to the strengthening of networks of patronage and embezzlement of public money to private interests. On a careful analysis we find that the politicization of public administration is an element that indicates the presence of two other phenomena of corruption: on the one hand political parties are tempted to take government space to use public resources in the interests of party or group, and the other hand party leaders or their clients may be interested or rewarded with positions in administration and therefore, by corruption, to use public funds in their personal interest.⁶⁷

Also in the public sector in 2009 and then in 2010 a framework law was adopted regarding unitary wages for staff paid by public funds. In 2009 the law was adopted by the government accountability and every time the two laws were accompanied by derogations from the entry into force for the following year, 2010 and 2011. These acts are emblematic of the government's refusal to engage in dialogue, on the one hand, and the inconsistency of regulations, on the other. Far from becoming a means to prevent corruption in public sector wages staff, the unitary pay law, determines abuse at the highest level, just by its discretionary application.⁶⁸

At strategic documents level, the National Anticorruption Strategy for vulnerable sectors and public administration was adopted for 2008-2010 period, and the Ministry of Justice has drafted another one to follow it. This new strategy has been subject to public consultation and should be completed by the end of 2011.

In September the Intermediate Evaluation Report on the impact of the National Anticorruption Strategy on vulnerable sectors and local government for the period 2008-2010 was launched. One year after the

⁶⁷ National Report on Corruption, May 2010, București.

⁶⁸ Ibidem.

start of the Strategy, following recommendations made by the European Commission MCV Report of 22 July 2009 a technical working group to monitor state performance measures undertaken was formed, consisting of representatives of institutions responsible for implementation of the Strategy at central⁶⁹ and local government level. But in its present version, the document does not touch any of the set objectives. First, there is no identification of the status of implementation of the strategy discussed: the document does not have a centralized statistic of measures that have been met, those in the process of being met and those that have not been met, divided by vulnerable sectors and areas of intervention, to which the values of quantitative indicators mentioned in the corresponding action plan of the strategy should be attached. Secondly, the report does not present an impact evaluation of measures taken on the target groups. Equally, given the fact that there is no real analysis of the stage of strategy implementation and impact analysis of any measures taken, the recommendations were prioritized according to the degree of necessity of their application.⁷⁰

An evaluation of the Group of States against Corruption (GRECO)⁷¹ on incrimination of corruption and vulnerabilities to corruption in political party financing legislation was launched in early 2011.⁷² GRECO recommendations were considered in drafting the NAS for 2011-2015.

A large number of Romanian non-governmental society organizations carry out programs to prevent and combat corruption. Moreover, a line of special funding under the European program "Transition Facility"⁷³ was

⁶⁹ Representatives of the Ministry of Administration and Interior, Ministry of Justice, Ministry of Public Health, Ministry of Education, Research, Youth and Sports and Ministry of Economy and Finances.

⁷⁰ National Report on Corruption, May 2010, București.

⁷¹ Department of Fight against corruption of the Council of Europe,
http://www.coe.int/t/dghl/monitoring/greco/default_en.asp.

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[http://www.coe.int/t/dghl/monitoring/greco/news/News\(20110315\)Eval3_Romania_en.asp](http://www.coe.int/t/dghl/monitoring/greco/news/News(20110315)Eval3_Romania_en.asp).

⁷³ <http://www.fdsc.ro/pagini/facilitatea-de-tranzi355ie-200719343.php>.

dedicated to civil society anti-corruption projects. Western embassies and foreign foundations also supported civil society anti-corruption actions. However, the impact of these actions is subject to the cooperation of public institutions and is limited by the extent to which public institutions take and implement their recommendations. In this context, unfortunately, in the last two years the public institutions have not been so open to cooperation with non-governmental sector comparing to the previous period.⁷⁴

Private environmental initiatives against corruption are even more limited. In terms of CSR strategies and corporate priorities, these are rather concentrated towards education, health, social, and headed to areas less politically sensitive, unlike the fight against corruption.⁷⁵ Exceptions are not lacking, but their impact is not yet sustainable.

⁷⁴ Interview.

⁷⁵ Interview.

6. NIS Assessment

6.1. LEGISLATURE⁷⁶

SUMMARY

The extremely big number of Emergency Ordinances of the Government and the procedure of assuming the responsibility of the Cabinet⁷⁷ in front of the Parliament determined the adoption of very important regulations without proper parliamentary debate. This shows the limits of the Legislature's independence. It also diminished its accountability and people's trust in its functions. Among the laws adopted by the procedure of assuming the responsibility of the Cabinet are the Civil Code, the Criminal Code, the modifications of the Labour Code and the Education Law.

Moreover, too much of the budget of the Legislature is spent on maintaining an inefficient building, while not enough is devoted to ensuring the legislative quality.

According to the Gallup poll in January 2008 the Romanian institution with the lowest level of credibility is the Parliament. *88% of the citizens have little or no confidence at all in the Parliament.*⁷⁸

According to the Global Corruption Barometer 2010 the Romanian Parliament is, along with the political parties, the most corrupt Romanian institution, with a 4,5 score out of 5 points, meaning extremely corrupt.⁷⁹

⁷⁶ We would also like to thank to Ms. Simina Tanasescu, deputy dean of the Law Faculty of the University of Bucharest for her contribution to the study launched in 2010, who served as a basis of the present analysis.

⁷⁷ Constitutional procedure that allows the Cabinet to pass a bill without debate in Parliament if a motion of censorship is not voted.

⁷⁸ Ibidem.

⁷⁹ http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results and http://www.transparency.org/ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf

The legislative framework to ensure the executive oversight by the Parliament can be evaluated as covering all the important cases where this oversight is needed. However, the consequences of the actions of MPs when exerting this oversight function don't always bring about the expected changes.

Legislature⁸⁰					
Overall Pillar Score: 62.5 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 75 / 100	Resources	100	75	0	25
	Independence	100	25	0	75
Governance 62.5 / 100	Transparency	75	75	25	25
	Accountability	75	25	25	75
	Integrity Mechanisms	100	25	0	75
Role 50 / 100	Executive Oversight	25		75	
	Legal reforms	75		25	

STRUCTURE AND ORGANISATION

The Parliament is the central representative authority 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 only legitimacy difference

⁸⁰ The overall pillar score is a simple average of the scores of the three dimensions capacity, governance and role. The dimension scores are simple averages of the respective indicator scores.

between deputies and senators is given by the number of voters electing these officials. The senators are elected by a higher number of voters, but the voting procedure and system is identical.

The operations of the Romanian Parliament make the Romanian system an almost “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.

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 Chamber⁸¹, the substantive similarities in the tasks of the two Chambers remain in place.

ASSESSMENT

Resources (law)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

Each Chamber’s budget is regularly drafted by the staff of each Chamber, and then approved by vote of the MPs⁸² and sent to the Government. The Cabinet includes the Parliament budget in the state budget proposal, without the right to change it.

The state Budget is afterward presented to the Parliament for the vote of MPs. From that moment on, the Secretary General (high civil servant) of each chamber administers the spending of the institution (payments, salaries, wages, and investments).

⁸¹ Article 75 of the Constitution

⁸² Art 64, paragraph (1) of the Constitution

Resources (practice)

To what extent does the legislature have adequate resources to carry out its duties in practice?

Romanian public debates concerning the resources of the Parliament focus on a false problem: that the Romanian Parliament is too expensive.⁸³ In fact, ensuring the functionality of the second biggest building in the world hosting the Romanian Legislature is very expensive. Although very big, the building is highly inefficient, the loss of time and resources to administrate and maintain determine the inefficiency of the Secretary General of the Chamber of Deputies, the legal administrator of the building.⁸⁴

One of the most important problems generated by the low level of resources is the low level of expertise, highly specialized clerks and applied research the two houses have at their disposal.⁸⁵

The lack of resources, combined with the culture of political relations and clientele⁸⁶ determine that the parliamentary groups and individual bureaus, in Bucharest or in the constituencies have as expert employees former MPs, and political personnel, and they don't have specialized and technically trained employees. Consequently, the quality of legislative projects drafted in the Parliament is lower and this allows the executive to

⁸³ Stated during interview by Georgeta Ionescu and Cristian Pirvulescu. In December 2009 a referendum was organized, asking the voters to state if there are in favor or against a single chamber Parliament and in favor or against the diminishing of the number of MPs to maximum 300. An important argument for the initiators, for the diminishing of the number of Chambers and MPs was the high actual cost of the Parliament. The advocates of the vote in favor stated their proposition will make the Romanian Parliament less costly.
www.basescu.ro.

⁸⁴ Stated during interview by Georgeta Ionescu.

⁸⁵ Stated during interview by Georgeta Ionescu and Cristian Pirvulescu.

⁸⁶ The issue is further developed in the section dedicated to political parties.

overlap the legislative function of the parliament, using its right of initiative and its possibility to legislate using Emergency Ordinances.⁸⁷

Independence (law)

To what extent is the legislature independent and free from subordination to external actors by law?

The legislature can be dismissed in a single situation: if it fails to pass the vote of confidence in a government, after two attempts, in 60 days.⁸⁸

The Legislature can be recalled outside normal sessions, if the President of the republic, the Presidents of the houses of the Parliament or a third of the MPs asks for an extraordinary session.⁸⁹ The legislature establishes its agenda in the Permanent Bureaus of the two houses of Parliament and it appoints its Presidents and other members of the Permanent Bureau in plenary sessions. The staff is employed either by the General Secretary of each Chamber in the case of administrative and committees' clerks or by the MPs themselves in the case of the staff of the parties' bureaus or MPs' individual bureau.

Independence (practice)

To what extent is the legislature free from subordination to external actors in practice?

Theoretically, the two houses of the Parliament control their own agendas, by establishing the agenda in the Permanent Bureaus of each chamber. However, the Emergency Ordinances have to be debated using the emergency procedure. Also, for the most important of its initiatives the

⁸⁷ Stated during interview by Georgeta Ionescu and Cristian Pirvulescu.

⁸⁸ Article 60 of the Constitution

⁸⁹ Article 66 of the Constitution

Government is asking for the emergency procedure and this is generally granted.

On the other hand, the Presidents of the Chambers (the Speakers) and the other leading figures of the Parliament are appointed by MPs, following a proportional rule regarding the balance between parties in each Chamber. The onus is no longer on the Government, but on the political parties, because the party discipline is working very well, and the liberty of the individual MPs is limited to the decision of the party leaders.⁹⁰

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.⁹¹

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. 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.

⁹⁰ Stated during interview by Cristian Pirvulescu.

⁹¹ Stated during interview by Cristian Pirvulescu.

Adoption of Law and initiators⁹²

Year of the adoption of a law	2011 (until October)	2010	2009	2008
Initiator				
Cabinet	79	169	306	236
out of which Emergency Ordinances	40	84	197	132
Deputies	6	50	43	49
Senators	3	35	32	31

Vivid examples of 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.⁹³

Another way to limit the independence of the Parliament, where the Government and the parties are acting together, passing over the will of the MPs, is the possibility of the Government to engage its responsibility before the Chambers.

Article 114 of the Constitution stipulate: "(1) the Government may assume responsibility before the Chamber of Deputies and the Senate, in joint sitting, upon a programme, a general policy statement, or a bill. (2) The Government shall be dismissed if a motion of censure, tabled within three days of the date of presenting the programme, the general policy statement, or the bill, has been passed. (3) If the Government has not been dismissed according to paragraph (2), the bill presented, amended, or completed, as the case may be, with the amendments accepted by the Government, shall be deemed as passed, and the implementation of the programme or general policy statement shall become binding on the Government."

This allows the passing of a law or of an entire legislative package without any parliamentary debate on the technical aspects of the legislation but

⁹² Data is available on the Chamber of Deputies website:

http://www.cdep.ro/pls/proiecte/upl_pck.interogare.

⁹³ Stated during interview by Cristian Pirvulescu.

solely on the basis of political trust that parliamentarians have in the Executive's team, as the cabinet proposals are adopted if no motion is adopted, in a negative way.⁹⁴

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Furthermore, apart from its obligations under FOIA, the Parliament has special activities requiring publicity: sessions, votes etc. In this context the transparency of parliamentary works is ensured, generally ex officio, by special regulations. The main representative body of the Romanian democracy, the bicameral Parliament is first regulated in the Constitution of Romania. Following the constitutional text, the two Chambers are organized based on their own regulations. Regarding the transparency issue, the Constitution mentions the publicity of parliamentary sessions. Article 68 stipulates that "the sessions of both Chambers shall be public",⁹⁵ but "the Chambers may decide that certain sessions will be secret."⁹⁶

From this point the two Chambers have their own regulations. The plenary sessions are public, but an important difference is made between the two Chambers at the Permanent Committees' level, and at the level of vote registration of MPs.

Regarding the publicity of the sessions, the *Regulations of the Chamber of Deputies* stipulate that: "the sessions of the Chamber of Deputies shall be public and broadcast online, unless, at the request of the President or a Parliamentary Group and based on the vote cast by a majority of the

⁹⁴ See the case of the adoption of the Education Law in 2011. More details in the National Corruption Report, May 2011.

⁹⁵ Constitution of Romania, Art. 68 (1).

⁹⁶ Ibidem, Art 68 (2).

Deputies present it is ruled that certain meetings should be secret.”⁹⁷ Furthermore the sessions of the Chamber shall be recorded and kept. The minutes of the sessions should be made public on the website and in the Official Gazette of Romania⁹⁸

Citizens may attend the proceedings of the Chamber of Deputies based on passes distributed on request, in the order in which the requests are received, within the number of seats available in the lodges designated for the public.⁹⁹ This regulation is exactly the same for the Senate.¹⁰⁰ The session’s agenda is public as well and posted on the web sites.

During sessions, as a rule, the vote shall be open, not secret. The open vote shall be cast, as a rule, by electronic means.¹⁰¹ The result of the electronic vote is posted on the website¹⁰² This way, the vote is nominal, and any person can track the vote of each deputy. As a rule, the vote is secret each time it is cast on a person: election, nomination, and demission etc. The confidence and non-confidence vote for the Government and the recall are as well secret, as a rule.

The debates of the Standing Bureau are recorded in minutes and posted on the web site,¹⁰³ but as an unwritten rule they are not opened to the public.

Unlike the *Regulations of the Chamber of Deputies*, the ones of the Senate do not stipulate the rule of casting the open vote by electronic means. Moreover, the results of the electronic vote, the nominal vote results are not posted on the web site of the Senate. It is possible to receive these results, if requested, though.

⁹⁷ Regulations of the Chamber of Deputies, <http://www.cdep.ro/pls/dic/site.page?id=240>, Art. 139.

⁹⁸ Regulations of the Chamber of Deputies, Art. 153 (1), (2).

⁹⁹ Ibidem, Art. 140 (1).

¹⁰⁰ Regulations of the Senate, <http://www.senat.ro/PaginaPrincipala.aspx?tdID=14&divID=2&b=0&adr=%2fpagini%2fsenatu%2fregulamentul+senatului+2006.htm>, Art. 116, 117 (2).

¹⁰¹ Ibidem, Art. 123.

¹⁰² Ibidem, Art. 124.

¹⁰³ Ibidem, Art. 31 (3).

According to the Senate's Regulations the Standing Bureau should post on the web site only its most important decisions¹⁰⁴. Based on an unwritten rule all its minutes and the minutes of the Chamber of Deputies' Standing Bureau are posted on the Internet. The vote of the Standing Bureau members is nominally registered and recorded only if requested.¹⁰⁵

An important difference between the Senate and the Chamber of Deputies is the openness of Committees' debates. In the Senate the publicity of the Committees' sitting is not a settled rule. On the other hand, the minutes and other documents of the Committees can be accessed by press or citizens only if the sitting bureau of the respective Committee approves it.

All in all, there are two major differences between the Chamber and the Senate, regarding electronic vote and Committees' debates, but these two issues mark a big difference. On the other hand, there are some important debates and votes: the budget, the confidence vote for the government, which are supposed to take place in joint sitting of the two chambers. *The Regulations of the Joint Sessions of the Chamber of Deputies and Senate* does not mention that all the electronic open votes are posted on the Internet, but this is usually the case on the web site of the Chamber of Deputies. Still, the debates of the Joint Committees are not public, according to the Regulations.¹⁰⁶

Transparency (practice)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

The Legislature has taken noticeable steps towards improving transparency in its activity, especially by the means of the Internet. The official web page

¹⁰⁴ Regulations of the Senate, Art. 36.

¹⁰⁵ Ibidem, Art 38 (2).

¹⁰⁶ The Regulations of the Joint Sittings of the Chamber of Deputies and Senate, <http://www.cddep.ro/pls/dic/site.page?id=748>, Art. 11.

of the Chamber of Deputies¹⁰⁷ currently provides 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 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 parliamentary control as the questions, the interpellations and their correspondent responses are available online.

Nevertheless an unwritten rule of the two Chambers is denying the public access to Standing Bureaus sessions. Still, the discussions are recorded and their complete written record is posted on the Internet site.

At the moment the Chamber of the Deputies and the Senate use as ordinary vote mechanism, without express demand, the electronic vote. Votes are nominal and posted on the web pages of the two Chambers. On the other hand, the vote is cast by electronic means in two Permanent Committees: the Committee for Budget, Finance, and Banks and the Juridical Committee. The sessions of these two Committees are video recorded and posted on the web page of the Chamber of Deputy at www.cdep.ro/calendar. Unfortunately the Senate is very often avoiding voting by electronic means and have not introduced the electronic voting system at any of its Permanent Committees.

As we have already mentioned, the sessions of the Standing Bureaus are recorded and their complete written minutes are posted on the web pages of the Chambers. The sessions of the joint Standing Bureaus are recorded in the same way and posted on the site of the Chamber of the Deputies. In the Chamber of Deputies, the minutes of the Committees' sessions as well as the daily agenda are posted on the web site: www.cdep.ro. The Chamber regulations mention this practice, but there is no sanction of not posting the respective minutes. On the other hand the Senate Committees do not disclose any kind of information, unless a person requires it and the President of the Committee agrees.

¹⁰⁷ www.cdep.ro.

The two Chambers also publish the legislative report of each session of the Legislature on their web pages. There is statistical data on the legislative activity of each chamber as a whole, mentioning the number of laws, the number of initiatives and their initiator, the Committees' activity report: number of sessions, number of amended laws etc. The instrument is very useful to examine the activity of the parliament as an institution, more than that of the MPs.

Important information also provided by the chamber of Deputies in regard to the expenses of the Chamber is the amount of expenses made by the Secretary General for the functioning of the Chamber, the administration of the building or the deputies themselves. The information is available in the section of public information, under the title of "economic information"¹⁰⁸

Accountability (law)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

In theory, The Parliament cannot 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 the last six years.¹⁰⁹

There are no special provisions in the Constitution or in other laws regarding public consultation on relevant issues organized by the Parliament.

¹⁰⁸ http://www.cdep.ro/pls/parlam/informatii_economice.home?leg=2008&an=2011&lu=8.

¹⁰⁹ Stated during interview by Cristian Pirvulescu. An example can be the adoption of the Education Law in 2011.

Regarding the possibility of applying sanctions regarding the behaviour of deputies and senators, this is only possible within the Parliament, if they are violating the Constitution or the Chambers regulations. The sanctions are regulated in the internal regulations of the two Chambers, discussed and decided by a commission of discipline and abuses organized within each Chamber. They can go from mere warnings to the interdiction of speech in the Senate or the exclusion from the Low Chamber's meetings.

Parliamentary immunity has been altered after the amendment to the Constitution in 2003, to protect deputies and senators only in matters of potential criminal offences without including protection from disciplinary responsibility any longer, as it had been the case until 2003. The immunity provisions as they exist now are considered to be adequate.

However, unsuccessful attempts were made to extend this immunity. A Government Emergency Ordinance in 2005 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.

Accountability (practice)

To what extent do the legislature and its members report on and answer for their actions in practice?

As the representative authority, the Parliament is solely accountable to the citizens – not just the ones who are eligible to vote or have voted in the past, but to all citizens of the country. 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 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 called a uninominal ballot. In reality, the uninominal ballot is a mixed electoral system. 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. 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.¹¹⁰ 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.

In 2006, 82% of the citizens have little or no confidence at all in the Parliament, according to a Soros Foundation poll carried out by Gallup.¹¹¹

According to the Gallup poll in January 2008 the Romanian institution with the lowest level of credibility is the Parliament. 88% of the citizens have little or no confidence at all in the Parliament.¹¹²

In spite of civil society warnings related to unsatisfactory participation to parliamentary work of the MPs in both Chambers¹¹³, although there are

¹¹⁰ Stated during interview by Cristian Pirvulescu.

¹¹¹ <http://www.gallup.ro>.

¹¹² Ibidem.

sanctions mentioned in the Regulations of each Chamber and the Statue of deputies and Senators, there were no important measures taken against any MP, because of its lack of participation in any kind of parliamentary work. Instead of the official parliamentary enforcement mechanisms, MPs are subject of party discipline mechanisms.

The MPs were accused by media and sometimes by opponent political parties of protecting fellow MPs by not granting prosecutors permission to make a house search or to arrest an MP. Article 72 of the Constitution stipulates: “the Deputies and Senators may be subject to criminal investigation, or criminally prosecuted for acts that are not connected with their votes or their political opinions expressed in the exercise of their office, but shall not be searched, detained or arrested without the consent of the Chamber they belong to, after being heard.” The situation is more unusual in the last couple of years, when the investigations regarding MPs multiplied and grew stronger.

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

The incompatibilities of public office for members of Parliament are described by the Constitution.¹¹³ The statute on deputies and senators covers most of the regulations related to accountability, integrity and transparency 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

¹¹³ The Institute for Public Policy is undertaking semestrial reports on the activity of the Parliament and MPs.

¹¹⁴ “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

the President of Romania.¹¹⁵

The law mentions the requirement that all senators and deputies submit annual assets (article 4) and interest (article 19) statements and further stipulates the obligation of parliamentarians to carry out their activity abiding by the principle of transparency (article 111). For all the issues related to conflict of interest, gifts and hospitality, except the post-employment, legislation has been claimed to be appropriate. As for post-employment, rules are not clear, particularly for MPs.

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 same 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.

Integrity (practice)

To what extent is the integrity of legislators ensured in practice?

According to the Global Corruption Barometer 2010 the Romanian Parliament is, along with the political parties, the most corrupt Romanian institution, with a 4,5 score, out of 5 points, meaning extremely corrupt.¹¹⁶

Press analysis reveals great suspicions on the actual implementation of the legislation concerning these issues. On the other hand, in spite of the stipulations in the Law no. 96/2006 regarding sanctions for Deputies and Senators not respecting the ethical duties, the Ethics Committees in the

¹¹⁵ <http://www.hotnews.ro/stiri-arhiva-1188185-presedintele-basescu-contestat-legea-privind-statutul-parlamentarilor-curtea-constitutionala.htm>.

¹¹⁶ http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results and http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf

two houses of the Parliament are not active at all.¹¹⁷ There are no sanctions applied for lack of integrity, even if the press publicized several cases when an MP cast a couple of votes for absent fellows.¹¹⁸ The example is illustrative, but is not the only case of unethical behavior.¹¹⁹

Lobbying activities are not regulated at all in Romania. Some of the possible lobby activities can be regarded, in the Romanian system, as the crime of intercession. However the Prosecutors are very cautious in opening an investigation in this respect.¹²⁰

A simple statistic shows, however, that there are 13 MPs accused of corruption in a trial. Still, the investigations and trials are extremely long, taking several years and not affecting the mandate of the MPs, with few exceptions.¹²¹ The most important exception is the one of Catalin Voicu, senator, arrested from May 2010 for intercession.¹²²

The asset declarations of MPs and of Parliamentary clerks are published. However, after May 2010 the personal data in these declarations is not public anymore. It is possible to know the surface of a house owned by an MP, but it is not possible to know the address. It is impossible for an investigative journalist to know, from public sources where the assets are, if there is a history of prior owners in relation with the present owner, the MP, etc.¹²³

¹¹⁷ Stated during interview by Cristian Pirvulescu.

¹¹⁸ Examples can be find at: <http://www.romanalibera.ro/actualitate/politica/cum-incuraieaza-parlamentul-votul-la-doua-maini-230113.html>, http://www.e-politic.ro/Parlament/Adrian-Radulescu-s-a-adaptat-in-Parlament-a-votat-la-doua-maini-122346_7.html, <http://www.ziare.com/politica/parlament/scandal-in-parlament-deputatii-pdl-acuzati-ca-au-votat-la-2-maini-ponta-a-votat-desi-era-la-cotroceni-1102595>, <http://www.ziaruldeastazi.ro/?p=9721>.

¹¹⁹ Cristian Pirvulescu, interview for the NIS analysis.

¹²⁰ Cristian Pirvulescu, interview for the NIS analysis.

¹²¹ <http://anticoruptie.hotnews.ro/>.

¹²² <http://anticoruptie.hotnews.ro/ancheta-7805374-dosarul-voicu-catalin-voicu.htm>.

¹²³ Results of a round-table organized by Transparency International Romania on 30 of April 2010 to debate the possible transformations of the law regarding the National integrity Agency managing and scrutinizing assets declarations.

Executive Oversight

To what extent does the legislature provide effective oversight of the executive?

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. 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).

The Houses of the Parliament can also set up committees of inquiry for Ministers of the government. Unfortunately the results and reports of the committees of inquiry set up in the Parliament in the last couple of years had no further results. Some of them were doubled by a Prosecution investigation, still in progress. Other conclusions of the committees of

inquiry generated attempts to open an investigation. However, the Prosecution dismissed the cases as irrelevant.¹²⁴

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.

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, including public contraction. No other special mechanism is in place for the supervision of public contracting of the Executive.

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.

¹²⁴ Cristian Pirvulescu, interview for the NIS analysis.

As a general evaluation, the legislative framework to ensure the executive oversight by the Parliament can be evaluated as covering all the important cases where this oversight is needed. However, the consequences of the actions of MPs when exerting this oversight functions don't always determine the expected changes.

Legal reforms

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

In the last legislature¹²⁵, 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 due to lack of political will.

In all the political parties, there were supporters and detractors to this kind of projects. The most involved parliamentary committees were the legal affairs committees, but the actor advancing the anticorruption legislation was the Government itself. The Minister of Justice of that time had been very active, but also showed rigidity in his 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.

¹²⁵ The last legislature was working in the period 2004-2008.

6.2. EXECUTIVE¹²⁶

SUMMARY

Under the constraints of the financial crisis, the Romanian executive is one of the weakest pillars of the National Integrity System in meeting its role in fighting corruption and in ensuring internal integrity and accountability.

According to the Global Corruption Barometer 2010 34% of the Romanian citizens consider the current government's actions in the fight against corruption as being very inefficient. 25% consider it inefficient and only 4% consider the measures very efficient. Only 3% of the citizens trust the government in being effective in fighting corruption.

One can count a very large number of cases of ministers and State secretaries involved in conflict of interests, trading on influence and other corruption offences in very long ongoing trials in courts. Moreover the trials are very long and none of them finished yet. On the other hand the accountability of the cabinet before the Parliament is only theoretical, as can be seen by examining the results of the censorship motions in the Parliament. All this brings very low scores for the executive on the accountability and integrity in practice dimensions.

¹²⁶ We would also like to thank to Ms. Dana Tofan, professor at the Faculty of Law, University of Bucharest, for her contribution to the study launched in 2010, who served as a basis of the present analysis.

Executive					
Overall Pillar Score: 45.83 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 83.33 / 100	Resources	-	75	-	25
	Independence	100	75	0	25
Governance 29.16 / 100	Transparency	25	0	75	100
	Accountability	50	0	50	100
	Integrity Mechanisms	75	25	25	75
Role 25 / 100	Public Sector Management (law and practice)	25		75	
	Legal system	25		75	

STRUCTURE AND ORGANISATION

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 the prime-minister¹²⁷. 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.¹²⁸ Furthermore, it was specifically stipulated that, in cases of changes in the structure or political composition

¹²⁷ Art.107 alin.(2) and alin.(3) in the Republican Constitution

¹²⁸ Art.109 alin.(1) in the Republican Constitution

of the 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.¹²⁹

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.

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.¹³⁰

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 position¹³¹.

¹²⁹ Art.85 alin.(3) in the Republican Constitution

¹³⁰ Art.80 in the Republican Constitution

¹³¹ Art.84 alin.(1).

ASSESSMENT

Resources (practice)

To what extent does the executive have adequate resources to effectively carry out its duties?

Despite the crisis of the Romanian economy and even despite the public speech of the president, stressing several times the need for reducing the budgets of public and state institutions, the budget of the presidential administration increased in the past three years, by 23% in 2010 and by 3% in 2011¹³².

On the other hand it is highly difficult to evaluate the adequacy of the resources of the executive, as a whole, including the Prime Minister, the General Secretariat of the Government and Ministries, but excluding the public administration coordinated by the government. As stressed under the public sector chapter, the Romanian Cabinet passed several bills in order to curb the budgetary expenses, including an important reorganization of the Ministries and their apparatus in 2009. However, in the last two years the changes were not as profound as one could expect in the summer of 2009. The press and some political responsible still stress the need to limit expenses and to deeply restructure some institutions coordinated by the executive.¹³³

As a general consideration, the Romanian Government assumed some budgetary threshold for different fields. Most seriously, Romania assumed, as a NATO member state, to allocate 2.38% of its GDP to Defence. It never reached the promised per cent. A similar situation is happening in the Educational System, where the Ministry should receive 4% of the GDP.

¹³² The differences can be observed by comparing the State Budget (www.mfinante.ro). The press agency Hotnews (www.hotnews.ro) issued a serious of articles on the subject.

¹³³ <http://www.ziare.com/economie/fmi/adrian-vasilescu-singura-solutie-pentru-romania-este-restructurarea-interviu-ziare-com-1111418>.

Each year priorities are always different from the ones established during long-time planning.¹³⁴

Independence (law)

To what extent is the executive independent by law?

According to the Constitution the President is independent from any branch of the government and the Prime Minister and the Cabinet are only dependent of the vote of confidence of the Parliament. Still, the Prime Minister is nominated by the President, after consulting the party having the absolute majority in the Parliament or all parliamentarian parties if there is no party who has the majority. As the last situation happens always in the case of the Romanian electoral system, the influence of the president over the name of the Prime Minister is crucial.

However, some of the Constitutional Court decisions after the revision of the Romanian Constitution in 2003 determined a number of dependencies, some of them putting the cabinet under the influence of the President of the Republic. For instance when changing one of the Cabinet ministers, the Constitution stipulates that it is the decision of the prime minister, but the nomination is made by the President. The Constitutional Court decided the president can refuse to nominate the prime minister's proposition only once. After the first refusal, the president has to accept the second nomination.¹³⁵

Independence (practice)

To what extent is the executive independent in practice?

As there are an important number of analysts and experts from the academia and from the civil society characterising the Romanian political

¹³⁴ Geta Ionescu, interview.

¹³⁵ Decision no. 89/7 February 2008, http://www.ccr.ro/decisions/pdf/ro/2008/D098_08.pdf.

system as being a partyocracy, the most important undue influence over the Romanian executive is made by the political parties. They hold the monopoly of the personal, resources, and even governmental politics. The concept of partyocracy was developed by the Italian scholar Mauro Calise and states that in some regimes the influence of the political parties is even more important than in others and is passing over the constitutional regulations of the separation of powers, eliminating any effective checks and balances between the powers. The Romanian case was identified as a partyocracy case.¹³⁶

One of the most important evidences of the partyocracy is the fact that the whole apparatus of the Executive, not only the Cabinet Ministries, is changing when the Cabinet is changes. The Secretary of State and the Directors in the Ministers are appointed on a political basis, and the continuity and the coherence of the public policies is lost every 4 years or often.

As there were many situations of cabinets with very short/small majorities, depending on the support of some small parties with big potential to form coalition, the independence of the cabinet is limited to the political program of these coalition parties¹³⁷.

Other bodies limiting executive freedom of action are the international organizations and donors, such as the European Union, as far as Romania is under the Mechanism of Cooperation and Verification of the European Union. The International Monetary Fund is another international actor determining actions of the Romanian executive.¹³⁸

¹³⁶ Danile Barbu, *Republica absenta*, Nemira, Bucuresti, 2004.

¹³⁷ Geta Ionescu, interview.

¹³⁸ Mihai Seitan, interview.

Transparency (law)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

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.¹³⁹ Nowadays there are already many regulations with regard to transparency in the *public administration's activity*, such as Law no. 544/2001 concerning free access to information of public interest¹⁴⁰, G.E.O no. 27/2002 concerning the activity of solving petitions¹⁴¹, Law no. 52/2003 concerning transparency in decision-making processes in public administration¹⁴². Violations of laws concerning transparency shall be judged by an administrative contentious court, according to Law no. 554/2004, with its further modifications.

Still the government publishes only the approved acts in a cabinet meeting and the minutes of the cabinet meetings are not published. The law is silent regarding these documents.

Regulations concerning the declaration of assets and, respectively, the declaration of interests have been evolving in Romania. In 2010, after a decision of the Constitutional Court of Romania the law changed and from may 2010 the declaration of assets and, respectively, the declaration of interests have to be published on the website of the institutions, including Ministries, with all the personal data covered, including name, addresses of assets etc.

¹³⁹ Art.108 alin. (4) in the Republican Constitution

¹⁴⁰ M.Of.nr.663/2001

¹⁴¹ Of.M no. 84/2002

¹⁴² Of.M no. 70/2003

Transparency (practice)

To what extent is there transparency in the relevant activities of the executive in practice?

The minutes of the cabinet meetings are not published. Still, after each cabinet meeting the prime minister and the ministers in charge of the implementation of the newly adopted acts hold a press conference on the cabinet meeting decisions and discussions. However, the press and the civil society observed an important degree of opacity governing these press conferences, as the prime minister is always answering only three questions from the journalists¹⁴³. The practice is also undermining the process of “translation” to plain language of the cabinet decisions. The State budget is published on the website of the Ministry of Finances. It is possible to filter the documents using the criteria of the institution and to analyse the budget of each Ministry.¹⁴⁴

Concerning asset declarations, there problems do not lie so much on their transparency, but on the capacity of the National Integrity Agency to verify their correctness. Regulations concerning the declaration of assets and, respectively, the declaration of interests have been evolving in Romania. However, after the changes in 2010 and the secrecy of some information considered as personal, 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 and by all employees in a public institution as well as by a important number of other persons.

¹⁴³ Several recordings of the press conferences of the Prime-minister can support the assessment.

¹⁴⁴ www.mfinante.ro.

As stressed under the chapter on the public sector, the performance of the executive and public administration to answer the Freedom of Information Act-based request diminished after 2007, when Romania joined the European Union.¹⁴⁵

Accountability (law)

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

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 article 96 in the Republican 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 law, with the later modifications and amendments.

Government 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 vote of no confidence. The vote of no confidence adopted with the majority of all MPs will determine the dismissal of the Government.¹⁴⁶

The Constitution stipulates furthermore the criminal liability of the members of the Government for their actions during their time in office;

¹⁴⁵ <http://www.apd.ro/publicatie.php?id=34>.

¹⁴⁶ The Constitution of Romania.

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 prosecution¹⁴⁷. 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.

Hence, any member of the Government can be held responsible in a 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 contentious law.

In the case of a Government member, who is a MP, 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*. This commission investigates the activity of the Government or of the ministry. 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. In practice this regulation created a lot of controversies regarding the accountability of ex-ministers and ministers for corruption.

Concerning consultation with the public and social groups, the government have to observe the Law no. 52/2003 regarding the decisional transparency and the Law of the social dialogue, recently changed, in 2011¹⁴⁸. The social dialogue act obliges the government to present to the Social and Economic Council the drafts of the bills regarding social measures and measures with social impact. In order to enforce the constitutional dispositions, the Law of Ministerial Responsibility no.

¹⁴⁷ Art.109 alin.(2) and (3) in the Constitution of Romania.

¹⁴⁸ Law no. 62/2011.

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*.

According to the law establishing and organising the Court of Accounts, the Court has to run an audit of the budget execution every year. The reports have to be presented to the Parliament.

Accountability (practice)

To what extent is there effective oversight of executive activities in practice?

As presented in the chapter dedicated to the Legislative, the theoretical control of the Parliament over the Cabinet is not working well in the Romanian practice of the last years. The Cabinet over-uses the procedure of responsibility assumption, putting the Parliament in the delicate position to choose between the adoption without debate of a proposed bill and political instability. Moreover, the motion of censorship passed by the Parliament in 2009, before the presidential elections, created both political instability and a very surprising outcome. After two months of instability and two proposed prime-ministers, the re-elected president nominated again the prime minister, Emil Boc. He was dismissed by the motion and the Parliament offered him a trust vote, two months after the motion. The political evolution of this situation shows that the political accountability of the Cabinet is only theoretical.¹⁴⁹

Concerning prosecution mechanisms for the members of the Cabinet and ex-members of the Cabinet that are MPs, the prosecutors investigations

¹⁴⁹ Stated during the interview on the Legislature.

depends on the decisions to allow the investigation of the Chamber or of the Senate.¹⁵⁰

In practice there are huge delays in presenting the reports of the Court of Accounts to the Parliament. In June 2010 the Chambers of the Parliament debated the report of the Court of Accounts for 2007. As it is difficult to identify interference while the Court of Accounts is completing the audit, the political independence of the body is contested, as its President was one of the most important political figures of Romania and President of the Senate from 2000 until 2008 and Prime Minister of Romania from 1992 to 1996.

The requirements for public consultations, based on the law of decisional transparency, are not followed in practice in all cases. The law initiatives are published, but there are cases when the consultation process is done only formally and no consultation output is considered¹⁵¹. Moreover, the Romanian executive use extensively the practice of legislating using Emergency Government Ordinances, seldom subject to a debate.

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

Most of the provisions regarding the ethical behaviour on part of the

¹⁵⁰ The report of the European Commission on the Mechanism of Cooperation and Verification stated in February 2011: "During the same period, Parliament voted against the search of a personal computer in an ongoing investigation into alleged corruption by a former minister. The prosecution will therefore have to use all other available evidence in this case. In another case of alleged corruption against the same person, Parliament voted against allowing an investigation. In another ongoing investigation of alleged corruption against a Member of Parliament, Parliament did not endorse the investigation. http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2011_80_en.pdf, p. 5. There were several cases when media and some of the civil society representatives accused the MPs of protecting their fellow members of the Chamber or Senate from prosecution in corruption or abuse cases. However, the MPs have sowed that the public prosecutors' charge was not so well done as it was presented to the press.

¹⁵¹ <http://opriticodurile.ro/files/Letter%20to%20the%20EU%20Commission.pdf>.

executive are present in the Constitution. There is no a comprehensive code of ethics for the executive.

The incompatibilities of the ministerial position are regulated by art. 105 in the Romanian Constitution¹⁵² and by the Law no. 161/2003¹⁵³. 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 for the violation of the regulations imposed by the legislator.

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 the supremacy of the public interest.¹⁵⁴ 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 or first grade relatives. It is clear that these obligations do not also concern the enactment of regulation acts.

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. According to art. 87 alin. (2) in Law no. 161/2003, these incompatibilities

¹⁵² Art. 105 in the Constitution stipulates that any public authority position, except the positions of deputy and of senator, or respectively, the position of professional representation paid within commercial organizations.

¹⁵³ The law concerning measures for guaranteeing transparency in public, authority and business positions, preventing and sanctioning corruption, others were later added. Vol. I, Title V

¹⁵⁴ Law no. 161/2003

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 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 the 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 what 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. There are no clear provisions in the Romanian legislation regarding restrictions on post-ministerial employment and restrictions on "revolving door" appointments.

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.

Integrity (practice)

To what extent is the integrity of members of the executive ensured in practice?

One can count a very large number of cases of ministers and State secretaries involved in conflict of interests, trading on influence and other corruption offences in very long ongoing trials in courts. Some of them were investigated and even convicted; some investigations are still in progress, some of the executive officials resigned after the media undertook investigation and accused, even if the prosecution decided not to investigate the cases. One of the most interesting situations is the case of the Minister of Agriculture, Decebal Traian Remes, accused of trading in influence. The journalists' investigation was filmed with a candid camera and broadcast by the national TV station. He resigned in 2007. Another case is the one of the Minister of Youth and Sport, Monica Iacob Ridzi prosecuted and sued for embezzlement of the budget of the Ministry she was running. She resigned in 2009. In 2011 the Minister of Labour resigned after being accused of conflict of Interest when the media discovered his wife was working as an expert in a project financed by European funds administrated by the Ministry of Labour.

The "revolving door" is a practice in Romania and is more and more a concern, mainly generated by the way of organising electoral procedures and the electoral campaign. As underlined under the political parties pillar, the one member constituencies used for the Romanian parliamentary elections since 2008 generates the need for large amounts money at local level. The parties obtain the money by recruiting and mobilising successful local business men, which are afterward promoted in the Parliament and the Executive. After their term in the public institutions these persons

return to their business.¹⁵⁵

The existing provisions for whistleblower protection are not effective in practice at the level of the executive. As in the case of the public administration, the level of trust in the effectiveness of the law is low.

Public Sector Management (law and practice)

To what extent is the executive committed to and engaged in developing a well-governed public sector?

According to the Global Corruption Barometer 2010 34% of the Romanian citizens consider the current government's actions in the fight against corruption as being very inefficient. 25% consider it inefficient and only 4% consider the measures very efficient. Only 3% of the citizens trust the government in being effective in fighting corruption.

According to government representatives the government has the appropriate mechanisms and bodies to effectively supervise and manage the work of the civil service. There are a number of provisions aiming to ensure the effective supervision over staff of the ministers and other executive agencies. Generally, the rules are the same applicable to all civil servants and there are no special statuses for the executive or cabinet employees.

Concerning other administrative bodies, the executive has a representative in each of the Romanian counties, the Prefects. They are running institutions in charge of supervising the legality of the local public administration.

Since 2009 the executive stopped providing incentives to civil servants, because of the economic crisis. In order to keep its capacity of control, the incentives for the control bodies, such as the Fiscal Administration, were preserved for 2009 and 2010.

¹⁵⁵ Cristina Pîrvulescu, during the interview for the Politica Partyes Pillar.

Legal system

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

The Government has been the main agent in drafting and advancing anticorruption legislation on the Parliament's Agenda. *The National Anticorruption Strategy*, its main strategic paper on anticorruption and self-styled as the foundation work for the subsequent policy papers on the topic, from the 1997 up to now, had to act on a systemic approach in the fight against corruption mainly within the public institutions. Another instrument to curb the government policy is the Cooperation and Verification Mechanism developed by the European Commission after the Romanian and Bulgarian accession to the European Union¹⁵⁶. 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 show¹⁵⁷ that the general corruption perception has increased in 2010, 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. The legislative inconsistency determines much of this lack of efficiency.

¹⁵⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0056:0057:EN:PDF> and http://ec.europa.eu/dgs/secretariat_general/cvm/progress_reports_en.htm.

¹⁵⁷ *Global Corruption Barometer 2010*, http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/index_en.html.

6.3. JUDICIARY

SUMMARY

Since the accession process to the EU has started, the judiciary has been the main negotiation chapter and therefore went through a strengthening of the legislation process, which led to a positive progress in the system.

However, it still remains one of the monitoring objectives under the Cooperation and Verification Mechanism, as the implementation of the improved legislative framework has never been fully attained. The lack of an appropriate reform strategy and an adequate timeline meant that the adoption of different pieces of legislation is incoherent and unpredictable, and the system itself does not have the capacity to adapt.

The 2010 GCB places judiciary as the third most corrupt perceived institution, with a 4 score, out of 5 (most corrupt), which consequently shows a very level of low trust in the judiciary. This public perception is linked to the very unstable legislative framework leading to contradictory decisions in similar cases, and very long terms before a case is closed.

In terms of transparency, while the activity of the prosecutor's offices and the courts is highly publicized when public figures are involved, there is a poor understanding of the general access to information framework, most of the courts failing to provide basic information such as contact details for the registry. Thus, at times a so called "media-justice" might affect the independence of the courts and innocence presumption.

While the system itself accuses that political interference and pressure on magistrates is still happening, the Superior Council of Magistracy lacks the capacity and will to truly defend the judiciary's independence and reputation, and ensure an authentic accountability system for magistrates. On the positive side, the CSM has been working on solving the judiciary human resources management, thus developing a dedicated strategy.

With regard to the role of judiciary in sanctioning corruption, the increased number of initiated corruption investigations should be noted, including high level officials, although the Parliamentary approval required for investigating MPs is an important obstacle judiciary is facing: the Parliament common practice was at least to delay the investigations, if not denying them at all. Thus, despite having convictions, the number of final sentences is still very limited and mostly against medium level officials. The reasons behind this are unclear: the poor quality of the investigative proofs or the lack of performance of the courts are two plausible explanations.

Judiciary					
Overall Pillar Score: 54.86 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 56.25 / 100	Resources	50	50	50	50
	Independence	75	50	25	50
Governance 58.33 / 100	Transparency	75	50	25	50
	Accountability	75	25	25	75
	Integrity Mechanisms	100	25	0	75
Role 50 / 100	Executive Oversight	50		50	
	Corruption Investigation	50		50	

STRUCTURE AND ORGANIZATION

The judiciary includes judges, magistrates and other adjudicators from the national (not international) judicial system.

According to the Romanian Constitution, judiciary is made up of three different bodies, namely the courts of justice, the prosecutor's offices and the Superior Council of Magistracy (CSM).

The courts system is structure in four categories, despite the fact that the maximum number of appeals is two. Currently there are operating 15 courts of appeal, 41 tribunals, ___ courts of law, and the High Court of Cassation and Justice, having above 6000 judges.

The prosecutors' offices system, also called the public ministry – which role is to investigate criminal cases both in favour and against the defendant - accompanies the courts one, to which two specialized structures are added. The National Anticorruption Directorate and the Directorate for Investigating Organized Crime and Terrorism are part of the general prosecutor office and have branches at local level. A total number of above 4000 prosecutors perform in all of the public ministry's bureaus.

The Superior Council of Magistracy is supposed to guarantee the judicial independence and is made up of 19 members: 9 judges and 5 prosecutors elected by their peers in their respective general assemblies, 3 permanent members – the president of the Supreme Court, the general prosecutor and the minister of justice. The remaining two are representatives of the civil society appointed by the Romanian Senate.

The main personnel acting in each of these structures is made by magistrates, although they enjoy different statutes.

While judges are independent and immovable by law, prosecutors, who are also magistrates, only enjoy decisional independence and stability, being under the authority of the minister of justice. The members of the Superior Council of Magistracy are both judges and prosecutors elected by their peers at national level, and who enjoy a dignitary statute while in charge.

The auxiliary personnel, meaning clerks, registrars, public servants and contractual employees, as well as assistant magistrates, judicial assistants and judicial police officers are also part of the judiciary and operate within

each of the three bodies. They enjoy different statues according to their profession.

ASSESSMENT

Resources (law)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

The general legal framework¹⁵⁸ provides that the magistrates' salaries are to be established by special law and they cannot be diminished or suspended except for sanctioning reasons.

Therefore special regulation has been adopted in April 2006, providing for specific salaries for each professional level. However, additional special regulations have been in force, increasing the salaries' levels for certain public employees or for certain magistrates categories.

In December 2009¹⁵⁹, under the pressure of the IMF, the Romanian authorities adopted a new regulation on the unitary remuneration of personnel paid from public funds, later on also amended. The general objective of the new regulation was to reduce the public salaries and to set up a common structure for establishing them.

A new regulation¹⁶⁰ was adopted by the end of 2010, as the previous one seemed to be mostly inapplicable.¹⁶¹

Despite dedicated regulations regarding the magistrates' salaries, there is no specific regulation on the total budget of the judiciary such as a certain percentage of the general public budget. Moreover, its administration is

¹⁵⁸ Law no. 303/2004 regarding the judges and prosecutors' statute, republished and amended

¹⁵⁹ Law no. 330/2009

¹⁶⁰ Law no. 284/2010

¹⁶¹ An interesting comment on the effects of the later and the previous legislation was made by Adrian Neacsu: <http://www.juridice.ro/123472/noua-salarizare-cadru-in-sectorul-public-partea-a-ii-a-sistemul-judiciar.html>.

highly divided between several structures. The Supreme Court has its own budget included in the general budget. The budget of the remaining courts (courts of appeal, tribunals and courts of law) is being managed by the ministry of justice and its management is to be transferred to CSM by the beginning of 2012. However the transfer was supposed to take place in January 2010 and was several times postponed.

The prosecutors' offices have their own budget which is being administrated by the public ministry, while the CSM also has its distinguished budget, self-managed.

Yearly, the approved budget is based on the requirements each structure submits itself, and not as a total judiciary budget. However, during public budget elaboration and parliamentary negotiations, the provisioned amount is usually amended.

Resources (practice)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

In practice the general salaries level for magistrates is one of the highest in the public sector. However, compared to the income a high profile lawyer can earn, the magistrates' ones are still limited, considering that their only accepted extra income is from academic activities.

Although there are specific regulations determining the magistrates salaries, due to unclear provisions, two different situations were encountered, which have raised serious concerns about the way magistrates are remunerated and the legitimacy of such levels.

In the first situation one can understand that the increments of the magistrates' salaries have to be implemented according to the past and current regulations¹⁶² as well as the fact that the application of a

¹⁶² Law no 50/1996 regarding the salaries rights of the judiciary personnel; EGO no. 177/2002 regarding magistrates salaries and other rights, etc.

government ordinance¹⁶³ regarding the increase of public salaries, except the salaries of the magistrates. In both cases, there was a sound contestation in courts by the magistrates themselves, in consideration that it creates a discriminatory situation. The paradox of this situation is that the majority of cases were sentenced in favour of the complainants, while the decision was taken by interested parties – judges. Huge press scandals¹⁶⁴ occurred around the accusation that magistrates themselves do not observe either the law, or the competencies of the legislative, adding through court decisions to the law provisions.

In May 2009 a Constitutional Court decision stated that by ruling on the application of rescinded provisions, or by avoiding legal provisions as they are discriminatory, the courts have exceeded their competencies¹⁶⁵. Recently, the general prosecutor submitted a request to the Supreme Court requesting an interpreting decision so that judicial practice can be unified in this matter¹⁶⁶. The case was sentenced on November 14th, stating that increments should not apply to magistrates' salaries¹⁶⁷.

The second case regards the artificial promotion of magistrates to hierarchical structures, include the associated issue of salaries. In fact, magistrates working for lower courts or prosecutors' offices have been detached to the specialized anticorruption or antiterrorism structures, or to the Superior Council of Magistracy or to the Ministry of Justice (MJ), where special salaries were stipulated – associated to higher judicial structures (i.e. magistrates from tribunal have been detached and received salaries associated to courts' of appeal). When the detachment term expired, the law stipulated that while returning to the initial positions, they

¹⁶³ Emergency Government Ordinance no. 10/2007

¹⁶⁴ <http://www.luiju.ro/magistrati/parchete/parca-ar-da-de-la-ea-laura-kovesi-a-cerut-icci-sa-se-pronunte-pe-un-ril-prin-care-sa-constate-ca-magistratii-nu-au-dreptul-la-indexarea-indemnizatiilor-conform-cu-un-act-normativ-din-2007>,
[http://www.mediafax.ro/cauta?q=salariile magistratilor](http://www.mediafax.ro/cauta?q=salariile+magistratilor).

¹⁶⁵ http://www.ccr.ro/decisions/pdf/ro/2009/D0838_09.pdf.

¹⁶⁶ http://www.sci.ro/Complet%20competent%20RIL%202011/c_comp_lista%20sedinta%2012.09.pdf.

¹⁶⁷ <http://www.sci.ro/comunicate2011/comunicat%20ril%20nov%202011.htm>

will continue to enjoy the regime acquired during detachment. In fact this have created a truly discriminatory regime, and led to nepotism allegations when detachment decisions have been made. The situation seems to have ceased when the law was amended.¹⁶⁸

Paradoxically, the law in formce at the moment on unitary income in the public secto has increased the magistrates' salaries, although its purpose was to limit them for all public employees¹⁶⁹.

In terms of human resources, it was available a higher number of positions than the number of acting magistrates, due to the high number of detached magistrates to CSM, MJ and other public institutions, or due to the poor human resources management policy. In its attempt to solve this problem, the system accepted as magistrates law practitioners with experience of 5 to 10 years, recruited through a simplified procedure which lead to nepotism accusations and a very poor quality of the human resource. The low was later amended after several allegations and scandals.

Currently, the problem is exacerbated by the adoption of new regulations on salaries and pensions, which lead to an increased number of cases in courts, doubled by the entering into force of the new civil and procedural cod on 1st October, who has modified courts competences and put a lot of pressure on civil courts.¹⁷⁰

As an answer to this acute problem, the CSM has developed and later improved a new human resources management strategy that is to be

¹⁶⁸ *Study of magistrates' perceptions regarding the independence of the system of justice* 2007, Transparency International Romania, http://www.transparency.org.ro/politici_si_studii/sondaje/2007/studiuCSM2007.pdf.

¹⁶⁹ <http://www.realitatea.net/magistratii--castigatorii-legii-salarizarii-unice--lefuli-marite-cu-20prc-701681.html>.

¹⁷⁰ <http://www.opriticodurile.ro/articol.php?id=11>

implemented¹⁷¹. The magistrates' perception is that also the number and the performance of the auxiliary personnel is still to be improved.¹⁷²

The three Studies on the Magistrates Perception on the Judiciary Independence, conducted by Transparency International Romania, show that most of the judges and prosecutors have currently access to computers and use them as a supporting resource.¹⁷³

The judiciary has its own training system, organized by the National Institute of Magistracy (NIM), who is under CSM supervision and coordination, and who has monopoly in regard the initial training of magistrates and is also responsible for continuous training. The latest ones are rounded by the ones organized by professional associations, NGOs or as project activities.

Most of the practitioners do complain about the way the admission is conducted. The major reflection is about the very rigid subjects which don't allow the evaluation the practical judgement capacity of the future magistrates. This reflection also goes for the whole initial training period, which is merely focused on knowledge of the law, and very few on case and court management.¹⁷⁴

The continuous training system is either perfect. The same Studies show that although training opportunities are available for most of the magistrates the selection system is mostly un-transparent and does not

¹⁷¹ http://www.csm1909.ro/csm/linkuri/06_01_2011_38053_ro.pdf.

¹⁷² Regional Cooperation Council, Regional Anticorruption Initiative, Transparency International Romania – *Integrity and Resistance to Corruption of the Law Enforcement Bodies in South East European Countries*, 2010, [http://www.rai-see.org/doc/Integrity and Resistance to Corruption of the Law Enforcement Bodies in South East European Countries-Survey Report.pdf](http://www.rai-see.org/doc/Integrity_and_Resistance_to_Corruption_of_the_Law_Enforcement_Bodies_in_South_East_European_Countries-Survey_Report.pdf), *Study of magistrates' perceptions regarding the independence of the system of justice 2007*, Transparency International Romania, http://www.transparency.org.ro/politici_si_studii/sondaje/2007/studiuCSM2007.pdf.

¹⁷³ The surveys are available at:

http://www.transparency.org.ro/politici_si_studii/sondaje/index_en.html.

¹⁷⁴ Stated by prosecutors during interview.

take into account a wide range of connections between topics, but rather very limited views.¹⁷⁵

Despite any shortness the judiciary might have, the stability of the personnel is a reality. Even though allegations of misconduct are made public, the CSM does not hurry to sanctioning and dismissing any judge or prosecutor. However, corruption allegations and incrimination led some of the involved magistrates to resign.¹⁷⁶

Independence (law)

To what extent is the judiciary independent by law?

According to the Romanian Constitution, justice is ensured through the High Court of Cassation and Justice (HCCJ) and the subordinated courts¹⁷⁷. No extraordinary courts of law are recognized or legal¹⁷⁸. Specialized courts on different matters may be set up through organic laws.

These constitutional provisions are completed by the law on judicial organization which sets up special provisions for each court category, including the high court¹⁷⁹.

While the constitutional provisions can be amended only subject to the constitutional revision process, which requires a qualified majority of the members of the Parliament¹⁸⁰, the legislative provisions are easier amended, as any organic law. During the transition phase, the competences of the Supreme Court have been several times subject of adjustments. However, the constitutional provisions have never been

¹⁷⁵ http://www.transparency.org.ro/politici_si_studii/sondaje/index_en.html.

¹⁷⁶ <http://www.evz.ro/detalii/stiri/seful-csm-cere-demisia-de-onoare-a-judecatoarei-barsan-951111.html>

¹⁷⁷ Art. 126, alin(1) from the Romanian Constitution.

¹⁷⁸ Art. 126, alin(5) from the Romanian Constitution

¹⁷⁹ Law no. 304/2004 regarding judicial organization

¹⁸⁰ Art. 151 from the Romanian Constitution

changed since the adoption of the constitution in 1991, although it was revised once in 2003, nor is envisaged for the next revision.

Magistrates¹⁸¹ are appointed at the Supreme Court if having at least 12 years of experience and have acted as judges during the past 2 years within a court of appeal or tribunal. Magistrates who are willing to accede at the Supreme Court must submit their professional file who will be analysed by a specialized structure of the court and then sent to the SCM.

The assignment is made by the CSM for ordinary justices, while the president, the vice president and the presidents of the sections of HCCJ are appointed by the president of Romania, upon CSM proposal. The president can deny once the appointment and it must be motivated.

The heads of the prosecutor offices are also assigned by the president, upon ministry of justice proposal, with the approval of SCM.

The removal procedure is equitable. However, by law, the president of the republic has no power against any magistrate, and the appointment procedure is merely a formal one.

All the magistrates are appointed judges or prosecutors by the Romanian president, upon CSM proposal. The appointment is for life tenure and judges are independent and immovable, while prosecutors enjoy decisional independence and stability¹⁸². They are assigned in public positions by the CSM. The removal procedure is also equitable.

The Superior Council of Magistracy is supposed to guarantee the judicial independence and is made up of 19 members out of which 14 are magistrates elected by their peers in their respective general assemblies. The remaining are the president of the Supreme Court, the general prosecutor and the minister of justice, and two representatives of the civil society appointed by the Romanian Senate. While for appointment decisions, all the members' votes are considered, for the disciplinary

¹⁸¹ Section 3, Law no. 303/2004 regarding the statute of judges and prosecutors

¹⁸² Art. 124 alin. (1) and (2) from the Romanian Constitution; Art. 2 alin (2) and alin (3), and art. 3, Law no. 303/2004

procedures neither the president of the high court, nor the general prosecutor, the minister of justice, or the representatives of the civil society can vote.

In most of the cases, appointments and promotions are made based on contests and further interviews, besides excellent professional behavior and no disciplinary sanction applied. The exception is the promotion at the HCCJ, where only interviews are conducted

Independence (practice)

To what extent does the judiciary operate without interference from the government or other actors?

The regulated appointment procedure is followed in practice in most of the cases, especially when appointment is based on the results of a written contest.

The problems arise when appointment decision is taken based on interviews, which happens for HCCJ and in ballot cases after the written test.

One of the sound scandals regarding the contest in judiciary dates from September 2007 when¹⁸³ five magistrates, including the former deputy general prosecutor, have been accused of corruption and fraud at the contest for promoting prosecutors.

Although magistrates involved in that case have been removed from their public offices, the case seems not to be finally closed yet¹⁸⁴.

¹⁸³ <http://www.ziare.com/articole/concurs+magistrati+iccj>, the *National Report on Corruption 2008*, http://www.transparency.org.ro/politici_si_studii/studii/national_coruptie/2008/NCR%20executive%20summary_en.pdf

¹⁸⁴ <http://www.luju.ro/magistrati/parchete/kovesi-vrea-sa-invalideze-concursul-pentru-sefia-parchetului-capitalei-pe-motiv-ca-un-rechizitoriu-constituie-dovada-savarsirii-fraudei-ceruta-de-regulament-csm-a-pus-o-la-punct?print=1>.

Similar problems, including allegations against very poor professional competences have been faced also regarding the entrance examinations in 2007¹⁸⁵.

Dissatisfaction about the appointment and promotion systems has been also expressed in the Studies regarding magistrates' perception on the judiciary independence¹⁸⁶.

One of the recent cases regards the change of the appointment procedure during an already organized interview procedure. The reason behind was the general dissatisfaction about the promotion to the HCCJ. The true one relies on the power demonstration of the new elected members of SCM, at the beginning of 2011. The discussions behind the close doors showed that the intention was to reject all candidates, because the Council intended to change the procedure¹⁸⁷.

Although several corruption accusations have been made, very few magistrates have been removed from their public office, and this only after a disciplinary decision of the SCM, which can still be appealed. Yet, several allegations of pressure for quitting the office have been made by former magistrates¹⁸⁸.

Currently the situation seems to have changed, at least with regard the contests to which regard no recent allegations have happened.

However, despite the legal provisions protecting magistrates' independence, several accusations of political pressure and interference have been made. The Studies show that most of them do perceive the public opinion and political declarations as pressure to sentence in favour

¹⁸⁵ <http://www.gandul.info/news/viitorii-magistrati-confruntati-de-la-admitere-cu-prima-frauda-baremul-de-corectare-907464>

¹⁸⁶ The surveys are available at:

http://www.transparency.org.ro/politici_si_studii/sondaje/index_en.html.

¹⁸⁷ http://www.csm1909.ro/csm/linkuri/19_01_2011_38561_ro.htm;

<http://www.scj.ro/8%20IUNIE%202011.htm>

¹⁸⁸ <http://www.ziare.com/udrea/stiri-elena-udrea/udrea-neaga-ca-ar-fi-fost-in-posesia-listing-urilor-telefonice-ale-procurorului-ciurea-954863>; <http://e-juridic.manager.ro/index.php?pag=a&aid=3815>

or against certain cases¹⁸⁹. Media is accused to be one of the most influencing bodies. Media publications presenting in advance the names of the magistrates in charge of sentencing in an important fraud case and containing allegations about family members of the judges are one example of pressure¹⁹⁰. Another example is the recent declaration of the Romanian president, stating that complaints against the results of the public procurement procedures should not be solved by courts, but magistrates should obey the experts' opinions. The same with regard to complaints against dismissal from public office¹⁹¹.

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

According to the currently in force legislation¹⁹² assets and interest disclosure is mandatory for magistrates, both judges and prosecutors. The declarations should be published both on the courts and prosecutors' offices web-sites as well as on the National Agency for Integrity portal. However private data such as the address of the real estate, signature, bank details or identification number are blurred. Before the adoption of the law no. 176/2010 most of the above data were also available for the public, raising serious concerns in terms of the security of magistrates, once everybody was able to discover where they live.

In terms of transparency, all the administrative data a public institution is usually required to provide such as budget, personnel number, number of

¹⁸⁹ http://www.transparency.org.ro/politici_si_studii/sondaje/index_en.html

¹⁹⁰ <http://www.ziare.com/sorin-ovidiu-vantu/arestat/dosarul-vintu-recursul-se-judeca-miercuri-1041932>

¹⁹¹ <http://www.cotidianul.ro/amr-presedintele-basescu-blameaza-terfeleste-si-stigmatizeaza-magistratii-162823/>; <http://www.jurnalul.ro/special/basescu-minte-de-ingheata-comisia-europeana-ce-au-declarat-oficialii-ce-pentru-jurnalul-national-596914.htm>

¹⁹² Law 144/2007; Law 176/2010; art. 93 of the Law no. 303/2004

cases etc. are also required to be public from a court or prosecutor office, the law on free access to information being directly applicable¹⁹³. Most of the judicial statistics should be included in the annual report and should be public. Except for the prosecution phase where only parties can have access to the files, all proceedings and sentencing are made in public sessions, and most of the decisions are published on the justice portal, after blurring the personal data of the parties. There are also decisions of the High Court, ruling on a special procedure in interpreting the law, that are published in the Official Journal and mandatory for all the courts.

Media also can have access to the files, upon previous approval from the spokesperson of the court¹⁹⁴.

However, the access to judicial information might be restricted if it can harm the justice interest, and files at the prosecutor's office can be seen only by the interested parties.

The Superior Council of Magistracy is also subject to the transparency laws, namely the one of assets and interest disclosure by its members and staff, and the one on free access to information. By default all the CSM sessions, both in plenum and sections are public, and magistrates' professional associations can take part¹⁹⁵. Decisions of having closed door sessions can be taken by the majority of members, in special cases.

Also all the CSM decisions on appointing, moving and removal of judges and prosecutors are published on the web-site of the institution¹⁹⁶, and the normative ones on the Official Journal.

¹⁹³ Art. 77 alin(1) from the regulation on courts internal order approved through SCM Decision no. 387/2005; and art. 53 from the regulation on prosecutors' offices internal order approved through the Minister of Justice Order no. 529/2007

¹⁹⁴ Art. 92 alin(2) from the regulation on courts organizing and functioning approved through SCM Decision no. 529/2007

¹⁹⁵ Art. 29 alin (1) and (2) from Law no. 317/2004 on the Superior Council of Magistracy

¹⁹⁶ Art. 29 alin (6) from Law no. 317/2004

Contributing to its transparency is also important to stress that 2 out of the 19 members of CSM are representatives of the civil society who should act as promoters of its activity to the public.

Transparency (practice)

To what extent does the public have access to judicial information and activities in practice?

The justice portal¹⁹⁷ has been set up as a platform integrating most of the relevant data on judiciary, such as: contact details, guides on judicial proceeding, relevant decisions, statistical data, and reports on the judicial activity.

While most of the courts do not have published an activity report for each year, it is impossible to determine whether there is a common practice in centralizing the reports at the courts of appeal level, which also do not have a report published in the vast majority: only 6 out of 15 court of appeal have a report published for 2010 on the justice portal, for the rest of the courts most of the data available being out of date. The reports available do include activity reports for the courts under the named courts of appeal jurisdictions.

The situation of the reports published by the prosecutors' offices attached to the courts of appeal looks better, having 10 out of 15 reports published. This situation is definitely far from satisfactory, but the hierarchical structure of the prosecutors' offices seems to bring more discipline in this regard.

On the other hand some data are centralized at CSM level and there published in a centralized report published yearly and named "The justice state of art"¹⁹⁸, which includes both information about courts and prosecutors' offices activities.

¹⁹⁷ <http://portal.just.ro/Index.aspx>.

¹⁹⁸ <http://www.csm1909.ro/csm/index.php?cmd=24>.

The CSM has its own activity reports published on its web-site containing information on its activity, and its responsibilities towards the National Institute of Magistracy and the National School of Clerks.

A positive development in 2011 was the issuing on the CSM web-site together with the agenda for each session, of the supporting documents prepared by the technical staff, for each of the topics subject of discussion.

A recent research conducted by Transparency International Romania shows that only 60% of the courts in Romania do provide answers to the public information requests¹⁹⁹. Some of them do not answer the requests at all and some other pretend that the requested information is not a public one: i.e. contact details of the registry and the name of the person in charge.

However, statistical data are subject of disclosure, and although most of the available data are not very detailed, courts do publish on their web-site this information.

By law, prosecution is not conducted in public, and nor in practice. Yet, the public ministry has a very well developed communication strategy, and is continuously informing the public opinion about relevant cases they are investigating.

A very sensitive topic is related to the media's access to the criminal. While, as stated above, during the prosecution the file is not public, when it reaches the court, media gets access to it and several times it published information which can prejudice both the defendant, because it breaks the innocence presumption and third parties by disclosing private information.

¹⁹⁹ http://www.transparency.org.ro/stiri/comunicate_de_presa/2011/28septembrie1/StudiuTransparentalInstantelorRO.pdf

Several scandals around this subject took place especially with regards to the disclosure of the transcripts of phone conversations of accused where third parties were involved.²⁰⁰

The court hearings and sessions are most of all public, and there haven't been allegations of abusive closed sessions. All the court decisions are pronounced in public sessions and the most relevant ones can be found on the court's web-sites, after blurring the personal data.

Accountability (law)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

According to the law, each decision both of courts²⁰¹ or prosecutors' offices must be motivated. Very few exceptions are accepted, for displacements or divorce, for example.

If the decisions are not motivated they are subject of denial, using the complaining procedures: appeal and recourse²⁰², and in case of prosecutors decisions complaints to his or her superior and action in front of the courts.

The procedural codes state that decisions are issued in public sessions, and their motivation should be issued in no more than 30 days after the sentencing. If the deadline is not observed, magistrates are subject of disciplinary sanctioning.

Any interested party can complain against magistrates. The first complaining level is to challenge the magistrate in specific cases. If he or she abstains or the challenge is accepted, he or she will be removed from the case. The second level is submitting a disciplinary complainant either

²⁰⁰ Newspaper write about the actual and legal impossibility to use some proves instrumented by prosecutors. <http://www.luju.ro/avocati/cazul-avocatului/inregistratile-agentilor-sri-efectuate-in-procesele-penale-nu-sunt-probe-legale>

²⁰¹ Art. 261, point 5 of the Civil Procedural Code

²⁰² Art. 304, point 7 of the Civil Procedural Code

directly to CSM or to the chief of the court of prosecutor office where the magistrates operates, who will send the complaint to CSM. And the third level is the criminal complaint against the magistrate.

Taking disciplinary actions against magistrates is the exclusive attribute of the CSM through its judicial inspections, organized in two sections – for judges and prosecutors. Once the investigation is complete, the final decision on administrative sanctioning pertains to the CSM section for judges or prosecutors. The decision can be appealed in front of the High Court. The easiest sanction is the summons, while the severest one is the dismissal from office.

Currently the legislation in place provides for the judicial inspection as part of the CSM, under its authority, which can potentially affect the independence of the inspectors. Formerly, the inspectors were appointed for a determined term from the judges and prosecutors, and once the term was over, they were reintegrated in their previous position. This have raised serious concerns about their independence of inspectors, once sanctioned magistrate could potentially get revenge against them, once reintegrated or they could favour former colleagues during investigation, Therefore the legislation was amended such as to transform the inspectors' positions in permanent positions, that can be filled in only by contest.²⁰³ A recent legislative amendment has been proposed in order to bring remedy for these shortcomings. Although many of the proposed provisions were a real progress, some of them, hiper-extending the competence of the inspection, might seriously affect the independence of the magistrates.²⁰⁴

Criminal proceedings against magistrates are followed based on the ordinary procedure. Still, there is needed the agreement of the sections of

²⁰³ *National Report on Corruption 2008*, http://www.transparency.org.ro/politici_si_studii/studii/national_coruptie/index.html.

²⁰⁴ The law was published by the Ministry of Justice and on the website of the Chamber of Deputies, http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=9320, Pres release, Association of Magistrates in Romania, <http://www.asociatia-magistratilor.ro/reactii-si-opinii/amr/139-comunicat-de-pres-cu-privire-la-proiectul-de-lege-privind-modificarea-i-completarea-legilor-3032004-i-3172004>.

CSM for visiting, detaining and attaching judges or prosecutors, with the exceptions of flagrant crimes. Also, the jurisdiction for cases in which magistrates are involved pertains to the Courts of Appeal or the High Court, depending of the professional level of the defendant²⁰⁵.

Accountability (practice)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

While most of the courts ensure appropriate transparency in regard to their decisions, one of the most stringent problems is the quality of the motivation of the decisions. While all decisions must be motivated by law, in order to ensure appropriate access to justice, they should also have a clear and accessible content for the addressees, and he or she can reasonably understand the reasons and grounds a certain decision has been made on. The quality of the motivations has raised several discussions and finally there is an amendment proposal to sanction inappropriate motivations as administrative malpractice²⁰⁶.

For the past years, the CSM practice has been to reject all the complainants submitted by citizens regarding any aspect of the content of a decision, including the quality of the motivation, under the general statement that “CSM is not competent to revise any court decision or prosecutor’s one”, although the law in force provides that it is an administrative breach “bearing the profession, including the breach of procedural rules, with bad faith or severe negligence”.²⁰⁷

The very few number of sanctions lead to several discussions, SCM being often accused of acting as a trade union, rather than a professional

²⁰⁵ Art. 28¹ point 1 b) and b²) and art. 29 point 1 g) from the Criminal Procedural Code

²⁰⁶ <http://www.iust.ro/MeniuStanga/Normativepapers/Projectedeactenormativeafilateindezbatere/tabid/93/Default.aspx>, amendment to art. 99 from Law no. 303/2004

²⁰⁷ *Integrity in Justice – Strategic Document, Transparency International Romania*, <http://www.transparency.org.ro/publicatii/publicatiiti/2006/IntegritateaJustitie.pdf>

body.²⁰⁸ This raised legitimate questions about the independence of the judicial inspectors, once they are appointed from judges and prosecutors and they are subordinated to SCM, as well as the independence of the members of SCM themselves, once they are elected from the judges and prosecutors, and can we individually removed from this position by the same if sentencing against the voters.

One of the recent practices was that magistrates accused of severe breaches, although not sentenced yet as criminal offences, but who could be potentially removed from their positions for administrative breached, were never sanctioned because they have resigned from their charge or they have retired.²⁰⁹ According to the current legislation it is up to CSM whether to accept or not these requests, if an investigation, administrative or criminal, is on-going. The implications rely on the magistrates' access to special pensions. If they fulfil the requirements for a special pension, and the retirement or resignation happen before being sanctioned, they are entitled to receive the special pension. Reviewed legislation has been adopted recently to prohibit such practice.

As for the effectiveness of the remedies provided to complainants, by law they would potentially have the right to ask for the review of the decisions taken by sanctioned magistrates. Yet very few such cases have happened due to the very few number of sanctioned magistrates. As for the civil reparation, there is no provision allowing for actions against magistrates for material compensation. Yet, legislative recommendations²¹⁰ have been

²⁰⁸ The surveys are available at:

http://www.transparency.org.ro/politici_si_studii/sondaje/index_en.html.

²⁰⁹ http://www.adevarul.ro/actualitate/Florin_Costiniu_a_iesit_la_pensie-Consiliul_Superior_al_Magistraturii_i-a_aprobat_cererea_0_248375324.html.

²¹⁰ The surveys are available at:

http://www.transparency.org.ro/politici_si_studii/sondaje/index_en.html. A summary of the recommendation was made by judge Lidia Barbulescu, ex-president of CSM, http://www.csm1909.ro/csm/linkuri/11_03_2008_14511_ro.PDF

submitted in order to remedy this situation and currently there is a legislative proposal on magistrates accountability.²¹¹

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

According to the Law no 176/2010²¹², magistrates, both judges and prosecutors, as well as the members of CSM are required to disclose their assets and interests, at the beginning of their career, once a year or each time changes occur, and at the end of their career. The declarations are submitted to SCM²¹³, and certified copies are sent for verification to the National Agency for Integrity (ANI)²¹⁴. The declarations are also made public on the CSM web-site and on NAI portal.

The code of conduct for magistrates has been adopted in 2005²¹⁵, after the adoption of the package of laws for the judiciary reform in 2004: Law no 303, Law no. 304 and Law no. 317. It is merely a particularization and a very limited completion of the Law no. 303 on the statute of judges and prosecutors, as it does not bring essential extra elements. However, its adoption is more than welcomed, once it includes behavioural elements, based on which there have been several discussions in practice regarding some magistrates' attitude during their private life which might affect the dignity and the honour of their profession.²¹⁶

²¹¹ <http://www.iust.ro/MeniuStanga/Normativepapers/Proiectedeactenormativeaflateindezbatere/tabid/93/Default.aspx>, amendment to art. 99 from Law no. 303/2004

²¹² Initially Law no 115/ 1996, then Law no. 161/2003, then Law no. 144/2007

²¹³ Art. 5 (2) e) of the Law no. 176/2010

²¹⁴ For details regarding the independence and performance of ANI, see chapter "6.9. Anti-corruption Agencies" of this Study, dedicated to anticorruption agencies

²¹⁵ SCM decision no. 328/24.08.2005

²¹⁶ E.g.: a judge was arrested when driving drunk: <http://www.gandul.info/news/video-ijudecatoarea-elena-turcu-prinsa-beata-la-volan-achitata-de-instanta-de-ce-a-cerut-achitarea-chiar-procurorul-care-ar-fi-trebuit-sa-o-acuze-8192780>

Although there is no regulation formally prohibiting magistrates from receiving reimbursements, compensations and honoraria in connection with their privately sponsored trips, Law no. 303 provides that they are incompatible with any private activity and also they can not have any business relations, nor directly or through intermediaries. Also, the assets declaration²¹⁷ provides at point VI that is mandatory to declare any kind of goods, services or benefits received from third parties, if above 500 EUR. This should prevent magistrates from receiving such gifts, combined with the conflict of interest avoiding policy.

The conflict of interest policy is extremely wide, preventing judges and prosecutors of ruling in such conditions, and if so their decisions can be challenged. Moreover, the statute of magistrates provides that each year magistrates should declare if their close relatives up to fourth grade or spouses are performing any legal activity and in which institution²¹⁸.

Besides the ordinary regulations on conflicts of interest applicable to all public employees, including magistrates, there are special provisions in the civil and criminal procedural codes back 1856 when the respective codes were adopted.

The remedy in case of one of conflict of interest situations listed in the codes is the abstention of the magistrate to rule in that specific case. If he or she does not abstain, than the citizens can challenge their integrity and remove them from that case. In other cases, NAI will investigate de conflict of interest and ask CSM to apply an administrative sanction.

There are no regulations on post-employment restrictions for magistrates in public or private sector. However, they can not plead as lawyers in front of the courts of prosecutors' offices where they have worked for a 5 years period.²¹⁹

²¹⁷ Annex 1, point VI from Law no. 176/2010

²¹⁸ Art. 5 (3) from Law no. 303/2004

²¹⁹ Art. 20 (8) from Law no. 51/1995 regarding the organization and exercise of the lawyer profession

Integrity (practice)

To what extent is the integrity of members of the judiciary ensured in practice?

According to the GCB 2010²²⁰ judiciary is perceived as the third most vulnerable to corruption institution in Romania. Thus the public confidence in judiciary is very low²²¹. One of the causes of such state of art is generated not by the behavior of the vast majority of magistrates, but by a couple of sound cases on inappropriate behavior. In some of the cases, the accuses still enjoy the innocence presumption, but the media has driven very hard attacks. Yet in none of them CSM has acted active enough such as to protect the judiciary image and the magistrates one, nor by sanctioning or defending them.

The CSM behaviour has improved during the past years, but is still unsatisfactory in terms of investigating administrative breaches and sanctioning where the case.

Magistrates do disclose both their assets and interests. Years ago there have been discussions about the information provided in the assets declarations, where they were supposed to include the address of the real estate they own, including their home address. The reason behind are the risks they are potentially exposed to from the citizens they sentence against. The remedy for this was to include in the declarations just part of the address, in order to make it impossible to identify the exact location. All the declarations are published on the CSM portal²²².

When challenging the magistrates impartiality, there are often situations when the conflict of interest can not be proved, as the relations behind are not formal ones or the interest can not be tangible, and the challenge is than rejected, although it is a real case. On the other hand, there are situations when one of the parties wants to remove a judge or a

²²⁰ http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/index.html.

²²¹ http://www.transparency.org.ro/politici_si_studii/studii/masurarea_perceptiei_coduri/index.html

²²² <http://emap.csm1909.ro/site/Statements.aspx>.

prosecutor form a case, and submits a formal complaint to CSM or a criminal one against that magistrate. In this case there is an potential conflict between the party complaining and the magistrate, which could potentially affect the impartiality of his or her decision. Most of these artificial challenges are rejected.

In practice most of the magistrates exit the system when pensioning. The ones resigning earlier are usually becoming lawyers, and some of them get back to magistracy after a couple of years performing in the private sector. There are also cases where former magistrates are well known politicians, occupying positions such as members of the national or European Parliament or ministers.

Executive oversight

To what extent does the judiciary provide effective oversight of the executive?

All administrative acts and documents adopted by the executive should be subject of judicial review, with very few exceptions. Yet, courts cannot suspend administrative contracts, until the case is closes, although the prefect has this right. On the other hand, the courts can censorship the content of Government Ordinances which are normative acts issued by the Government²²³. In fact, the courts can receive complaints from citizens claiming for a right or awards for prejudice suffered as the effects of an ordinance. In the context of such case, the court will sent the unconstitutionality exception against the ordinance to be solved by the Constitutional Court, and judge the case afterwards. Yet it should be noticed that ordinances are subject of judicial review only before their approval by the Parliament, from that point onwards them becoming equivalent with the laws.

Another option would be for the courts to censor those ordinances adopted without following the transparent decision making process

²²³ Art. 9 from Law no. 544-2004 on judicial administrative procedure

rules²²⁴. This is applicable only for simple ordinances, as for the emergency ones, the emergency reasons except them from being publicly debated.

The same should be applicable also in case legislative projects are sent by the Government to the Parliament without observing the transparent decision making rules. As the project itself is not a normative act, the only document that can be censored by the courts is the Government Decision based on which the project is sent to the Parliament. Unfortunately, the current judicial practice is that such specific Government Decisions envisage its relation with the Parliament and is excepted from judicial review.

It should be also noticed that the Constitutional Court ruled on several occasions on administrative issues, rather than on constitutional aspects, although is not its competence, thus breaking the courts competence.

On the other hand, the courts have been constantly accused of interfering with the executive, especially because their censorship attitude. Recent disputes on the application of the regulations on unitary salary system, or pension system, or of several ordinances regarding salaries and increments placed judiciary in position of ruling against the regulations and in favour of the citizens.²²⁵

One of the most sound disputes regards the 50% grows of the professors salaries through a law, which was later suspended through an emergency ordinance. All the claims sent to courts were sentenced in favour of the professors and the Government was supposed to execute them. A new regulation was adopted by the Government in order to suspend the execution of the courts decisions due to the economic crisis.²²⁶

Finally we should notice that several members of the executive have brought to courts or have been accused of calumny and all of them have been sentenced in their favour.

²²⁴ Art. 13 from Law no. 52/2003 of transparent decision making

²²⁵ Supra – *Summary* for 6.3. "Judiciary", *Resources* for 6.3. "Judiciary".

²²⁶ http://www.gov.ro/guvernul-a-amanat-plata-drepturilor-salariale-prevazute-prin-hotarari-judecatoresti_11a109128.html

Corruption Prosecution

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

With the fight against corruption as one of the benchmarks in the Cooperation and Verification Mechanism set up by the Commission, the increased number of initiated corruption investigations should be noticed.²²⁷

The National Anticorruption Prosecutor Office has provided detailed information about the cases it is investigating, both directly to the media and on its web page.

2011 brought several huge corruption scandals to light, such as the customs one, alike 2010 brought the one regarding police officers responsible for the issuance of driver licenses.²²⁸

On-going investigations include also high level officials, although the Parliament approval required for investigating MPs or Government members, current or former, who are also MPs, is an important obstacle judiciary is facing. The Parliament common practice was at least to delay the investigations, if not denying them at all.

It is unclear at this point how this huge corruption cases are discovered, as it sometime appears to be a negotiation instrument: before the country reports elaborated by the Commission, or if a sensitive topic is discussed – such as Romania's accession to the Schengen space – a new case is brought up by the prosecutors.

In 2011 also six reputable magistrates from the High Court were accused of corruption, out of which two were former presidents of the Penal Section of the Court.

²²⁷ <http://www.pna.ro>

²²⁸ <http://anticoruptie.hotnews.ro/stiri-8280473-harta-cazurilor-coruptie-din-vamile-romaniei.htm>, <http://anticoruptie.hotnews.ro/>.

Although several important investigations are on-going, the number of convictions is still very limited and mostly against medium level officials.²²⁹ 2011 brought light in one of the soundest cases involving one of the former prime ministers, sentencing un-guilty.

The reasons behind these statistics are unclear: the poor quality of the investigative proofs or the lack of performance of the courts. Courts and prosecutors' offices mutually accuse each other of the lack of results. Prosecutors are saying that courts are re-sending the proofs and the files to them, without sound grounds, while judges complain about the lack of sufficient proofs. The conclusion can be a single one – there is no will to demonstrate that corruption cases are seriously investigated and sanctioned. Romanian magistrates do cooperate in most of the mutual assistance cases. Still the cooperation on corruption cases is very limited and the assets recovery as well.

From the assets recovery point of view,²³⁰ Recently intense discussion happened about the so called extended confiscation²³¹, allowing for recovery of all assets that can not be proofed to have been legally acquired. Yet this still needs to be in line with the Constitution and the human rights protection regarding the property. A Constitutional review is foreseen, but uncertain for the moment.

Most of the legislative amendments regarding anticorruption measures are the exclusive attribute of the Government and magistrates usually complain about the lack of consultations with them. Although CSM advise is mandatory to obtain, the legislative or the executive are often ignoring it.²³²

²²⁹ www.pna.ro

²³⁰ *Ibidem*.

²³¹ <http://www.infocsm.ro/amendamentele-csm-acceptate/>.

²³² The surveys are available at:

http://www.transparency.org.ro/politici_si_studii/sondaje/index_en.html. A summary of the recommendation was made by judge Lidia Barbulescu, ex-president of CSM, http://www.csm1909.ro/csm/linkuri/11_03_2008_14511_ro.PDF

6.4. PUBLIC SECTOR²³³

SUMMARY

Public sector corruption is still considered, by the public and by insiders, as being a major problem of the Romanian integrity system. With assessments from 2.4 to 3.7 on a scale from 1 (free of corruption) to 5 (extremely corrupt) the Global Corruption Barometer shows that the public sector components (education, medical assistance, tax system, public services, and customs) are still heavily affected by corruption.²³⁴

However, it should be relevant to say that the most recent GCB, in 2010, showed that 28% of the respondents paid a bribe in the last 12 months (from September 2009 until September 2010). As the bribe paid by a citizen is generally an act of petty corruption in the relationship between the citizen and the public officials in the administration, the percentage is relevant to assess the high level of corruption within the public sector.

Dramatically affected by the economic crisis, the resources of an important number of institutions within the public sector are assessed as being insufficient to ensure the normal functioning of these institutions. The most affected were the human resources. Restructuring and the dismissal of the staff together with the salary cuts affected not only the budgets, but also the quality of the work of the remaining civil servants.

Moreover the lack of independence of the public sector and the political intervention in the administrative field annulled, also, any efficiency of the public education initiatives against corruption.

²³³ We would also like to thank to Ms. Carmen Stecko and Ion Popescu for their contribution to the study launched in 2010, who served as a basis of the present analysis.

²³⁴ http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results and http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf. The assessment is done in 2007. The GCB afterwards did not assess enough components of the public sector to ensure a proper analysis.

Public sector					
Overall Pillar Score: 23.61 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 8.33 / 100	Resources	-	0	-	75
	Independence	25	0	75	100
Governance 54.17 / 100	Transparency	75	25	25	75
	Accountability	100	25	0	100
	Integrity Mechanisms	75	25	25	75
Role 8.33 / 100	Public Education	0		100	
	Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption	0		100	
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement	25		75	

STRUCTURE AND ORGANIZATION

The public administration in Romania is divided in two according to fundamental law and community regulations. The civil servants are coordinated by an agency that provides legal support and guidance in order to make their activity efficient.

ASSESSMENT

Resources (practice)

To what extent does the public sector have adequate resources to effectively carry out its duties?

In June 2010 the Romanian Government passed a couple of bills regarding measures to overcome the economic crisis. The measures were presented by the cabinet in the Parliament using the procedure of assuming the responsibility of the cabinet²³⁵, without any debate, public or parliamentary, on the subject. The most important crisis overcoming measure promoted by the Romanian Government in the past three years and also included in the bills presented is the saving of public funds by means of budgetary discipline and cuts. However the media continues to stress upon the fact that the public speech of the ministers and officials is more powerful than the measures are; that in practices the budget saving is not done properly; that the arranged public procurement continues, determining the public institution to pay sometimes double than the market price for a service.²³⁶

However, probably the most important austerity measure promoted by the Cabinet was, in June 2010, the reduction by 25% of the salaries of civil servants and the elimination of most of the benefits the civil servants had. In this context the sums earned by civil servants diminished in some cases by 50%. The wages were not evaluated as adequate to sustain an appropriate standard of living event before the cuts, and after June 2010 the situation became extremely difficult. The measure was designed as a temporary one, and in January 2011 the salaries were supposed to recover by 25%. However they were increased by only 10% out of the 25%. The 25% cut of the salaries came from another very controversial measure of

²³⁵ The procedure is described in the chapter analysing the Legislature.

²³⁶ <http://www.juridice.ro/140487/cristina-traila-despre-sistemul-electronic-de-achizitii-publice.html>, <http://www.mediafax.ro/economic/conferinta-mediafax-anrmap-a-admis-doar-49-de-documentatii-de-atribuire-a-licitatiilor-din-cele-1-550-verificate-8863776> (the articles are based on an interview with Cristina Traila, director of the ANRMAP)

the government, in November and December 2009 the civil servants were obliged to take six days of unpaid leave.²³⁷

Ironically enough, in 2009 and 2010 the government also passed two successive bills, using the procedure of assuming the responsibility of the cabinet, without any debate, to establish a common set of criteria and limits for the salaries in the public sector. The bills were called the *Framework Law of a Unique Wage System for all employees paid by public funds*. Although presented as an emergency for the economy and a “cleansing” of the public sector of human resource policies that lacked in integrity, the bills were postponed from implementation in 2010 and 2011.

There are no benefits attracting talented people to enter the public sector. More, another anti-crisis measure from 2009 limited employment in the public institution. One cannot be employed in a public institution if there are not seven other public servants leaving the institution, either by age retirements or by quitting. In this context the young graduates in public administration cannot be employed in the public institutions.

The general evaluation of the financial and material resources of the public institutions is not satisfactory. In the best case the resources can be evaluated as being just enough and there are very few possibilities for developments, including rearranging and opening space for working with the citizens, in order to deliver public services effectively.

In this context, one should say that the financial resources are not the only and most important resources missing. The human resources quality and motivation is evaluated as being one of the critical problems of the public sector.

²³⁷ <http://www.gandul.info/news/bugetarii-6-zile-de-concediu-fara-plata-in-noiembrie-si-decembrie-5084569>

Independence (law)

To what extent is the independence of the public sector safeguarded by law?

According to the Law no. 188/1999 regarding the Statute of Civil Servants the employment and functions of the civil servants have to be made without any political interference. At the same time, apart from high-level civil servants (prefects, deputy prefects and governmental inspectors) other civil servants can be party members and can take part in political activities, but they cannot have a leading role in their party. However in 2009 and 2010 several amendments²³⁸ in the Statute of Civil Servants affected the independence of the public sector. Most of these changes were afterwards annulled, but the attempts to limit the public sector independence should be noted.²³⁹

The National Agency of Civil Servants was created by Law no. 188/1999 regarding the Statute of Civil Servants. The National Agency of Civil Servants, according to art. 22 of the law: elaborates the policies and strategies concerning the management of civil service and civil servants; verifies the way the law is carried out regarding civil service and the civil servants; sets down the criteria for the evaluation of the civil servants' activity; approves the participation conditions and the organization procedure for the recruitment and promotion in public office; monitors the recruitment and promotion; provides specialized assistance and coordinates the human resources departments; takes notice of offences and applies sanctions, according to the law. The National Agency of Civil Servants has an active legitimacy and may address the appropriate administrative court regarding: (a) acts through which public authorities or institutions do not respect the legislation regarding civil service and civil servants, after developing a proper control activity; (b) refusal of public authorities and institutions to apply the legal dispositions in civil service

²³⁸ OUG no. 37/2009, OUG no. 105/2009, HG no. 1228/2009 and the Law no. 140/2010. Some of these were annulled by the Constitutional Court. The situation proves the incoherence and fragility of the legislation in this field, essential for the fight against corruption.

²³⁹ More details on these changes in the practice section below.

and civil servants domain. The Law no. 140/2010 amending the Law no. 188/1999 changed the National Agency of Civil Servants attribution concerning the recruitment and promotion of civil servants.

Independence (practice)

To what extent is the public sector free from external interference in its activities?

The issue of changes in the public sector employment after a change of government is in fact the problem summarized by the Romanian media and civil society as the “political bias of the administration”.²⁴⁰ One of the most visible actions of political interference over the public administration is the constant changing of the prefects and sub-prefects after the government change. The government representatives in the counties were political positions until 2004. Since then they are, theoretically, public servants without political affiliation. Still the practice of all governments is to change the prefects, and these persons are members of the parties resigning from the party in order to become prefect and, sometimes, re-joining the party after the prefecture term.

In 2009, the Cabinet issued two Emergency Ordinances imposing as mandatory a management plan for all candidates to decision-making positions in public institutions. Also, the bills asked for a reorganization of manager competitions in local public institutions, in order to make sure that the management plan exists. Therefore competitions were organised in some institutions and some managers had been changed.

The Emergency Ordinances were afterwards examined by the Constitutional Court, which eliminated most of their provisions, making it unclear whether the new managers should be changed with the old ones or not.

²⁴⁰ The National Report on Corruption, 2010, 2009, www.transparency.org.ro.

The opposition and the press viewed the bills as being “a large open door to the polarization of the public service” since they were a means for the power party to name its people in decision-making positions in public institutions.²⁴¹

There is no clear legal regulation including the parliamentary lobbying for the inclusion or exclusion of publicly procured projects in plans, programmes and budgets. However, the parliamentarian lobby is not the most important threat to the independence of the planning of procurement, as we are going to see.

Transparency (law)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Generally the transparency of the public sector is ensured by the legal framework. However some limits are present, and more important more limiting changes were made in the last three years.

Law no. 115/1996 stipulates in art. 3 that the statement of assets shall be a written affidavit 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 art. 10 of the Act, 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. 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

²⁴¹ The National Report on Corruption 2010, www.transparency.org.ro.

obligation of payment of the amount of property, the court will determine the term and payment.

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.

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 interests²⁴².

In April 2010 the Constitutional Court of Romania declared unconstitutional a number of articles of the law, mainly the ones that gave the National Integrity Agency an administrative jurisdiction. After the transformations of the project, the result was that declarations of assets and interest will be further published without an important number of personal details, including addresses, names, names of banks holding the accounts, that were very useful for the investigation journalists and NGOs. The ANI inspectors will have access to the entire declaration, but the decisions of these inspectors will be afterwards examined by the prosecutors and will not be directly presented to the judges. The procedure is, from 2010, longer and less transparent.

Beyond the personal side, on the organizational side the activity of the central and territorial public administration authorities is subject to an annual report showing the main activities, including those during hearings,

²⁴² art. 42 Law 144/2007.

for solving complaints, taking phone calls and in the application of Laws no. 544/2001 and no. 52/2003. The report of activities of public administration authorities is published, usually, on the website of the institution.

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 (art. 1). The Law aims, according to art. 2, to increase the accountability of the 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.

On the basis of art. 6 of law, within the procedures for drawing up draft legislation, the public institution is obliged to publish a notice of this action on its own website and to make it public in an accessible way for its own constituencies at least 30 days before submission for review and approval by its decisional body. Public administration authority will send the draft normative acts to all persons who have submitted a request to receive this information. The public institution can receive comments on the draft or the request to organize a public consultation. The public institution can follow or can reject observation and suggestions of the citizens. After an amendment of the law in 2010, the public institution should also motivate its decision to reject suggestions of the citizens.

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 with the Romanian Constitution and international documents ratified by the Romanian Parliament.

To ensure access for any person to information of public interest, public institutions are required to organize specialized compartments of Information and PR or to nominate persons responsible for these issues. Each public institution is required to communicate ex officio the basic

information of public interest. All 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 if the information is complex or request a large volume of work. The terms are from 1 to 3 days in the case of requests received by media and journalists.

The law also cover the information about the privatization contracts concluded after the entry into force of this Act. The public institutions have to make public the premises of the contracts.

The law²⁴³ requires the public advertisement of the vacancies, to ensure fair and open competition. The National Agency of Civil Servants has to supervise the public institutions when implementing of these provisions.

Transparency (practice)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

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. Several NGOs undertook different monitoring campaigns of the implementation of the freedom of information act, and the results are not satisfactory²⁴⁴. With regard to transparency in decision-making within the local government, the most used means of fulfilling this principle is 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

²⁴³ Law no. 188/1999 regarding the Statute of Civil Servants

²⁴⁴ <http://www.apd.ro/publicatie.php?id=34>.

regard to decision-making was lower at the local and county level than at the municipal level²⁴⁵.

The law of public procurement includes clear provisions on 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 documentation²⁴⁶. However this is one of the issues that are still hard to monitor, as the monitoring and control of the procedures, evaluation and decisions examines only the documents registered under the procedure and the provision of confidential or favouring information is still one of the main problems of the system, as the business men and civil servants recognize.²⁴⁷

A huge problem for the public sector continues to be the recruitment system. Over the time this was recognized even by important political responsible.

Concerning the disclosure of the personal assets, until 2010 the publication of the assets declarations was entirely on the websites of the public institutions. However after the amendment of the law in 2010, the personal information is erased from the declaration.

²⁴⁵ http://www.apd.ro/download.php?id=32&filename=publicatii/Raport_de_monitorizare_cu_privire_la_aplicarea_si_respectarea_Legii_52_2003.pdf&PHPSESSID=05195900b9fab075468db5d6a2d1f0df, <http://www.crj.ro/Uploads/CRJAdmin/Raport%20de%20monitorizare%20a%20institutiilor%20publice2008.pdf>

²⁴⁶ Art. 36 GEO 34/3006 as modified.

²⁴⁷ The Center for Legat Resources, *Percepția asupra corupției în administrația publică locală*, Evolve Group, București, 2006.

Accountability (law)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Romania was the first and is still the only country in the continental law system having a comprehensive Whistle-blowers' Protection Act. The Whistle-blowers' Protection Act (Law no. 571/2004) addresses the protection of the personnel that forwarded a complaint against or informed with regard to the infringement of the law *within public authorities, public institutions, and other institutions*, whether the aforementioned personnel is permanently or temporarily exerting (regardless of how he/she was invested) any kind of duty (paid or not) for a public institution or entity. The Witness Protection Act also regulates the protection of persons who provide information and data concerning a series of serious criminal offences (among which corruption crimes). The scope of the act is limited though to the public sector.

According to art. 75 of Law no. 188/1999, the violation of work duty by a civil servant can determine disciplinary, legal, civil or criminal liability, as appropriate. Among these work duty violations is the refusal to offer public information, according to art. 21 of Law no. 544/2001. It can determine disciplinary liability of the guilty one.

According to art. 15 of the Government Ordinance. no. 27/2002 on the complaints' solving, the following facts are considered disciplinary violations: the failure to respect the terms for solving the complaints; interventions to resolve some petitions outside the legal framework; 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.

The Court of Accounts exerts the function of control/audit on the acquisition, 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 with regard to, first of all, the draft of the state budget and projects of law in the domain of finances and accounting at the request of one of the parliamentary Chambers, and, second, on the establishment of special subordinate bodies of the Government or of the Ministries.

Accountability (practice)

To what extent do public sector employees have to report and be answerable for their actions in practice?

According to the report of the ANFP the number of the public sector employees reported of wrongdoing, charged with offences, convicted for offences and held accountable for malpractice is very low.²⁴⁸ However, the number of authorities actually reporting semestrially, according the law was of 21% in 2010.²⁴⁹

The number of whistle-blowing cases in Romania is still low²⁵⁰. The socio-cultural context seems to be the main impediment in this regard, showing that whistleblowing is either not well known by the public or not appreciated enough.²⁵¹ Civil society organizations have pursued several actions in this regard, the Whistle-blowers' Protection Act itself being the

²⁴⁸ ANAF, *raport semestrial privind respectarea normelor de conduită a funcționarilor publici, standardele etice și implementarea procedurilor disciplinare pentru semestrul al ii-lea al anului 2010*,

[http://www.ina.gov.ro/DocumenteEditor/Upload/2011/Raport%20cond%20%20II%202010.p](http://www.ina.gov.ro/DocumenteEditor/Upload/2011/Raport%20cond%20%20II%202010.pdf)

²⁴⁹ ANAF, *raport semestrial privind respectarea normelor de conduită a funcționarilor publici, standardele etice și implementarea procedurilor disciplinare pentru semestrul al ii-lea al anului 2010*,

[http://www.ina.gov.ro/DocumenteEditor/Upload/2011/Raport%20cond%20%20II%202010.p](http://www.ina.gov.ro/DocumenteEditor/Upload/2011/Raport%20cond%20%20II%202010.pdf)

²⁵⁰ *Alternativa la tăcere*, TI-Romania,

http://www.transparency.org.ro/proiecte/proiecte_incheiate/2010/proiect_1/index.html,

<http://www.avertizori.ro/MATERIALE/Alternativa.pdf>.

²⁵¹ Interview. See also *Alternativa la tăcere*, TI-Romania,

http://www.transparency.org.ro/proiecte/proiecte_incheiate/2010/proiect_1/index.html,

<http://www.avertizori.ro/MATERIALE/Alternativa.pdf>.

outcome of Transparency International Romania's advocacy efforts.²⁵² The promotion of the whistle-blowing mechanism still requires concentrated efforts, since several vulnerabilities are still present at the level of the internal regulations of the institutions or at the level of coverage/awareness of the whistle-blowing.

Civil servants appreciate they are well informed regarding the law, however the incentives for the whistle-blowing, compared with the disadvantages and the marginalization created by the socio-cultural context still discourage the reporting of the wrongdoing.

Concerning the oversight of the institutions in charge with the monitoring of public procurement, it is limited, at least by the enormous number of simultaneous procedure.

Citizens can address the respective public institutions and/or the court with complaints. The mechanism is assessed as being efficient.

Integrity (law)

To what extent are there provisions in place to ensure the integrity of public sector employees?

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 who hold an office within a public authority and institution of central and local public administration. According to art. 2 of the Code of Conduct, it aims to assure the 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 (art. 3) there are also: the moral integrity, a principle according to which it is

²⁵² *Alternativa la tăcere*, TI-Romania,
http://www.transparency.org.ro/proiecte/proiecte_incheiate/2010/proiect_1/index.html,
<http://www.avertizori.ro/MATERIALE/Alternativa.pdf>.

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; the 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. Art. 19 stipulate the clear conditions when a civil servant cannot buy a good in the private property of the state or of the territorial-administrative units.

According to art. 20, the National Agency of Civil Servants has the role of coordinating, monitoring and controlling the implementation of conduct regulations and in art. 21 of the same code all public institutions have to appoint an ethics advisor to advise and monitor the internal implementation of the code. Such conduct regulations are also present in Law no. 477/2004 regarding the Code of Conduct of the contractual staff in public authorities and institutions²⁵³. Special codes of conduct are in force for the special statute civil servants, as the policemen etc.²⁵⁴

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

²⁵³ Published in the Official Gazette of Romania, Part I, no. 1105 of 26 November 2004

²⁵⁴ 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. Regarding the promotion of a suitable conduct and the measures for preventing acts of corruption, the following normative acts are relevant: Law no. 115/1996 concerning the declaration and control of the wealth of dignitaries, magistrates, of persons with management and control functions over civil servants; Law no. 78 of 8 May 2000 for the prevention, discovery and sanctioning of acts of corruption; Law no. 571/2004 regarding the protection of staff within public authorities, public institutions and other units that deal with law infringements; Law no. 144/2007 concerning the constitution, organization and functioning of the National Integrity Agency.

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 para. 3 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.

Art. 76 of the Law no. 393/2004 stipulates that the statement of interest has to include 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).

Integrity (practice)

To what extent is the integrity of public sector employees ensured in practice?

Public sector corruption is still considered, by public and by insiders, as being a major problem of the Romanian integrity system.

However, it should be relevant to say that the most recent GCB, in 2010, showed that 28% of the respondents paid a bribe in the last 12 months (from September 2009 until September 2010). As the bribe paid by a citizen is generally an act of petty corruption in the relationship between the citizen and the public officials in the administration, the percentage is relevant to assess the high level of corruption within the public sector.²⁵⁵

The Cooperation and Verification Mechanism, implemented by the

²⁵⁵ http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf.

European Commission to monitor the Romanian progress in the fight against corruption in the European integration process includes two major fields: the public administration and the judiciary.

Bearing in mind the budgetary constraints of the last three years the training programs for the integrity of the civil servants were not systematically organised. They are only based on projects run by NGOs and/or having civil servants as target groups.²⁵⁶

However, the civil servants state they are well informed on the values, principles and rules ensuring the integrity in the public sector.²⁵⁷ This is also reinforced by the presence of the relevant legislation in the mandatory bibliography for every contest for a public function.

Public Education

To what extent does the public sector inform and educate the public on its role in fighting corruption?

The specific programmes run by the public sector to educate the public on corruption and how to curb it are generally isolated and not coherent. Most of these programmes refer only to the direct relationship between the respective public institution and the citizens and offer information about how to comply in the case of a solicitation or extortion and announce that corruption is a criminal offence sanctioned by the criminal law. Unfortunately the impact of these programmes for the average citizen is still limited, as the results for Romania of the Global Corruption Barometer shows.²⁵⁸

The opinion that public sector is still one of the most corrupt in Romania is

²⁵⁶ Interview. Among the projects run we can mention the project of Pro Democracy Association: *Your Silence Is Expensive! Campaign for a Clean Local Public Administration*, <http://www.apd.ro/proiect.php?id=43>, projects of the Centre for Legal Resources: www.crlj.ro and projects of TI-Romania: www.transparency.org.ro.

²⁵⁷ Interview. Results of the project *Your Silence Is Expensive! Campaign for a Clean Local Public Administration*, <http://www.apd.ro/proiect.php?id=43> of Pro Democracy Association.

²⁵⁸ http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/index.html.

a proof of the low impact of these education programmes. With assessments from 2.4 to 3.7 on a scale from 1 (free of corruption) to 5 (extremely corrupt) the Global Corruption Barometer shows that the public sector components (education, medical assistance, tax system, public services, and customs) are still very affected by corruption²⁵⁹

Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

The relationship between the state and civil society 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 mentioning²⁶⁰. However, notwithstanding the improvements in the inter-sector state-civil society dialogue and the multiplication of CSOs' advocacy initiatives²⁶¹, after the EU accession, cooperation between these two sectors decreased and became rather hesitant and competition-based²⁶².

²⁵⁹ [http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results_and
http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf](http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results_and_http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf). The assessment is done in 2007. The GCB afterwards did not assess enough components of the public sector to ensure a proper analysis.

²⁶⁰ This cooperation involved Transparency International Romania and more details can be fined on the website www.transparecy.org.ro.

²⁶¹ U.S. Agency for International Development (USAID), *op.cit.*, p. 189.

²⁶² Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, pp.95-114. Available at <http://www.fdsc.ro/pagini/cercetare.php>.
http://www.fdsc.ro/library/conferinta%20vio%207%20oct/Romania%202010_Sectorul%20ne_guvernamental1.pdf

Reduce Corruption Risks by Safeguarding Integrity in Public Procurement

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

The public procurement legal system ensures good transparency, open competition and equal treatment of the procurement procedures. The public procurement legal system is represented mainly by the Government Emergency Ordinance no. 34/2006²⁶³ modified and added countless times since its approval. All procurement processes that exceed EUR 15,000 must be made available to all potential candidates / tenders by publication of the forecast notice and corresponding tender announcement and award notice into the electronic system for public procurement (ESPP)²⁶⁴ 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 mandatory²⁶⁵. The legislation also imposes the utilisation of standard bidding documents.

However, in 2010 the law of Public-Private partnership²⁶⁶ undermined the principle of open, direct and fair competition. The contracts of Public-Private Partnership are not subject to the same rules as the public procurements, as the unique way to conclude a contract is the direct

²⁶³ 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).

²⁶⁴ The public utility IT system, accessible by Internet at a dedicated address (www.e-licitatie.ro) and utilized with the goal of applying the awarding procedures by electronic means.

²⁶⁵ Art. 55 GEO 34/2006 as modified.

²⁶⁶ Law no. 178/2010.

negotiation of the public institution with selected short-listed partners. The criteria of the short-listing are not covered by the law.

However the public servants and business representatives can name at least 8 ways to arrange a public procurement procedure, using the legislation weaknesses²⁶⁷:

- Establishing the tender criteria (specifications) according to the specific of a participant company
- The misuse of the state of emergency (e.g. during floods) to negotiate contracts with a single company. In some cases the contracts were signed much after the ending of the emergency situation or in order to solve non-existing problems, with no relation to the situation
- Providing inside confidential information to a participant to the tender
- Offering a dumping price to win the contract and signing afterwards addendums to the contract doubling the value
- Establishing difficult tender criteria, almost impossible for the participants without inside confidential information, in order to discourage direct competition
- Offering a dumping price and also offering low quality work or products and fixing the problems through another direct contract, much higher
- For the biggest contracts, directly managed by the ministers, the winning companies can be obliged to choose some specific sub-contracting parties
- Providing information to the participant about the offers of the other participants

On the institutional side, the bodies in charge of regulating and monitoring the public procurement process are the A.N.R.M.A.P.²⁶⁸ having as a fundamental role the creation, promotion and implementation of the

²⁶⁷ The Center for Legal Resources, *op. cit.*, pp. 13-14.

²⁶⁸ The National Authority for Regulating and Monitoring Public Procurement, set up by Government Emergency Ordinance no. 74/2005 adopted on 29 June 2005

public procurement policy, the C.N.S.C.²⁶⁹, the review body, and the U.C.V.A.P.²⁷⁰, performing the ex-ante control of the procedures within the Ministry of Public Finance and ensuring independence (from the operational point of view) from all bodies involved in the management and contracting of public funds, as well as from the main regulation body (A.N.R.M.A.P. and the C.N.S.C.), thus providing methodological coherence and the unitary approach in performing the ex-ante controls at the central and local level. However, the institutional framework seems to be too heavy to manage the flexible strategies to trick the law. A.N.R.M.A.P. is performing its tasks under the direct coordination of the Prime Minister; C.N.S.C. is functioning under the Government General Secretariat. Regarding U.C.V.A.P., having the status of general directorate within the Ministry of Public Finances, it reports to the Minister. The C.N.S.C. members are selected following a public contest²⁷¹ and are nominated by order of the Prime-Minister. The President of C.N.S.C. 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 once²⁷². Therefore, none of the responsible bodies in the field of public procurement is independent of the government. The personnel of these institutions can be appreciated as being insufficient, considering the extremely large member of contracts concluded by the Romanian local and central public institutions, public funded bodies, companies etc.

Considering the supervision Order no. 113/2008²⁷³ establishes the procedure for the supervision of the awarding process of public procurement contracts by observing the respect of the legal provisions governing the public procurement process. According to the regulation, the monitoring is done by A.N.R.M.A.P., each month or spontaneously by

²⁶⁹ The National Council for Solving Complaints. Art. 257-276*1 GEO 34/2006 as modified.

²⁷⁰ The Unit for Co-ordination and Verification of Public Procurement, GEO no. 30/2006 and Government Decision no. 942/2006

²⁷¹ In compliance with Law 188/1999 regarding the statute of the public servants, republished, as modified, and Government Decision no. 1209/2003 regarding the organization and the development of the public servants' career, as modified.

²⁷² Art. 258 GEO 34/2006 as modified.

²⁷³ Approving the Regulation on the procedure for the supervision of the awarding process of public procurement contracts. Published in the Official Gazette no. 383 / 20 May 2008.

notification²⁷⁴ and covers finalized public procurement procedures only²⁷⁵. The persons responsible for 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. C.N.S.C. solves the complaints²⁷⁶ formulated within the awarding procedure, before the termination of the contract, through specialized panels²⁷⁷. According to the law, the cases regarding the legal disputes are randomly distributed to the panels²⁷⁸. 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 void²⁷⁹. 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 procedure²⁸⁰, to ensure the transparency of the procedure and the equal access to all potential tenders²⁸¹, fair competition²⁸² and the confidentiality, whenever required²⁸³, in order to avoid conflicts of interest²⁸⁴, to ensure the equal treatment of all

²⁷⁴ Art. 3 (2), Order 113/2008.

²⁷⁵ Art. 3 (3), Order 113/2008.

²⁷⁶ Complaints may be submitted in all the phases of the public procurement procedure and against any act of the contracting authority as defined in art. 255 (4) of GEO 34/2006, as modified.

²⁷⁷ Art.29 of the Regulation approved by Government Decision no. 782/2006.

²⁷⁸ Art. 268, GEO 34/2006, as modified.

²⁷⁹ Art. 277, GEO 34/2006, as modified.

²⁸⁰ Art. 18 and art. 71-141, GEO 34/2006, as modified.

²⁸¹ Art. 47-57, GEO 34/2006, as modified.

²⁸² Art. 33-40, GEO 34/2006, as modified.

²⁸³ Art. 64-65 and 172, GEO 34/2006, as modified.

²⁸⁴ Art. 66-70, GEO 34/2006, as modified.

candidates/ tenders²⁸⁵, to inform all candidates/ tenders about the result of the procedure²⁸⁶ and to ensure the access to information to all interested parties²⁸⁷.

The public procurement law does not mention any specific measures on consultation/oversight and on the supervision of contract implementation. If it is made before or after the contract conclusion, the control of ANEREMAP or UCEVAP regards only the public procurement process, not the coherence between the contract stipulations and its implementation, which can be carried by the Court of Accounts. Nevertheless, the law ensures equal access to the tendering documentation and the right of the interested parties to request clarifications and modifications. Secondly, such provisions are provided for by Law no. 544/2001 on the unrestricted access to information of public interest²⁸⁸.

As we could see in the integrity section, the staff in charge of offering evaluations must be different from those responsible for the elaboration of the terms of reference/bidding documents. Both of the above-mentioned types of staff are different from those undertaking any control activities.

Transparency is ensured by providing all potential tenders with clear information on the technical requirements of the offer, the selection and award criteria and by communicating to all tenders 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 tenders 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 awarded²⁸⁹. The above mentioned provisions are equally applicable in the

²⁸⁵ Art. 172-208, GEO 34/2006, as modified.

²⁸⁶ Art. 206-208, GEO 34/2006, as modified.

²⁸⁷ Art. 211-216, GEO 34/2006, as modified.

²⁸⁸ Official Gazette no. 663 / 23 October 2001.

²⁸⁹ Art. 215 GEO 34/2006 as modified.

case of concession contracts²⁹⁰. The clarifications and amendments during the bidding process must be shared among all bidders.

The Romanian legislative framework does not consider civil or social control mechanisms to monitor the control processes of public contracting. It does not prohibit such mechanism either, which leaves the possibility of the implementation of the Integrity Pacts. However, for the moment the public institutions or the bidders were not involved or enthusiastic in adopting the procedure.

Incompatibilities and conflicts of interest are also subject of the public procurement law²⁹¹. The natural or legal person that has participated at the elaboration of the tender documentation, as an economic operator, has the right, to be tender, associated tender 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 tenders or subcontractors or own equity shares within the bidding companies or be relatives up to the fourth degree inclusively with any of the tenders. 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.

²⁹⁰ Art. 217-228 GEO/2006 as modified.

²⁹¹ Art. 66-70 GEO 34/2006 as modified.

When speaking about integrity, one may refer to the confidentiality requirements as they are important because, if not used, they may inflict damage on 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 property²⁹². 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 tenders 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 assure the confidentiality of the content of the offers and clarifications during the tendering process²⁹³.

²⁹² Art. 24 GEO 34/2006 as modified.

²⁹³ Art. 75 Government Decision 925/2006 as modified.

6.5. LAW ENFORCEMENT AGENCIES – POLICE

SUMMARY

Having one of the lowest rates of trust among the people, the Romanian Police is highly affected by corruption and by a damaged perception of the people concerning corruption within the institution.

A very well appreciated and positive step in the fight against corruption and integrity building within the Romania Police is the existence of a dedicated Anti-corruption Agency: the General Anti-corruption Directorate (DGA), a special police office investigating policemen on corruption charges. However, by the nature of the police work within the Police and within DGA itself many of the police activities stay confidential and this can prevent abuses from being discovered.

Moreover, the lack of resources of the police and the constant threats regarding letting go policemen increase the vulnerabilities to corruption for the law enforcement in Romania.

Law Enforcement Agencies					
Overall Pillar Score: 45.83 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
capacity 41.67 / 100	Resources	-	25	-	75
	Independence	75	25	25	75
Governance 45.83 / 100	Transparency	50	25	50	75
	Accountability	75	25	25	75
	Integrity Mechanisms	75	25	25	75
Role 50 / 100	Corruption investigation	50		50	

STRUCTURE AND ORGANIZATION

Within different Ministers there are different law enforcement institutions, generally named inspection institutions. The most important are the Financial Guard within the Minister of Finance, the Construction Inspection, within the Minister of Regional Development, the Labour Inspection, within the Minister of Labour. However, most of the regulations and characteristics of these institutions are assessed under the public sector pillar. There are some special codes of conduct for each of these institutions meant to ensure integrity mechanisms and accountability for the special situations of investigations representing the work of the civil servants within the inspection institutions.

In this context the present pillar assess the most important law enforcement agency, the police. The Romanian Police is the institution in charge to defend the fundamental rights of law enforcement agencies and

freedoms of citizens, to prevent and uncover criminal activities, and to respect order and public safety.²⁹⁴

Under the Romanian law the prosecutors are magistrates, as the judges and the prosecution offices are part of the Judiciary. Even if their function is the law enforcement, their status and the most important applicable regulations and rules are specific to the Judiciary and this make them part of the Judiciary, assessed under the Judiciary pillar.

Within Police structures there is the General Inspectorate of the Romania Police (IGPR), the central authority; the territorial branches, which are set up on the basic of the national territorial and administrative structure, under the supervision of the IGPR; academic, and training institutions, as well as other specific units, specialized for different sectors.²⁹⁵

ASSESSMENT

Resources (practice)

To what extent do police have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The General Inspectorate of Romanian Police is funded from the budget of the Ministry of Administration and Interior and its operations are entirely state funded, the General Inspector of the IGPR being secondary authorising officer of accounts

The budget of the police it is allocated through the Ministry of Administration and Interior to the territorial police inspectorate, as secondary authorizing authorities of accounts, which distribute the allocated sums to the subordinated institution. Within the Institution of Romanian Police there are no other ways to obtained out of budget funding.

²⁹⁴ For more information, please: http://www.igpr.ro/prima_pagina/index.aspx

²⁹⁵ For more information please see: http://www.igpr.ro/unitati_centrale.htm and http://www.igpr.ro/unitati_teritoriale.htm

The budget of the police is evaluated as not being adequate. The most important problems are related to the technical endowment and the human resources. In 2010, as a consequence of the decisions related to the expenses and budget cuts for the public sector, the salaries and bonuses of the police officers diminished substantially, and there are not adequate to attract qualified and committed staff. Another related issue is the announced reorganisation of the police, including layoff and changes in the financing structure – there were projects proposing the layoff of funding of the police from the local budget, instead of the budget of the Ministry.

The budgetary cuts from 2010 determined several protests of the police officers and agents, including very well media covered protest in the front of the Presidency Palace, Cotroceni.

Concerning corruption investigation, there is a dedicated unit under the Ministry of Administration and Interior, the General Anticorruption Directorate. The institution was assessed under the ACA pillar.

Independence (law)

To what extent are police independent by law?

The legislation aiming to ensuring the independence of the Police in its daily activity and in handling corruption cases has been considered potentially efficient. Moreover, the set-up of the institutions as the DNA and especially DGA within the Ministry of Administration and Interior, have been considered efficient instruments to fight and prevent corruption among police officers.

The police officers and agents are recruited directly from the education institutions of the Police and the graduation exam is considered as being equivalent with a contest for an assigned position. For the non-operatives positions of the police and specialized position the recruitment of staff is made based on an open competition.

As the majority of the recruitments within the police are made from the specialized schools and the promotion is made manly on the basis of

length of service there is a strong career driven approach of the police activity.

The employees of the Romanian Police have to fulfill their attributions and mission in accordance with the competence establish by law, without the illegal immixture²⁹⁶ of other authorities, political interference or other person, they are obligated to operate in an independent way. The employees of Romanian Police have to respect the provision of the Code of Conduct of the civil servants with special status, emphasizing some basic principles in their activities as follows: the principle of legality, equality, impartiality, loyalty, moral integrity, professionalism, respect and operational independence. The judiciary police, investigating also the corruption crimes, are coordinated and supervised by the Prosecution Offices of the Judiciary Courts.

Independence (practice)

To what extent are law enforcement agencies independent in practice?

The General inspector of the General Inspectorate is appointed by the Prime Minister at the proposal of Minister of Internal, after consultation of National Police Corps.²⁹⁷

The heads of the counties' police inspectorates are appointed and dismissed by the order of Ministry of Interior., at the proposal of general inspector of the General Inspectorate of the Romanian Police, after consultation with National Police Corps and advisory opinion of the prefect.²⁹⁸

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 superior and their subordinates has

²⁹⁶ Code of Conduct of Civil servants with special statute, approved by Government Decision, number 991/2005, article 6

²⁹⁷ The law no.360/2002 regarding the status of police officers, article 8, paragraph 1 and 2

²⁹⁸ The law no.360/2002 regarding the status of police officers, article 12, paragraph 3

been said to have largely exceeded the legal limits. More precisely, the usual measures that the police officers were due to take 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 decision of the superior. A plausible explanation for this state of affairs has been the existence of large competences of the police chiefs in dealing with the appointment, dismissal and promotions of the police staff coming under their subordination from the police schools.²⁹⁹

Regarding the judicial police, the hierarchic chief may not give instructions regarding the criminal investigation, only the prosecutor has the competence. Thus, all the instructions given by the prosecutor are compulsory/mandatory.

Transparency (law)

To what extent are there provisions in place to ensure that the public can access the relevant information on police activities?

Police officers must submit an income statement as well as an interest statement, upon their first appointment, at confirmation or termination of their function.

Taking into account the provisions of law regarding free access to public interest information³⁰⁰, the institution of police has to publish *ex officio* or at the citizens' requests all public interest information. The information made public *ex officio* are as follows: normative acts which regulate the organization and function of the institution; the personal with leadership position within the institution and the personnel responsible to disseminate the public interest information; the structure and the attributions of the departments, the audience program, the contact, the list regarding public interest documents, the ways that the citizens may contest a decision of the public institutions. Also, the Romanian Police has

²⁹⁹ Conclusions of the previous National Integrity System assessment, published in 2010.

³⁰⁰ The law 544/2001 regarding free access to public interest information

to publish and to up - date an informative bulletin with the public interest information provides by the law.³⁰¹

Also, the law provides some exceptions from the free access to the public interest information as follows: information regarding the national defense, security and the public order, the information regarding economic and politics interest, information regarding personal data and the information regarding the procedure during the criminal and disciplinary investigation; information regarding judicial procedures if the publication of the information affect ensuring a fair trial.³⁰²

To prevent and combat corruption, border crimes, drug traffic, human trafficking, and organized crime, at the appointment of the General Inspector of the Romanian Police, with the approval of the Ministry of Interior and with the authorization of the prosecutor appointed by the General prosecutor attached to the Court of Appeals, the Romanian Police may use undercover police officers to gather information for use as evidence during a trial. All these authorizations will be confidential and will not be made public. Thus, the public cannot access the sources of information, nor the methods and ways used by the undercover police officers.

Also, the public information provided by the Romanian police regards the: statistics regarding the activities fulfilled during the year by it, the evaluation of activities, financial resources, the tracking of missing children.

The victims of crimes can access their case files through their legal representatives. The defender (legal representative) of the injured party is entitled to attend the criminal investigation and may make requires and

³⁰¹ See Law. 544 regarding free access to public interest information, article 5, paragraph 1

³⁰² See Law 544/2011 regarding the free access to public interest information, article. 12, paragraph 1

memoirs.³⁰³ The right to be defended is guaranteed to the accused during the criminal trial.

Transparency (practice)

To what extent is there transparency in the activities and decision-making processes of police in practice?

Romanian Police published on his website the asset declaration in according to the law regarding the transparency of exercising a public office.³⁰⁴

Taking into account that the Romanian Police fulfills some of its activities through the undercover police officers and regarding the income statement and interest statements of the police officers, the practices emphasizes that they have to submit their statement directly to the National Integrity Agency. This means that their statements are not subjected to the publicity of the public interest. This is an accepted practice, but it is not regulated by the law regarding the statements. Thus, to not publish the interest statement of the undercover policemen means to protect their identity is ensured the protection of the personnel working in such structures. Also in case of the persons that works in the secure structures, statements are not publish.

The activities that should be disclosed, according to the law, are public. Still, many of the police activities stay confidential and this can prevent abuses from being discovered.

Regarding practices, within the institution of the police, there are not clear in what measure is it respected in practice the appointment procedures, especially in leadership function.

³⁰³ Article 173, Criminal Procedure Code

³⁰⁴ <http://www.mai-dga.ro/index.php?=ro&t=38>.

Accountability (law)

To what extent are there provisions in place to ensure that police have to report and be answerable for their actions?

In general terms, the police officers have been responsible in front of the hierarchic superior, except for the judicial police working under the authority of the prosecutor.³⁰⁵

Regarding the mechanisms to respond to citizens complains within a reasonable period of time within the institution of police we have two situations: the first one is when a person lodge a complaint /a petition against a person from institution, the law establish a time period of 30 days. But on the other hand, when a person brings a complaint against a tertiary person, the law does not establish a time period.

External complaints related to corruption acts done by the police officers are worked out by the Anticorruption Directorate within the Ministry of Administration and Interior and by the National Anticorruption Directorate.³⁰⁶ As for internal complaints, they have been addressed to the hierarchic superior, who had the competences to order preliminary. There reliability is both disciplinary and judiciary, and in the former case both civil and criminal.

The disciplinary procedure has two phases: a preliminary investigation phase and a consultation with the disciplinary council 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.

³⁰⁵ For more information see the Status of Police officers, article 4, paragraph 1 and 2, article 5.

³⁰⁶ More on these institutions under the Anticorruption Agencies pillar.

Accountability (practice)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

In practice, the annual report for 2006 is the last published on the website of the General Inspectorate of the Romanian Police. Only some statistics regarding the activity of the police institution since 2004 to 2009 are published. The report activity regarding public interest information is integrated in the general report of the Ministry of Interior, and publishes on its website.

There are few reasons given to stakeholders and not enough interest on the Ministry side to hold Police accountable.

The criminal investigation organs apprise through a complaint or apprise by office, conduct investigation only with the supervision of the prosecutor. Thus, the decision to start/begin the criminal investigation, transmitted by the criminal investigation organ, it's submitted to the prosecutor motivation which supervise all the criminal investigation procedure. The police officers have the obligation to make a criminal files/recorded, than to submit it to the prosecutor together with a motivation report.

However, there is not enough evidence to assess the time period of replay at citizens' complains, as there are no statistics available regarding the average, the minimum and maximum time of answering complains and solving cases.

There is, on another hand, assessed as being a very good thing the existence of an autonomous body from the police, within the Ministry, the General Anticorruption Directorate, investigating corruption of the personnel under the Ministry of Administration and Interior.

Police officers are not immune to criminal proceedings, but they can enjoy several rights and presumptions during a criminal proceeding against them, if they are accused of something done during a mission.

Integrity Mechanisms (law)

To what extent is the integrity of law enforcement agencies ensured by law?

There are no regulations related to post-employment restrictions. For holding accountable those law enforcement officials who have not accurately declared their assets and property the regulations are the same as for all the public sector officials. For not declaring the assets in time the National Integrity Agency can fine the officials. For not declaring at all some or all assets and for false declarations the Agency can report to the Prosecution office. However, in practice the National Integrity Agency has not the resources and procedures necessary to verify all the public officials and all the police declarations.

The police officers of the Romanian Police must respect the provision emphasis in the Code of Ethics and Deontology of the Police Officers. The 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. According to their Status, the police officers are forbidden from: using force in other ways than prescript by the law, causing to a person mental or physical harm in order to obtain from information, 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. If these rules are violated, the ensuring penalty could be, depending on the severity of the act, not only a disciplinary but civil and criminal as well. In order to ensure their integrity and moral rectitude, police officers cannot have membership in political parties, political organization or associations or do propaganda for these organisations; express political opinion of preferences at work in public, express in public opinions that are contrary to Romanian national interest.

The police officers are subject to law 161/2003 on measures to ensure transparency in the exercise of public service, therefore there are

regulations concerning incompatibilities and the conflict of interest and they have to submit the interest declarations representing the basis of the analysis of such cases. The declarations are made public on the website and should be verified by the National Integrity Agency. The police officer is incompatible with any other public service as well as with any high ranking public function. Police officer cannot carry out other activities, remunerated or not within other public institution or authorities; they also cannot work within government owned enterprises, commercial or other profit making entities, from the public or the private sector, within a family association or as an authorized person, and they cannot be a member of a group with an economic interest. Police officers can however carry out teaching activities, scientific research and literary or creative performance.

The police officer is in a conflict of interest if he/she is called to solve a petition, make a decision or participate in the decision-making process regarding individuals or legal entities with whom he/she has had pecuniary/patrimonial relations. The law provides general rules regarding gift and states that public servants have no right to offer or receiving any kind of benefit related to their position in the public service.

Integrity Mechanisms (practice)

Are existing codes of conduct, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behaviour by law enforcement officials?

The Code of Ethics stipulates general principles that should govern the conduct of the police officers. However for the moment its effectiveness is very low.

The Police is perceived as one of the most corrupt institutions in Romania, being ranked the fourth most corrupt institution (after the political parties, Parliament and Judiciary) by the Romanian citizens in the Global Corruption Barometer 2010. The Police is also, beside the health system, the first example Romanians give as the recipient of petty

corruption. Even more, lately, more and more high Police officials are under investigation for corruption and corruption related offences.³⁰⁷ Earlier in 2010 the prosecution started against a very large number of border police for their involvement in several smuggling affairs.

Other cases are brought in front of the public by journalists' investigations.

We can assess the existence of a specialized anticorruption agency (the General Anticorruption Directorate) dealing with police. This unit is also carrying out education activities and therefore the police officers can benefit from trainings on this matter.

Taking into account the public information provided on the website and the last public report activities; we don't have information about the training of the police officers. In practice, the training programs for employees are made by the specialized institution within the public sector or private sector.

Corruption investigation

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

The judicial police investigates corruption cases under the prosecution office coordination. The judicial police, under the supervision of prosecutors, have the access to personal information and carry out search and arrest as they are decided by a judge.³⁰⁸

The report activity of the Minister of Administration and Interior indicates that in the field of public order crime phenomenon has the similar values to those of previous year. Compared to the year 2009, were committed fewer acts of robbery (- 4, 48%) and fewer crimes against the person (-8, 58%). The fight against computer crime has led to the destructuring of the

³⁰⁷ Interview

³⁰⁸ All the statistic regarding investigations of the corruption charges are available at the National Anticorruption Directorate, analysed under the Anticorruption agencies pillar.

59 organized group, 528 persons were sued/ arraignment. In 2010 were destructuring 66 organized, 499 persons with concerns in criminal sphere of human trafficking and illegal migration were sent on a trial/prosecuted/sued.

In 2010 were identified 757 groups of crime, with 11, 49 % more than in 2009. Were destructured 286 organized groups concern in committing serious crimes, 2124 people were prosecuted and 46, 23% of their members were arrested.

Statistical analysis show that in 2010, were registered increase in acts of robbery. Economic financial fraud represents 21, 62% of the total number of crimes discovered by the Institution of Police, with 6, 2 % more than in 2009.

6.6. ELECTORAL MANAGEMENT BODIES³⁰⁹

SUMMARY

The electoral management is carried out by two types of Romanian institutions: The Permanent Electoral Authority (PEA) and the electoral bureaus, active only during elections. As a general observation, after its first years, 2006-2008, when affected by internal conflicts, the PEA is performing better from the transparency and integrity point of view than the electoral bureaus. Still its resources and independence are limited. The effectiveness in party financing regulation and control is still very limited.

The electoral bureaus register problems related to the training of its members, the independence of the appointments, the accountability of the members and transparency of its work.

³⁰⁹ We would also like to thank to Ms. Crina Rădulescu, professor of the National School for Political science and Public Administration, Bucharest for her contribution to the study launched in 2010, who served as a basis of the present analysis.

Electoral Management Body					
Overall Pillar Score: 43.06 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 33.33 / 100	Resources	-	25	-	75
	Independence	50	25	50	75
Governance 58.33 / 100	Transparency	50	50	50	50
	Accountability	75	50	25	50
	Integrity Mechanisms	75	50	25	50
Role 37.5 / 100	Campaign Regulation	25		75	
	Election Administration	50		50	

STRUCTURE AND ORGANIZATION

The Permanent Electoral Authority (PEA) is an autonomous administrative institution that ensures the management of electoral and election related issues between elections. During the electoral period (one or two months before the elections and until the results of the election are validated) the institution in charge of the electoral management is the Central Electoral Bureau. The Permanent Electoral Authority is organized according to the electoral law regarding Parliamentary elections.

During the electoral period the electoral management bodies are the Central Electoral Bureau, the District Electoral Bureaus (48, including a special Bureau for voters aboard) and Polling Stations Electoral Bureaus. For local elections, Local Electoral Bureaus are set up for each municipality. The formation rules, powers and responsibilities of the administration are detailed in the electoral laws. Although present in different laws, the regulations concerning electoral management bodies are similar. Romania

doesn't have an Electoral Code³¹⁰ and each type of election is regulated by a different law, indicating the incoherence of the legislative framework.

Therefore, elections are administrated by two distinct institutions: the PEA and a tiered structure of election bureaus which is established anew for each election and headed by the Central Electoral Bureau. Considering the dependence of the Central Electoral Bureau to the work, expertise, material and human resources of the PEA, the electoral management body analysed in the following section will be the Permanent Electoral Authority. However, when relevant for the management of electoral processes, we will also present and analyze legal provisions and practice of the Central Electoral Bureau and other electoral bureaus.

ASSESSMENT

Resources (practice)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

The PEA decides on its own budget proposal, receives the Ministry of Finances' approval for it and submits this budget to the Government to be included in the state budget and to be presented to Parliament.³¹¹ However, for all capital expenditures the approval procedure is more complex and it has to be agreed in all details by the Government. Therefore, the budgetary independence does not include the development of the PEA, as the functioning of the authority general management. Since 2009, until 2011, no increases in financial resources of the PEA have been approved, although there was a significant increase in the volume of work,

³¹⁰ At the time of writing (March 2011) the Electoral Code is a project drafted by the Permanent Electoral Authority and waiting to be debated by the political parties.

³¹¹ According to art. 7, chapter II, Decision no. 2/19.03.2007 (the Functioning Statute of the Permanent Electoral Authority), 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.

considering the necessity to realize the electoral record book, as the management of the PEA stated during the interviews.

In carrying out its activities and duties, the Permanent Electoral Authority has its own working personnel, organized in departments. The personnel's responsibilities are defined by the Statute of the Permanent Electoral Authority. The distribution on departments is done through the orders issued by the president. 15 departments are mentioned by the Functioning Statute. The Authority has 8 regional branches in each region of development. The Permanent Electoral Authority also has a Secretary General, appointed by the Prime Minister, under the law, following an open competition.

The total number of employees on the organizational chart, including regional branches, is 170, out of which 3 are the president and vice-presidents, as is can be checked on the PEA website. According to its own Functioning Statute, the Permanent Electoral Authority should have 34 territorial bureaus and 250 staff, instead of the current 170, excluding the dignitaries and the Cabinet of the President and of the Vice-presidents. The lack of staff for designed positions is mentioned as a weakness both by the PEA's management, during interviews, and by the experts from academia, also during interviews, and by civil society, in election monitoring reports. Comprehensive reports are provided by Pro Democracy Association³¹² and the Institute for Public Policies³¹³.

PEA management stated that lack of staff and insufficient funds made the PEA unable to guarantee the presence of a representative of PEA in all electoral offices at district level, which would ensure professionalism of these structures for the elections for the representatives of Romania in the European Parliament, or for the presidential elections. The information can also be checked in the nomination documents of these representatives.

³¹² Important sources in this respect are Pro Democracy Association's reports from different electoral moments. All available at www.apd.ro/publicatii.php.

³¹³ Alegeri locale 2008 prin ochii societatii civile, July 2008, Alegeri locale 2008. Organizare inertială, candidați apatici, alegători indiferenți, July 2008, Available online at <http://www.ipp.ro/pagini/publicatii.php?pg=2>

According to the same source PEA could not establish county offices, as stipulated in art. 26, paragraph (a) of Law 35/2008, as they were not allocated the necessary funds. PEA appointed 30 representatives in county level electoral offices instead of 48.

PEA management also stated that the retirement of experienced staff has made it very difficult to monitor activity of party financing and of organizational work at the local level and the impossibility to employ more staff made the situation even more difficult to handle³¹⁴.

Further resource limitations are observed in the lack of space for storage of hard-copy documentation, which the PEA is required by law to maintain. Further resource limitations are observed in the lack of space for storage of hard-copy documentation, which the PEA is required by law to maintain it.

Considering training opportunities, the legal provisions in force oblige the employer to provide annual training. Still the budget of the PEA did not include the funds for personnel training, during the last three years, as it can be observed in the budget plan, provided by the PEA at request.

Concerning human resources of the polling station bureaus, the president and deputy of the polling stations' bureaus have to be, as a rule, jurists. When not possible, the president and vice-president of the polling stations bureaus are independent and with a very good name.³¹⁵ Other members of the polling stations bureaus are representatives of the parties competing in elections.³¹⁶

The law does not stipulate any specific training for members of the Central Electoral Bureau and District Electoral Bureaus. Moreover, the Permanent Electoral Authority must support the training for members of the polling station bureaus, organized by prefects. The trainings are organized only for

³¹⁴ The statement is reliable, as the same problem was faced by many other public institutions when the cabinet passed the bill forbidding retired persons to continue to work in public institutions and also forbidding new employments in public institutions. The bill was a decision made for curbing the economical crisis. Still it is highly contested because the experience and professionalism in public institutions was discouraged.

³¹⁵ Art 19 alin (4) of the Law no. 35/2008.

³¹⁶ Art. 19 alin (8)-(9) of the Law no. 35/2008..

the president and the deputies of the polling station bureaus and the session lasts only a couple of hours. The budget of the PEA for information materials for the members of the polling stations bureaus is very limited and the authority used its partnership with NGOs to realize and distribute the materials during the last Parliamentary and Presidential elections in Romania. All these are issues underlined several times in the election monitoring reports of the civil society organizations.³¹⁷ The experts also underlined the problem as one of the most important issues concerning the training of electoral officials.

Independence (law)

To what extent is the electoral management body independent by law?

Law no. 373/2004 on the elections for the Chamber of Deputies and the Senate³¹⁸ (art. 26-29) and the Statute concerning the organization and functioning of the Permanent Electoral Authority are the main legislative acts regulating the Permanent Electoral Authority.

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 Minister³¹⁹. The President and the two vice-presidents are appointed for a term of 8 years which can be renewed only once. The only criterion for appointing the president is the juridical or administrative training and experience. No

³¹⁷ OSCE/ODHIR Assessment Mission Report, 2004, p. 16, Available at www.osce.org/odihr/elections/romania/41455, Pro Democracy Association, Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php.

³¹⁸ The law no. 373/2004 was abrogated by the law no. 35/2008. The PEA was established by the law in 2004 and functions today under the provisions of the Law no. 35/2008. 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.

³¹⁹ Law no. 35/2008, art. 63, (3)-(4).

other stipulation can determine the recruitment basis for the management of the Permanent Electoral Authority. In carrying out their legal responsibilities, the president and its deputy carry out a function that involves exercising state authority.³²⁰ Therefore they cannot be members of a political party. The president and its deputy can be removed from their position by the authorities having appointed them for sound reasons. There is no clear definition of the sound reason under the law.

Important doubts have been raised concerning the independence of the polling stations bureaus. Specifically, the provision on selection of citizens to be included in the drawing of lots for the appointment of presidents and deputy presidents of polling station election bureaus when the number of jurists is insufficient to fill all positions is too vague and open to arbitrary implementation.³²¹

Independence (practice)

To what extent does the electoral management body function independently practice?

Considering the mechanism of appointing the management of the Permanent Electoral Authority, in 2004, from the beginning of PEA's activity, a conflict appeared between the president and the vice-presidents of the institution. The president of PEA is appointed by Parliament and the vice-presidents by the Prime-minister and the President of Romania. The president of the PEA, Octavian Opriş, was senator on behalf of one of the

³²⁰ Law no. 35/2008, art.13, (3)

³²¹ Pro Democracy Association, Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Important sources in this respect are Pro Democracy Association's reports from different electoral moments. All available at www.apd.ro/publicatii.php, OSCE/ODIHR Limited Election Observation Mission. Romania. Presidential elections, 22 November and 6 December 2009. Final report, Warsaw, 17 February 2010, p. 8.

main Romanian parties in the 1990s. The inner conflict was considered by the press to be a political one, influenced by external interferences.³²²

The conflict negatively impacted on the effectiveness of the authority during its first years. It did not arrive at updating voters' lists and to improve the electoral logistics and it did not established the party financing control department³²³. The report of the institution for 2006 was rejected by the Parliament. However, the juridical committee of the Chamber of Deputies decided to confirm the position of the President. One month later, in February and March 2007, the two vice-presidents of the Permanent Electoral Authority were changed. The activity of the institution improved, but the questions regarding the actual independence of the management remained. In 2008, one of the vice-presidents was accused of party affiliation with one of the political parties nominating candidates for the European Parliament. She participated in the after-election activities of the party³²⁴. The citizens' confidence in the PEA remains thus low. A survey initiated in 2009 by Pro Democracy Association shows how low is the level of trust of citizens in the effectiveness of election management institutions. 84% of the Romanian believed in November 2009 these institutions are ineffective in curbing electoral fraud.³²⁵

Concerning the staff, 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

³²² OSCE/ODHIR Assessment Mission Report, 2004, p. 10, Available at www.osce.org/odhir/elections/romania/41455

³²³ News available at: <http://stiri.kappa.ro/actualitate/31-01-2007/jandarmul-electoral-rateaza-alegerile-europene-117642.html>

³²⁴ News available at: <http://www.jurnalul.ro/special/special/ana-maria-patru-iti-cerem-demisia-511082.html>

³²⁵ The survey results are available at: http://www.apd.ro/files/sondaj_privind_fraudarea_alegerilor_mai-nov2009.html

parliamentary civil servants³²⁶ in the art. 21-24, respectively from the labour legislation regarding the personnel employed on the basis of individual labour contracts.

On the other hand, important points to be considered were formulated regarding the independence of the electoral bureaus' members and especially of the polling stations bureaus' presidents.

In 2009 an incident occurred in Vrancea County where the prefect (government representative) was changed during the electoral period³²⁷. The incident was an important indicator of the interference of the government and party government in nominating the presidents and deputy presidents of the polling station electoral bureaus.³²⁸

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

According to art. 28 of the amended Statute, the Department of communication and public relations is required to ensure 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, it provides the media with documents and materials issued by the Authority, it offers citizens information of public interest, it ensures the update of the internet

³²⁶ Published in the Official Monitor no. 35/16.01.2006.

³²⁷ The prefect was changed after retirement of the Social Democratic Party from the government. Although the prefect should be a high public servant, independent, it is practically named and related to political parties. The problem is further developed under the „Public Sector” chapter.

³²⁸ The statements under this chapter are mainly based on experts opinion and press review. Another source was M. Adrian Neacșu, president of the Vrancea County Tribunal and member of TI-Rmania. He underlined the independence problem concerning the presidents and deputies of polling station bureaus.

page with the Authority's information, reports and analysis and it organizes press conferences.

The control department of political parties' financing and of election campaigns must publish the results of its control activities carried out at political parties' central and territorial headquarters on the website of the institution, as well as reports on the public subsidies and private donations given to the parties. However, no donor name can be made public according to the present law.

Transparency (practice)

To what extent are reports and decisions of the electoral management body made public in practice?

The transparency of the Permanent Electoral Authority is generally ensured in practice. Civil society organization experiences show the authority answers very well to public information petitions.³²⁹ However, the good performance is recent. Until 2008 the transparency of PEA, mainly concerning party financing was criticized by the civil society.³³⁰ Furthermore, since 2006, reports regarding the activity of public information (containing statistical data on audiences, petitions, solicitations or memorials) of the institution were published on the website.

The Permanent Electoral authority implemented several projects in partnership with NGOs monitoring elections, showing its openness towards the public. The PEA also publishes on its website all legislative propositions made in order to modify the electoral legislation and any suggestion received from NGOs or simple voters.

³²⁹ OSCE/ODIHR Limited Election Observation Mission. Romania. Presidential elections, 22 November and 6 December 2009. Final report, Warsaw, 17 February 2010, p. 8, Pro Democracy Association, Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php.

³³⁰ Report available at www.ipp.ro/protfiles.php?IDfile=31.

The website of the Permanent Electoral Authority is a very useful and user-friendly tool, updated in due time and publishing all public information required by law, such as annual reports, after-election White Books, financial reports of parties and control reports concerning parties' financing.

Regarding the activity of the Department for research and monitoring of the electoral process, printed and electronic brochures related to the main electoral events of the previous years were published, conferences were organised on issues related to the electoral process as voting abroad. However, data relevant for the public opinion regarding the correctitude and fairness of the electoral processes are not available (e.g. the electoral lists that will enable the authority and the citizens to look for the double voting).³³¹

All relevant legislation and a history of relevant decisions of the Central Electoral Bureau are available on the website on a comprehensive structure. Very useful tools including electoral calendars and tools to identify each voter's respective polling station are available on the website before the electoral day. However, no call centre is available. The PEA was a partner in two of Pro Democracy Association's projects (PDA is an NGO monitoring elections) organising a free national call centre for voters during the vote day. The PEA supported the NGO to promote the call centre.

During the election period, the Central Electoral Bureau develops its own website and Departmental Electoral Bureaus sections are organised as separate pages on the websites of the prefects. The transparency is well ensured, and the reports of civil society concerning electoral processes do not mention the lack of transparency as one of the problems³³². Locally, the problem identified is the lack of professionalism (see Indicator:

³³¹ Stated during interview by Cristian Pirvulescu.

³³² OSCE/ODIHR Limited Election Observation Mission. Romania. Presidential elections, 22 November and 6 December 2009. Final report, Warsaw, 17 February 2010, p. 8, Pro Democracy Association, Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php.

Resources). However, the Central Electoral Bureaus adopt their own functioning statutes and the regulations for the other electoral bureaus. Since 2004, these bureaus' meetings are not public. They only have to publish meetings' records, but observers and media cannot attend these meetings. The decision determined vigorous protests of election monitoring organizations, but did not changed over years³³³.

Since 2007, the control department of political parties' financing and of election campaigns has published the results of its control activities carried out at political parties' central and territorial headquarters on the website of the institution, 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 electoral campaigns from 2007 onwards were made available online along with public and private contributions to party financing. The last information, as well as the income sheets of the electoral campaign financial reports contains only total amounts.

Accountability (law)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

The management board of this institution is mainly accountable to the institutions that decided their appointments, mostly the Parliament, which analyzes the annual activity reports and the post-elections reports, which are afterwards made public as a White Book. The vice-presidents are also accountable to the President of Romania and to the Prime-Minister, as they can be removed from their position by the authorities having appointed them, for sound reasons. No particular definition of the "sound reason" is present in the law.

The Permanent Electoral Authority submits to the Parliament, a report on the organization and progress of the elections or of the referendum,

³³³ Pro Democracy Association, *Alegeri la limita democratiei. Analiza procesului electoral din Romania (2005)*, March 2005, p.23. Available at www.apd.ro/publicatii.php.

comprised of references to participation in the ballot, the process of voting, the departures and drawbacks found, including legislative ones, and the results of the elections, no later than 3 months from the closure of elections for the Chamber of Deputies and the Senate, for the President of Romania and the authorities of local public administration, or of a national referendum,. The report is made public as a White Book.

The annual report also includes a financial report of the PEA. As the Permanent Electoral Authority is in charge of counting and transfers the budget subventions to political parties, the financial reporting is mandatory under the law of party financing. 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 the 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 attention of the President.

The legal framework allows the review of the electoral bureaus' decision by the superior electoral bureau. The local electoral bureaus or the Departmental ones review the decisions of the polling station bureaus. The Central Electoral Bureau reviews the decisions of the Departmental Electoral Bureaus. This hierarchic revision is timely and enforceable. On the contrary, the decisions of the PEA (prior to electoral periods) and of the Central Electoral Bureau (during the electoral periods) can only be contested in Court and the revision is generally very long, exceeding the electoral period and therefore is not effective and not enforceable after the electoral period.³³⁴ The provisions on complaints and appeals lack clarity in particular with regards to the post-election stage and also do not

³³⁴ OSCE/ODIHR Limited Election Observation Mission. Romania. Presidential elections, 22 November and 6 December 2009. Final report, Warsaw, 17 February 2010, p. 8.

provide effective means for legal redress against certain decisions of the Central Election Bureau.³³⁵

Political parties and candidates have the means to redress electoral irregularities, as they can nominate members for all electoral bureaus, from the polling station bureau to the Central Electoral Bureau. Candidates also have the possibility, by law, to attend the electoral process in any polling station.

Accountability (practice)

To what extent does the EMB have to report and be answerable for its actions in practice?

Political parties and candidates can seek to redress electoral irregularities through a complaint. The complaints resolution mechanism is working well during the electoral period to answer political parties³³⁶. The same mechanism is not timely and registers delays to answer citizens or civil society, e.g. to election monitoring organizations³³⁷, as the expert interviewed also stated. Civil society and especially the election monitoring organizations also observed the ineffectiveness of the Central Electoral Body to solve, during the Election Day, some problems raised by other electoral bodies, by political parties and domestic observers, regarding voting logistics, vote ballots and polling station organization. These irregularities were not shown by the White Books of elections in the last 4 years³³⁸.

The Permanent Electoral Authority's departments report their activity to the PEA management on a quarterly basis. The reports are reviewed and approved by the Consultative Committee. The control and branches

³³⁵ OSCE/ODIHR Limited Election Observation Mission, *op. cit.*, p.5

³³⁶ *Ibidem*

³³⁷ Pro Democracy Association, *Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009*, March 2010, p.72. Available at www.apd.ro/publicatii.php.

³³⁸ *Ibidem*.

coordination departments of the PEA report their activity and underline the problems that can occur concerning the electoral endowment 30 days before elections. All reports are recorded and filed. The final general reports of the authority are also published on the website. The reports are generally comprehensible and ensure proper oversight of the institution, management and employees.³³⁹

The Permanent Electoral Authority generally answers the civil society or media requests. It also organizes several debates on issues of interest. However, the Central Electoral Bureau doesn't have the same openness to answer queries on delays/decisions/disputes raised by the media and observers.³⁴⁰

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

With respect to regulations on conflict of interest, art. 41 of Decision no. 2/19.03.2007 stipulate 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. Interest declarations have to be signed and submitted to a responsible person of the institution in charge of submitting them to the National Integrity Agency. 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 system³⁴¹. A public servant is appointed ethics advisor and he reports his activity to the National Agency of Public Service. Furthermore, direct hierarchic relations between spouses and those between first-degree relatives are prohibited. No special code of conduct for the PEA

³³⁹ All reports available at <http://www.roaep.ro/ro/section.php?id=1&l2=20>.

³⁴⁰ The expert interviewed stated these problems. They also appear in the election monitoring reports. Available at www.apd.ro/publicatii.php.

³⁴¹ Art. 8-10 from the Law no. 7/2006 from 11/01/2006, republished in the Official Monitor, Part I no. 345/25.05.2009

employees is in place and the management of the authority do not consider it to be needed.³⁴² The staff does not have to sign a contract, declaration or swear an oath to uphold the guiding principles of independence, impartiality, integrity, transparency, efficiency, professionalism and service-mindedness in conducting their duties.

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, amended³⁴³, 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 learned during their time in office, under the conditions stated in the internal regulations and in the labour contracts, be they collective or individual.

However, experts appreciate the law is not comprehensive concerning the integrity of the members of electoral bureaus. The issue of the lack of law clarity regarding the independence and non party affiliation of the presidents and deputies of the polling station electoral bureaus (see Indicator: Resources) has a negative effect on the integrity of these officials.

Additionally, the election candidates', husband/wife, relatives and in-laws until second degree inclusive,³⁴⁴ are prohibited from being members of the electoral bureaus. (13-35/2008). The representatives of the political parties, political alliances, and electoral alliances, as well as of the organizations of citizens belonging to national minorities, in the electoral bureaus and offices may not be assigned and may not exercise other attributions besides those stipulated by the present law. The quality of members of an electoral body shall end *de jure* in case of a disposition of summoning in court for having committed a violation of the electoral law.

³⁴² Stated during interview with TI-Rmania researcher.

³⁴³ Law no. 53/2003 on the Labour Code from 24.01.2003, updated on 26.08.2005.

³⁴⁴ Expert interviewed and civil society reports: Pro Democracy Association, Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php

No code of conduct is in place for the electoral bureaus either, except the electoral law.

Integrity (practice)

To what extent is the integrity of the electoral management body ensured in practice?

The management of PEA consider the law and practices in the integrity field adequate to curb corruption.³⁴⁵ No investigation was started against an employee of the PEA.³⁴⁶

However, domestic observers underlined during all electoral moments after 1990 important problems regarding the integrity of the members of polling stations electoral bureaus, starting the relationship of the members with candidates, parties and administrating and continuing with electoral campaign made by these members of polling stations electoral bureaus.³⁴⁷ The problems persisted in 2007, 2008 and 2009.³⁴⁸

Some questions are raised by the procurement processes before elections. The representatives of the AEP requested some derogative rules from the public procurement ordinance, mainly 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, and asked for additional regulations to curb this trend able to raise the price and to affect the state and authority budget. Employing specialized IT personnel of the PEA can also solve the problem and it is a solution proposed by the authority management, as they stated,, but without feed-back until now.

³⁴⁵ Stated during interview with TI-Rmania researcher.

³⁴⁶ Stated during interview with TI-Rmania researcher.

³⁴⁷ OSCE/ODHIR Assessment Mission Report, 2004, p. 16, Available at www.osce.org/odihr/elections/romania/41455

³⁴⁸ Important sources in this respect are Pro Democracy Association's reports from different electoral moments. All available at www.apd.ro/publicatii.php.

The situation was underlined by civil society organization as the Institute for Public Policy.³⁴⁹

Campaign regulation (law and practice)

Does the electoral management body effectively regulate candidate and political party finance?

The funding of political parties and campaigns is regulated by the Law on the Funding of the Activities of Political Parties and Electoral Campaigns (2006, last amended in 2009). The competent body for the control of the campaign funding and the implementation of the law is the Permanent Election Authority, which now exercises the functions that were within the competence of the Court of Accounts under previous legislation.³⁵⁰ The law establishes certain prohibitions and restrictions, including a ceiling for campaign expenses.³⁵¹ If the limit is exceeded, the party or independent candidate is to be fined; in addition, the offender has to contribute a sum equal to the excess amount spent to the state budget. Candidates may fund their campaign activities through donations, which have to be declared to the PEA and can only be used after the declaration. Disclosure and reporting on the expenditures for the campaign are required only after the election and are to be effectuated within 15 days from the publication of the final election results. If necessary, the PEA may request additional documentation within another 15 days, and within 30 days it has to pronounce itself on the compliance by each candidate with the legal provisions. PEA decisions in implementation of this law may be challenged to the Bucharest Court of Appeals.

³⁴⁹ Press release available at <http://www.ipp.ro/pagini/interven355ia-institutului-pentru-pol.php?pg=1>

³⁵⁰ The Court of Accounts retains the function of controlling the subsidies which political parties receive from the state budget

³⁵¹ For a presidential election, the maximum expenditure limit for a party or political alliance which has nominated a registered presidential candidate, or for independent candidates, is 25,000 minimum salaries. The official minimum salary for 2009 was 600 RON (around 140 Euro); thus, the spending limit for each nominating party or alliance, or independent candidate, was around 3.5 million Euro.

Unfortunately, the expert opinion is that the simplicity of the law and the limited resources of the Permanent Electoral Authority make the party financing control inefficient.³⁵² The parties do not have a special account dedicated to fund administration for the electoral campaign and they do not declare the transfer of money fundraised for the electoral campaign before the electoral campaign, which make the controls of the PEA very difficult and their findings unsatisfactory. Furthermore, the reports submitted by parties do not include the identity of donors and, because of the lack of resources for control of the PEA, there are very few controls of the actual observance of the legislative framework concerning the identity of donors and the maximum value of the donations allowed.

An important question mark was raised by civil society and media regarding unregistered donations and expenses during campaigns. Still, neither the Permanent Electoral Authority, nor other state body made serious investigations and findings on this issue³⁵³.

Candidates from non-parliamentary parties complained several times that existing legislation favours the parties represented in the parliament, e.g. with regard to broadcast time or to party and campaign financing provisions.³⁵⁴ The non-parliamentary parties cannot receive state subsidies and have to rely only on private donations.

During the electoral campaigns, both in 2008 and 2009, billboards and banners attacking candidates were put up, without indicating the source (in violation of Article 29 of the Law on Funding of Political Parties and Election Campaigns). Political parties launched a number of formal

³⁵² Expert interviewed and civil society reports: Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php.

³⁵³ Expert interviewed.

³⁵⁴ The legislative provisions in favour of parliamentary parties are many. The parliamentary parties have propriety in nominating members of the electoral bureaus (e.g. Art. 14, Law no. 35/2008), and to public funding (e.g. Art. 14, Law no. 334/2006). They also have larger broadcasting time according to the National Council of Audio-Visual. More details about the situation of an independent candidate or of a non-parliamentary party ion the website of the Green Party candidate, Remus Cernea, <http://remuscernea.ro/>

complaints, during different campaigns in the last for years regarding destruction of their candidates' campaign posters in several counties. Irregularities also appeared in electoral meetings and during outdoor demonstrations. The incidents were contested both by international observers from Office for Democratic Institutions and Human Rights of OSCE in 2009 and by domestic observers of Pro Democracy Association³⁵⁵

Election Administration (law and practice)

Does the EMB effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?

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.

The incidence of voters who come to the polling station being turned away and refused vote is rare. However several delicate matters related to electoral administration remain under question: minorities and especially Roma community vote, special polling stations and fraud (multiple voting) prevention mechanisms, electoral list, out-of-country vote and the observers' capacity to carry out their work.

³⁵⁵ OSCE/ODIHR Limited Election Observation Mission. Romania. Presidential elections, 22 November and 6 December 2009. Final report, Warsaw, 17 February 2010, p. 8, Pro Democracy Association, Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php.

Due to the social vulnerability of many Roma, the Roma community is particularly vulnerable to vote buying. Moreover, because a considerable number of Roma do not have identity documents or are not registered with the authorities there are also unable to vote.³⁵⁶

On the other hand, voters who were hospitalized in their place of residence but outside the area served by their polling station were effectively deprived of their right to vote, since they could not be served by the mobile ballot box, which by law may not leave the precinct area, but also could not vote in the special polling station in the hospital since they were in their place of residence.³⁵⁷

Despite the fact there are a couple of authorities sharing responsibilities concerning the electoral list verification and these responsibilities are well determined: the local administration and the Permanent Electoral Authority, there are several problems regarding these lists. While not questioning the overall accuracy of the voter list, some interlocutors voiced concerns related to the issue of unrecorded migration, both inside Romania and abroad.³⁵⁸ In particular, they pointed to the risk of impersonation and multiple voting on behalf of citizens known to be living outside their place of registered residence.³⁵⁹

The “electoral tourism”, namely the multiple voting of organized groups in different municipalities, was the subject of several media and civil society warnings. Up until the first round of the 2004 presidential election, voters could vote in any polling station if they were away from their place of residence. After allegations of serious irregularities, the Central Electoral Bureau decided to strictly limit the number of special polling stations for

³⁵⁶ OSCE/ODIHR Limited Election Observation Mission, *op. cit.*, p. 17

³⁵⁷ Pro Democracy Association, *Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009*, March 2010, p.72. Available at www.apd.ro/publicatii.php.

³⁵⁸ Some 3 million registered voters are estimated to be living abroad, but remain registered on the voter list in their place of registered residence in Romania. Such voters are only deleted if they register their permanent residence abroad with the respective Romanian diplomatic mission

³⁵⁹ The survey results are available at: http://www.apd.ro/files/sondaj_privind_fraudarea_alegerilor_mai-nov2009.html.

the second round of the 2004 presidential election. In the 2007 referendum on recalling the president and in the 2009 European parliament elections, voters could again vote in any polling station if they were away from their place of permanent residence.

For the previous presidential elections in 2009, as a rule, citizens voted in the polling stations serving their place of permanent residence. However, voters who are away from their place of residence³⁶⁰ on Election Day could vote in any of the 3,359 special polling stations throughout the country. Additionally, to prevent the “electoral tourism” the party-nominated polling station bureaus members had the right to copy information from the supplementary voter lists in an effort to increase checks and confidence in the process. However domestic and international observers could not ask for copy information from the supplementary voter lists, based on the protection of personal information of voters. A cross checking was never done.³⁶¹

The out-of-country vote became an important issue during last presidential elections in 2009. Due to the fact that voting procedures were in essence the same as in special polling stations, generally the out-of-country vote raises two types of questions: (1) the vote is not accessible to all Romanian citizens abroad, but only to the ones living near diplomatic missions, (2) there are always warnings from civil society about the independence of the polling station and their affiliation with the government party.

Domestic observers and media objected also to the provisions of the law regarding their behaviour in the polling stations. The law stipulates media representatives and observers are not allowed to leave the premises within the polling station indicated by the president of the polling station bureau, in order to prevent them from disturbing the voting process. The provision allows the presidents of the polling station bureaus to abuse

³⁶⁰ Meaning outside the municipality, town or commune where they are registered with the authorities as being permanently resident.

³⁶¹ Press release available at <http://www.apd.ro/comunicat.php?id=231>.

their position and to limit the observers and media representative rights to actually observe the process.³⁶² Furthermore, Several NGOs publicly warned that political parties may try to accredit their activists under the guise of NGO observers.³⁶³ ODIHR observers confirmed the situation, as they met observers that recognized they represented the interests of certain candidates. 364

The incident shows that the electoral management bodies, the Permanent Electoral Authority in charge with accepting the organization and the District Electoral Bureaus, in charge with accreditations of observer cannot ensure the observance of the law, namely they are not able to verify the actual party affiliation of domestic observers.

³⁶² Press release available at <http://www.apd.ro/comunicat.php?id=194>.

³⁶³ Press release available at <http://www.apd.ro/comunicat.php?id=221>.

³⁶⁴ OSCE/ODIHR Limited Election Observation Mission, *op. cit.*, pp. 17-18.

6.7. OMBUDSMAN

SUMMARY

The assessment finds that the Ombudsman's performance was poor considering the volume of tasks performed, because despite the bulk of petitions, the Ombudsman has a limited reaction time, and a lack of consistent effort to achieve its mission. The impact of its activity is zero and the real results on the legislative system and practice of institutions against citizens is not changed as a result of the Ombudsman activities.

The Ombudsman's failure to entirely meet the exhaustive role provided for it by the law seems to be related to the fact that the Ombudsman is not properly accountable and the weak interest of the Parliament to hold the Ombudsman accountable for its performance (or even alleged misbehaviour in some cases).

On the positive side, Romania has adequate legal provisions designed to ensure transparency of the Ombudsman administration's operation and the body is assessed as rather well-resourced.

Ombudsman					
Overall Pillar Score: 41.67 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 66.67 / 100	Resources	-	75	-	25
	Independence	75	50	25	50
Governance 58.33 / 100	Transparency	75	50	25	50
	Accountability	50	25	50	75
	Integrity Mechanisms	75	75	25	25
Role 0 / 100	Investigation	0		100	
	Promoting good practice	0		100	

STRUCTURE AND ORGANISATION

Romania has established Ombudsman since 1991 when the new Romanian Constitution was adopted (in Articles 58-60), as the *People's Advocate Institution*, and was founded and started to function after the adoption and the implementation of its organic law, Law no. 35/1997.

The *Ombudsman* alias *People's Advocate* receives and decides on the complaints filed by persons aggrieved by the public administration authorities through the violation of their civic rights or freedoms; follows up the legal settlement of the complaints received; issues opinions, at the request of the Constitutional Court, to refer to the Constitutional Court any case of law unconstitutionality, before the law concerned has been promulgated; refers directly to the Constitutional Court any objection of unconstitutionality with regard to laws and ordinances.

The four Ombudsman's deputies shall carry out their activity in the following areas of specialization:

1. Human rights, equal opportunities, religious cults and national minorities;
2. Children's rights, family, youth, retired persons, disabled persons;
3. Army, justice, police, penitentiaries;
4. Property, labour, social security, taxes and duties.

The Institution has 14 territorial offices, numerically organized on the territorial criteria of the Appeal Courts of Justice.

ASSESSMENT

Resources (practice)

To what extent does an ombudsman or its equivalent have adequate resources to achieve its goals in practice?

The People's Advocate Institution (Ombudsman) is provided with sufficient independent budget, human resources, and an adequate legal and infrastructural resource base to meet its goals. It has its own budget which is an integral part of the State budget. It also covers the functioning of the 14 territorial offices, and 99 employed staff.

The institution has adequate financial support, consisting of: 5.570.000 lei³⁶⁵ According to the State Budget for 2011, Annex nr. 3 published in the Official Gazette, Part I, no. 879 bis. (1,310,600 Euro).

The funding is perceived as proper and sufficient³⁶⁶ by the former employee we have interviewed, but according to one of the Ombudsman's Deputies³⁶⁷, the funding allocated to the administration in the state budget is lower than the solicited one (despite the fact that the amount of funding has increased steadily in the last ten years). This level of financing is considered by the deputy as a limitation for the headquarters to hire more

³⁶⁵ http://discutii.mfinante.ro/static/10/Mfp/buget2011/Avocatul_Poporului.pdf

³⁶⁶ Interview 2nd, with a former employee of Ombudsman

³⁶⁷ Interview with Mrs. Erzsébet DÁNÉ, Deputy Ombudsman for human rights, equal opportunities, minorities and national religious cults

than three drivers and this is considered as an impediment for the Ombudsman and his Deputies to participate personally in inquiries in the countryside (). Another limitation is considered to be the law that forbids public institutions during the last years, to acquire electronic devices, furniture and other equipment, due to budgetary restrictions imposed by the economic crisis.

One area of concern highlighted by the deputy is the fact that the institution has some fluctuation of personnel, considered to be a common situation for the budgetary institutions. The former employee also considered that there is a high fluctuation of personnel in the institution.

By the new rule's amendments since 2003, the constitutional provisions regarding the Ombudsman's Deputies have been particularized.

The four Deputies have to be highly qualified professionals as they have independent responsibilities, such as:

1. Erzsébet DÁNÉ : human rights, equal opportunities, minorities and national and religious cults
2. Mihail Profir Stelian GONDOȘ : Child rights, family, youth, pensioners, disabled people
3. Valer DORNEANU : The army, justice, police, prisons
4. Ionel OPREA : property, labour, social care, taxes and fees

According to official data, the total staff number includes 90 qualified people among which there are well-trained experts and counsellors and 9 additional employees (cleaning and drivers).

The Ombudsman's Deputy considers³⁶⁸ they work with insufficient staff, although the petitions' volume is double than that of the previous years. Since 2010, Ombudsman received a new attribution, to promote the appeal on points of law, but has not received qualified personnel to achieve this task. As overall appreciation the Deputy considers the budget as insufficient.

³⁶⁸ Idem

The last two years' annual activity reports show that members and employees do benefit of permanent training and seminars specialized on activity fields (through various training programs, postgraduate courses in the juridical field, short international training programs: in The Netherlands, United Kingdom, France, obtained as a result of the cooperation with international ombudsmen, and internal training programs with the international participation of experts and representatives of the National Ombudsman of the Netherlands).

A very important aspect is the collaboration and the exchanges of experience with ombudsmen from various countries and with specialized associations. The institution is involved in the activity of different Ombudsman structures (European Ombudsman Institute, International Ombudsman Institute, Association of Francophone Ombudsmen and Mediators), but also in other activities involving exchanges of experience with Ombudsmen from the Netherlands, France, Spain, Czech Republic, Azerbaijan, Germany, Albania).

The Deputy³⁶⁹ emphasised that every department received internal training and has a well-endowed library, but that is not enough, and there is a permanent concern for the development of better professional skills.

On the other side the former employee³⁷⁰ assessed that there are additional opportunities abroad, but those are not properly used.

Independence (law)

To what extent is the ombudsman independent by law?

People's Advocate Institution (Ombudsman) is established by provisions found in both the Romanian Constitution adopted in the year 1991 (Articles 58-60), and in laws³⁷¹. Its organic law is Law no. 35/1997. The

³⁶⁹ Interview with Mrs. Erzsébet DÁNÉ, Deputy Ombudsman for human rights, equal opportunities, minorities and national religious cults

³⁷⁰ Interview 2nd, with a former employee of Ombudsman

³⁷¹ Laws and Regulations for Ombudsman: Law No. 35/1997 on the organization and functioning of the People's Advocate institution, republished in the Official Gazette of

fundamental role of the Ombudsman is to protect the rights and freedoms, particularly in relation to public authorities, especially the executive.

Its independence is guaranteed by law, in terms of appointment by Parliamentary majority, restriction on other activities, and term of mandate, both the Ombudsman and its Deputies being appointed for a term of 5 years; the mandate can be renewed once³⁷².

The Ombudsman- Advocate of the People shall exercise his powers *ex officio* or at the request of persons aggrieved in their rights and freedoms, within the limits established by law (Art. 59 in the Constitution). It is binding upon the public authorities to give *the Advocate of the People* the necessary support in the exercise of his powers.

By definition it is a public authority, autonomous and independent from any other public authority; to ensure independence, the Ombudsman has its own budget which is an integral part of the State budget. On the other hand, in the exercise of his/her power, the People's Advocate shall not be a substitute for any other public authorities

The Ombudsman cannot be subjected to any imperative or representative mandate; no one can compel the People's Advocate to obey any instructions or orders.

The Ombudsman is assisted by four *Deputies*, specialized per fields of activity, appointed by the Standing Bureaus of the Chamber of Deputies

Romania, 1st Part, No. 844 from September 15, 2004; Regulation on the organization and functioning of the People's Advocate institution, republished in the Official Gazette of Romania, 1st Part, No. 922, from October 11, 2004; Law No. 206/1998 approving the affiliation of the People's Advocate institution to the International Ombudsman Institute and the European Ombudsman Institute, published in the Official Gazette of Romania, 1st Part, No. 445, from November 23, 1998; Law No. 554/2004 on the administrative procedure, published in the Official Gazette of Romania, 1st Part, No. 1154, from December 7, 2004; Law No. 170/1999 approving the affiliation of the People's Advocate institution to the French speaking Ombudsmen and Mediators Association, published in the Official Gazette of Romania, 1st Part, No. 584, from November 30, 1999.

³⁷² Constitution of Romania (Art. 58): *Appointment and Role (1) The Advocate of the People shall be appointed for a term of office of 5 years, in order to defend the natural persons' rights and freedoms. The Advocate of the People's deputies shall be specialized per fields of activity. (2) The Advocate of the People and his/her Deputies shall not perform any other public or private office, except for teaching positions in higher education.*

and the Senate, following their nomination by the People's Advocate and with the opinion of the Legal Committees of the two Chambers of Parliament. They shall carry out their activity in the following *areas of specialization*:

- human rights, equal opportunities for men and women, religious cults and national minorities;
- children's rights, family, youth, retired persons, disabled persons;
- army, justice, police, penitentiaries;
- Property, labor, social security, taxes and duties.

The professional criteria for the appointment of the deputies are clear, but not applied strictly, appreciated³⁷³ the former employee.

The appointment rules, powers and responsibilities of the administration are detailed in the Constitution and in the organic law. The Parliament appoints the Ombudsman and four deputies, as proposals for candidates are made by the Standing Bureau of the Chamber of Deputies and the Senate on the recommendation of the parliamentary groups of the two Houses of Parliament.

According to the Romanian Constitution, the Ombudsman is elected from among the public personalities who meet the appointment requirements laid down by the Constitutional Court judges and shall be appointed by the two Chambers of the Parliament in joint session, for a term of office of 5 years.

The Advocate of the People and his/her *Deputies* shall not perform any other public or private office, except for teaching positions in higher education. During the 2nd interview with a former employee of Ombudsman, the person expressed the opinion that those restrictions are not as clear, since the appointed persons could have a political background years before.

³⁷³ Interview 2nd, with a former employee of Ombudsman

The People's Advocate is comparable in salary and office incentives (including pension rights) to other high-level officials, and the salaries of the Deputies of the People's Advocate are comparable to the Departmental Chief from the Parliament personnel.

The level of salaries aims to ensure neutrality by law³⁷⁴ as: *"The office of Ombudsman shall be treated as rank, pay and conditions of retirement with the position of minister and deputy to the Ombudsman shall be treated as rank, pay and conditions of retirement with the secretary of state function, with all of their proper rights. Management and executive functions within the company are similar to those in the Parliament"*.

In exercising its powers under the law, the People's Advocate institution sets up territorial offices, organized numerically on the territorial criteria of the Appeal Courts of Justice. The total specialized staff, including territorial is 90.

The Secretary General as chief of staff ensures by delegation the continuity of leadership, the stability of the institution's functioning and the functional relationships within it.

The specialist personnel of the institution, formed of advisers and experts, is considered equivalent to the personnel of the specialist structures of the Parliament. The Ombudsman shall have sole jurisdiction in appointing people³⁷⁵, employment is through competition, and recruitment is based on competence. The contest consists of a theoretical part, operating a computer, and languages. There are annual staff evaluations, grounded on motivation and incentive.

In regards to stability and removal without relevant justification, the staff activity is ruled by the public servants' regulation.

The ombudsman has the power to appoint and remove staff (there is no public service commission). The staff is protected by the civil servants law from removal without relevant justification. The ombudsman has the same

³⁷⁴ Art.36, Law 35/1997 revised.

³⁷⁵ Interviu with Mrs. Erzsébet DÁNÉ, Deputy Ombudsman for human rights, equal opportunities, minorities and national religious cults

protection as any other minister for acts performed under the law, according to Law no. 115/1999 on ministerial responsibility.

To protect from arbitrary removal, the mandate of the Ombudsman may cease before the end of term under limited law provisions³⁷⁶:

(1) in case of resignation, removal from office, incompatibility with other public or private office, inability to perform their duties more than 90 days, certified by medical specialty examination, or in death.

(2) removal from office of the Ombudsman, following the failure of the Constitution and laws, shall be proceeded by the Chamber of Deputies and the Senate, in joint session, with the majority vote of Deputies and Senators, on the proposal of the Standing Bureaus of the two Houses of Parliament based on the joint Legal Commission of both Houses of Parliament.

(3) Resignation, incompatibility, inability to perform its function or death must be ascertained by the permanent offices of both Houses of Parliament, no later than 10 days after the appearance of what triggers the termination of the mandate of the Ombudsman.

There are enough guarantees in law as mentioned above, that the Ombudsman may not be prosecuted for acts performed under the mandate.

The People's Advocate activity has a public nature, but at the request of persons whose rights and freedoms have been infringed or due to well-grounded reasons, the People's Advocate may decide upon the confidential character of his/her activity; The People's Advocate exercises his/her duties ex officio or upon complaints lodged by aggrieved persons.

The Ombudsman and his deputies are not legally responsible for the opinions or acts that meet with law enforcement, in the exercise of powers provided by law (Article 27.Law 35/1997).

During his term of office, the Ombudsman can be pursued and prosecuted for criminal offences other than those provided in art. 30, but cannot be

³⁷⁶ Article 9, Law 35/1997 revised

detained, searched or arrested without the consent of the Speakers of both Chambers of Parliament³⁷⁷. Deputies may be pursued and prosecuted for criminal offences other than those provided in art. 30, but cannot be detained, searched or arrested without a sent notice to the Ombudsman³⁷⁸.

If the Ombudsman or his deputies are arrested or criminally prosecuted, they will be suspended from office, until a final court decision.

The ombudsman's activities are subject to judicial review by the courts, and solely during 2010 a number of 33 actions were forwarded to Justice by unsatisfied petitioners against the Ombudsman's responses or actions.

The ombudsman may appeal to the courts to reinforce the powers granted by law. Prior to this there are several other administrative actions as potential ways to act.

Independence (practice)

To what extent does the Ombudsman function independently in practice?

Both interviewees appreciate that the Ombudsman is totally independent.

The interviewed Deputy Ombudsman considers that the Ombudsman may and is operating in a non-partisan manner. Although the ruling/governing party coalition has the right to propose the candidate for the Ombudsman position, there is no consistent evidence of political interference after nomination. It seems to operate freely from any interference. The former employee³⁷⁹ expressed a contrary opinion in regard to the political influence that applies to the four Ombudsman's Deputies, since their nomination belongs to political groups in Parliament.

There is no evidence that during the functioning of the institution, any of the ombudsmen in office were engaged in political activities, or other activities prohibited by law.

³⁷⁷ Article 31, Law 35/1997

³⁷⁸ Idem

³⁷⁹ Interview 2nd, with a former employee of Ombudsman

Former ombudsman Mr. Ioan Muraru was appointed by the Romanian Senate on 4th October 2001 and reappointed by the Romanian Parliament on May 10, 2006 for another five years term.

Mr. Muraru is also Professor of Constitutional Law and Political Institutions at the Faculty of Law, University of Bucharest. He is a former Judge of the Constitutional Court of Romania (1992 - 2001) and former President of the Constitutional Court (1995 - 1998).

There is no evidence that the Ombudsman or any of the Deputies were removed before the end of term. During 2010, among the former staff of the Ombudsman there were three former employees discontent with administrative decisions and who saw the institution in Court.

The complaints – petitions can be filled without fear of retaliation, as there are enough guarantees in law: any individual irrespective of his/her citizenship, age, race, sex, political affiliation or religious belief may petition the People’s Advocate, following the conditions mentioned above.

Meantime, exercising the People’s Advocate attributions to defend the citizens’ rights and freedoms may be performed at request or *ex officio*.

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsman?

The Ombudsman, his deputies and the employees working under their authority are delivering activities considered for public interest. There are provisions in law that at the request of persons aggrieved in their rights and liberties or due to some reasons, the Ombudsman may decide on the confidentiality of its activities³⁸⁰.

³⁸⁰ Law No. 35/1997 on the organization and functioning of the People’s Advocate institution, republished in the Official Gazette of Romania, 1st Part, No. 844 from September 15, 2004 Article 3

Under general provisions, the Ombudsman office, like any other public institution in Romania, is subject to *Law no. 544/2001 on free access to public information*. The Law 544/2001 ensures free and unrestricted access of persons to any information of public interest, as one of the fundamental principles of relations between individuals and public authorities, in accordance with the Constitution and the international documents ratified by the Romanian Parliament. By public authority or institution the law defines any public authority or institution that uses or manages public financial resources (including autonomous, national company and any company under the authority of central or local public authorities and the Romanian state or if necessary, an administrative-territorial unit is unique or major shareholder).

The definition of public information by law is “*any information concerning the activities or from activities of public authorities or public institutions, whatever their medium or form or way of expressing information*” and also “*information regarding personal data means any information concerning an identified or identifiable natural person*”.

The solicited information may include but is not limited to those: findings, procedure, terms recommendations, reports, and budget.

The annual reports of the Ombudsman are presented to Parliamentary comities and then voted by plenum. The reports are public and representatives of the media and people are authorized to attend the parliamentary meetings when those reports are voted.

To avoid an arbitrary behaviour, the right of individuals to lodge complaints is also limited to cases referred by the same law³⁸¹.

³⁸¹ The law includes in the category of administrative acts which are the subject of the People's Advocate activity also those of *public corporations (autonomous stage management)*. The acts which are the subject of petitioning: *The public authorities' administrative acts and facts* which violate the constitutional rights and freedoms of natural persons shall be the subject of petitioning. *Refusal by the public administration bodies and belated issuance of the acts* shall be considered equivalent to administrative acts. Petitions concerning the following acts *shall not be the subject* of the People's Advocate activity and shall be rejected without motivation: the acts issued by the Chamber of Deputies, the Senate or by Parliament; the acts and facts of Deputies and Senators; the acts and facts of the

On the other side, the former employee³⁸² expressed a critical opinion as to the quality of information that does not cover the most sensitive issues in dealing with petitions, the Institution being focused more on quantitative data regarding their activity.

The law³⁸³ includes extensive provisions regarding the transparency of the Ombudsman administration's activities. The Ombudsman, like all the public Institutions in Romania, are required to disclose the solicited information to any interested individuals within 10 days of receiving such a request or, in case of complexity, the term may be extended to 30 days (Law 544/2001, Article 7: *"(1) Public authorities and institutions are obliged to respond in writing to requests for public information within 10 days after the event, within 30 days of the application's registration, depending on the difficulty, complexity, volume of documentation and emergency of the requested work. If the time needed to identify and disseminate the requested information exceeds 10 days, the answer will be communicated to the applicant within 30 days, provided notice thereof in writing about it within 10 days.*

(2) Refusal to motivate and communicate the requested information is communicated within 5 days of receiving the complaints.

(3) Requesting and obtaining information of public interest can be achieved in electronic format, if technical conditions are met").

The Ombudsman and his Deputies are obliged by law to provide their "statement of interests"³⁸⁴, and to declare their assets publicly, as they are subjects to the provisions applicable for high officials exercising public dignities and public functions, regarding conflicts of interest (Article 99, c).

President of Romania; the acts and facts of the Government; the acts and the facts of the Constitutional Court; the acts and the facts of the Chairman of the Legislative Council; the acts and the facts of the judicial authorities.

³⁸² Interview 2nd, with a former employee of Ombudsman

³⁸³ Law no. 544/2001 on free access to public information

³⁸⁴ Law no. 161 / 2003 on measures to ensure transparency in the exercise of public dignities, public functions and businesses, preventing and sanctioning corruption, Published in Official Gazette Nr. 279 of April 21, 2003

According to the law, those statements are published on the webpage of the institution.

There are no regulations pertaining to the involvement of the public in the activities of the ombudsman (e.g. public council, advice committee, public consultations), and the former employee stressed the appreciation that during last years the Ombudsman has not shown a clear interest for that.

Transparency (practice)

To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?

The findings on the transparency of operation during the last years (the 2009 and 2010 activity report) were mostly positive considering the volume of communication. Thus far, the content of that data is not always relevant to the core issue activity, or to achieving the mission of the Ombudsman Institution.

Synthetically, the annual activity reports of the Ombudsman for the last two years provide data on:

- Legal organization and functioning of the Ombudsman
- Overview of the year's activity
- Surveys and recommendations - specific intervention means the People's Advocate for each domain of activity as provided by law
- The activity of the People's Advocate territorial offices
- The activity of the Ombudsman in the constitutionality of laws and ordinances
- Trials, the institution's legal problems
- Relations with ombudsmen, similar institutions and the media
- Resources in terms of structure and the establishment plan, budgetary resources and materials consumed every year; audit and risk management data.

The report on 2010³⁸⁵ also includes an overview on: joint projects for students in practice, Media coverage, publications, newsletters, broadcastings on radio and TV, media relations, and joint activities with the civil society.

One sole time delay in response to a petition was mentioned during the interviews, according to the Deputy Ombudsman³⁸⁶.

Most of data is available via internet, on the Ombudsman website. Presently, the website³⁸⁷ carries different types of information including the procedure and conditions to address to Ombudsman, but also data and figures concerning the types of different petitions, study-cases on the way petitions were solved, statistics and links to public resources. The annual activity reports are also published on the website.

The Ombudsman and his Deputies apply the legal request and provide “the statement of interests” according to the law, which is published on the webpage of the institution.

The statement of interest is made on their own responsibility on the functions and activities they performed, except those related to exercising their office or public position.

The functions and activities that are included in the declaration of interest are:

- a) their positions in the associations, foundations and other nongovernmental organizations or political parties;
- b) paid professional activities;
- c) a member of or associate companies, including banks and other institutions
credit, financial and insurance companies.

According to the annual activity reports on 2009 and 2010, the Ombudsman has regular consultation and joint projects with local

³⁸⁵ <http://www.avp.ro/raport%202010/raport%202010%20avocatul%20poporului.pdf>

³⁸⁶ Interviu with Mrs. Erzsébet DÁNÉ, Deputy Ombudsman for human rights, equal opportunities, minorities and national religious cults

³⁸⁷ <http://www.avp.ro/>

authorities and the civil society. A number of students attended practice in the institution.

The core activity with NGO's is carried on by territorial offices, and close to communities. They have projects to raise public awareness and public debates on human rights and overall Ombudsman activity.

In practice, the Ombudsman and his Deputies make their asset declarations public. They are available on the webpage of institution.

Transparency has thus generally been ensured; generally, the Ombudsman operated in a transparent manner and held frequent press conferences to inform the public on its activity.

Accountability (law)

To what extent are there provisions in place to ensure that the Ombudsman has to report and be answerable for its actions?

Article 21 the Law 35/1997 states that:

“(1) In performing its duties, the Ombudsman issues recommendations that cannot be subject to parliamentary oversight and no judicial control.

(2) Through recommendations, the Ombudsman informs the public administration authorities regarding the illegality of administrative acts or facts. The silence of public administration and the late issuing of documents are assimilated to administrative acts”.

The Ombudsman's reports may contain recommendations on legislation or measures of any other nature for the defense of the citizens' rights and freedoms (Constitution Art. 60- Report before Parliament). Other provisions are in Art. 5 of Law 35/1997: The reports must include information on the activity of the Ombudsman. They may contain recommendations for amendments to legislation or other measures aiming to protect the rights and freedoms of citizens.

To avoid an arbitrary or subjective behavior of the Ombudsman, the law³⁸⁸ is establishing and limits the situations when petitions cannot be taken into consideration:

- when the issue falls *outside of the competence of the People's Advocate*;
- if the petitions are *anonymous* or are submitted in the name of another person without his/her consent;
- if the petitions are filed after *more than one year* from the date when the violations occurred or from the date when they were brought to the knowledge of the person concerned;
- The People's Advocate can reject, on a motivated basis, the petitions which are patently *unsubstantiated*.

Prior to plenum session, the Report is debated in the Standing Committees of the two Chambers, which elaborate their own report regarding the findings in the Ombudsman's own report, including a recommendation for the plenum to adopt or reject the Ombudsman Report. There is no real debate in the plenum, but according to the rules of procedure of the joint meetings, representatives of parliamentary groups may address the Ombudsman for information or clarification.

The annual activity reports of the Ombudsman on a calendar year are submitted to Parliament until February 1 of the following year³⁸⁹, in order to be debated in the joint session of both Chambers (Art. 60 of the Constitution and the Art. 5 of Law no. 35/1997 regarding the organization and functioning of the Ombudsman).

The annual activity report is published in the official gazette "*Monitorul Oficial*" and on the webpage of the Ombudsman. The activities of the Ombudsman are not subject to juridical review.

³⁸⁸ Law No. 35/1997 on the organization and functioning of the People's Advocate institution, republished in the Official Gazette of Romania, 1st Part, No. 844 from September 15, 2004

³⁸⁹ According to Article 5 of Law 35/1997

There are no internal regulations to allow whistleblowing on the staff's misconduct. The law provides for the possibility of appealing against the administration's decisions.

Accountability (practice)

To what extent does the Ombudsman have to report and be answerable for its actions in practice?

According to Article 35, of Law 35/1997, any "violation of this law or of the Rules of Organization and Functioning of the Ombudsman by its personnel is subject to criminal liability, disciplinary or administrative, as appropriate. Disciplinary liability is established under the Ombudsman's Regulation of organization and functioning".

Even though submitted on time, the Ombudsman's reports are not properly debated, at least not during the practice of the last 2 years. There is a lack of interest from the Parliament concerning the activity of this institution. Article 21 the Law 35/1997 states that the Ombudsman recommendations cannot be subject to parliamentary oversight or judicial control. (As by recommendations, the Ombudsman informs the public administration authorities regarding the illegality of administrative acts or facts. The silence of the public administration and the late issuing of documents are assimilated to administrative acts).

Unsatisfied petitioners were appealing to courts for what was considered misconduct or non-diligence of the Ombudsman. During 2010, there were a total number of 36 actions in justice against the practices of Ombudsman: 33 introduced by petitioners discontent with the way the Ombudsman dealt with their requests, and 3 by former employees. During 2009, there were 32 cases (at the end of 2009, in 18 of them there were given decisions in favour of Ombudsman due to lack of procedure as stated in Art. 21 of Law 35/1997, and the remaining 14 cases were pending before the courts).

The Law of the Ombudsman is Law. No 35/1997. The Institution's aim was to help people resolve conflicts between individuals and public administration amicably, through mediation and dialogue.

People that apply to the Courts against the Ombudsman's proceedings have in mind that the People's Advocate acts as a supervisory authority, despite that it has no legal power/coercion to compel or punish another public authority, which emerges clearly both in art. 13 letter. c) of Law no. 35/1997, republished, with subsequent amendments, according to which (the Ombudsman) aims to ask the government officials to resolve the claims they received, and concerning the termination of rights and liberties, rehabilitation of the petitioner and reparation of the damage, and of art. 21 para. (1) and (2) which states that "in exercising its duties, the Ombudsman issues recommendations that cannot be subject to parliamentary scrutiny or judicial review. Through recommendations, the Ombudsman shall notify the public authorities on the illegality of administrative acts or facts. "

At the same time, a number of complains do exist in Court. According to the petitioners, there was a lack of interest to deal with their requests.

Integrity (law)

To what extent are there provisions in place to ensure the integrity of the Ombudsman?

The Law on Public Service establishes "general rules of conduct" and requires public servants to perform their duties in an "unbiased and honest manner", to refrain from misusing public funds and to be guided by the "principles of transparency and lawfulness" in decision-making

The Ombudsman and his Deputies are subjects to *Law no. 161 / 2003 on measures to ensure transparency in the exercise of public dignities, public functions and businesses, preventing and sanctioning corruption* (Published in Official Gazette Nr. 279 of April 21, 2003). The law states the conflicts of interest and establishes the categories of high officials exercising public dignities and public functions, regarding the conflicts of interest including

Ombudsman and the Deputies (Article 99, c). Accordingly, “statement of interests” provisions are applicable for Ombudsman staff.

Public servants are required to announce a conflict of interest as soon as they are informed of it and to make annual statements about family members or close relatives.

The Law provides general rules regarding gifts and states that public servants have no right to offer or receive any kind of benefit related to their position in the public service. The Law also establishes general rules of conduct regarding the prevention of corruption-related offences. It prohibits public servants from receiving any gift or service that could influence their work.

If in doubt, they are required to declare such gifts. Public servants must inform their superiors about any such gifts.

According to the Constitution (Article 58) and to the Law no. 35/1997 (Article 32), the Ombudsman and his/her Deputies shall not perform any other public or private office, except for teaching positions in higher education and cannot be members of a political party. The same incompatibilities referred above apply to the staff.

All the personnel have to declare their assets publicly, and the declarations are public on the website.

Integrity (practice)

To what extent is the integrity of the Ombudsman ensured in practice?

There is an internal Code of conduct for contractual staff. There are also some provisions included in each individual job description.

There is some training on integrity for Ombudsman staff.

There is no evidence of violations of the Code of conduct.

The Ombudsman, his four Deputies and the personnel have to declare their assets publicly, and the declarations are public on the website. The

National Integrity Agency is in charge with scrutinising high officials' declarations of assets.

Investigation

To what extent is the ombudsman active and effective in dealing with complaints from the public?

Any individual irrespective of his/her citizenship, age, race, sex, political affiliation or religious belief may petition the People's Advocate. The petitions are exempted from the stamp tax. The exercising of the People's Advocate attributions in order to defend the citizens' rights and freedoms may be performed: *at request*, or *ex officio*.

The conditions in order for the petitions to be received and examined are posted on the website and include:

- They must be *done in writing* and may be sent by mail, email, fax or be submitted *personally or via delegate* (who must indicate his full name and domicile) to the Institution headquarters or territorial offices, with the occasion of the audiences, or directly to the registration office;
- for well-grounded reasons, *the petitioner may introduce his petition orally or through the dispatch service*, which will record the petition and fill in the standard forms ;
- they must be signed by the petitioner;
- they must *contain*:
 - full information related to the aggrieved person's *identity data (full name, domicile)*;
 - information about the *injustice suffered* (rights and freedoms violated, facts invoked and their description);
 - *the name of the administrative authority or the public servant involved*;

- *proof of the public administration's delay or refusal to deal with the petition, under the law, within the established term;*
- *the obligatory specification whether the petition is the subject of a case pending a decision or whether it was the subject of judgment;*
- *the names of the public authorities to which the case had been referred to before;*
- all the relevant documents attached.

Procedures for dealing with the petitions

Inquiries - The People's Advocate has a right to carry out his/her *own inquiries*, to ask the public administration authorities to produce any information or documents which may be necessary for the conduct of the inquiry, *to hear and to take depositions* from the officials of the public administration authorities and from any civil servant who may supply information required for dealing with the petition.

Recommendations - In the exercise of his/her powers, the People's Advocate *issues recommendations* which cannot be subject to either parliamentary or judicial control. By his/her recommendations, the People's Advocate notifies the public administration authorities of the unlawful character of the administrative acts or facts.

Special reports - Where, during the course of his/her inquiries, the People's Advocate finds *gaps in legislation or serious cases of corruption or failure to comply with this State's legislation*, he/she submits a report on his/her findings to the Chairmen of the two Chambers of Parliament or to the Prime Minister, as appropriate.

Dispatcher's office - There is a dispatcher's office on the premises of the People's Advocate, where people can phone daily, between 10.00 hours a.m. and 2.00 hours p.m., on telephone number 312.71.34. Outside the mentioned hours, all notifications are recorded on the answering machine.

Audiences - Audiences are given *by the specialist staff of the institution*. At request, people *can be received in audience by the People's Advocate and his/her deputies*, according to the regulations on the organization and functioning of the Institution, as republished.

During 2010, the People's Advocate gave audiences to a number of 17,470 people, had received 8895 complaints and 6928 phone calls to the dispatch service.

Compared to the high quantity of petitions they received, a limited number were resolved in favour of petitioners.

By Article 22³⁹⁰, of Law 35/1997, the Ombudsman has the right to investigate the public administration authorities, to request any information or documents necessary for investigation, to interrogate and take statements from leaders of public administration authorities and any officer who can provide necessary information for solving an application. In 2010, the Ombudsman conducted 18 investigations aimed mainly to verify compliance to a standard of living rights, the rights of a person aggrieved by a public authority, labour rights and social protection of labour, the right to petition, the right to protect children and young people, the right of private property, free access to justice, the right to life and physical and mental integrity and the right to health.

The activity of the Ombudsman in 2009: a total of 16 561 audiences were awarded, work in this area maintained at a level close to that recorded in 2008 (17,783 in 2008); 8295 petitions (complaints) were received, and 5978 calls were made to dispatch service. The Ombudsman conducted 30 investigations and made six recommendations that notified the government authorities on unlawful administrative acts or facts such as:

- 2 recommendations on respecting the right of private property, addressed to the Mayor of Afumati, Ilfov County and Mayor of Rosia, Sibiu County;

³⁹⁰ By the same article 22, para2: "the provisions of law, applies to public administration authorities, public institutions and public services under the authority of any public administration authorities".

- 2 recommendations to the Mayor of Cotmeana (Argeş) and to the President of the National Authority for Property Restitution, on respecting the right of private property and the right of the person aggrieved by a public authority;
- a Recommendation to the Pension House of Bucharest, on respecting the right to a decent standard of living and the right of a person aggrieved by a public authority;
- a Recommendation to the Minister of Finance, on compliance with art. 137 par. (2) in the Constitution on Romania's national currency.

During investigations, in order to settle the cases, the Ombudsman has dealt with situations in which due to the lack of involvement of public authorities or where government authority has not acquired terms, the Ombudsman had to notify the hierarchically superior government authority upon the claimed administrative illegality.

According to the former employee interviewed and the scarce referrals to the efficiency of the Institution, or even critical appraisal, the Ombudsman is perceived as insignificant as to its role, and inert.

From public records in their own Activity Reports, the Ombudsman is trying to reach out through the public and media, using press conferences and public participation, especially by their territorial offices. In 2009 there were 190 media coverages.

Receiving official visits and hosting other events in office, or attending international meetings, events, conferences, symposiums are sustained accordingly.

To improve its perception, in its current practice the Ombudsman gets involved in social work to highlight its interest for children. The Ombudsman provided social aid, consisting of goods for personal use (!) to children on the occasion of the three actions undertaken in 2009 and also in 2010. The amount of funding spent on those occasions is not clear, nor is the criteria used to select those communities or children.

Promoting good practice

To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

It is not a common practice for the Ombudsman to consult before criticising an agency or person and to allow the criticised to reply.

There is no evidence of public campaigns, but the Ombudsman publishes a Quarterly Newsletter, and 11 press releases were sent to media in 2010, on special internal and external events. Regional offices had consistent appearances in media, as they released 642 communicates on the Ombudsman's duties.

Only one recommendation was made in 2010, and that was addressed to the Minister of Health concerning the right to petition and the right to health. In 2009 there were a total of six recommendations but those recommendations were not addressing the issue of campaigning to raise public awareness. Those are included in the activity reports together with study cases on some of the petitions promoted by individuals, and the way that petitions were approached and finally solved by authorities.

Syntheses on findings are published in activity reports, such as a comparative analysis of the proportion of complaints on domains in 2009:

1. A total of 1855 of the number of complaints related to property, labor, social security, taxes and fees;
2. In the area of the army, justice, police and prisons there were 1591 complaints;
3. In the field of children's rights, family, youth, pensioners, disabled people, there were 1107 complaints;
4. In the area of human rights, equality between men and women, religious and national minorities were registered 675 complaints;
5. A total of 36 petitions returned to the Secretary General of the institution, counselors and department of Ombudsman relations with other institutions or persons and Protocol.
6. A total of 3031 complaints were recorded from territorial offices.

6.8. SUPREME AUDIT INSTITUTION – COURT OF ACCOUNTS³⁹¹

SUMMARY

According to the law, the appointments of the Accounts Councillors of the Court of Accounts are made by the Parliament. Thus there are high risks of political interference and limitation of the Court's managers and activities.

The reports of the Court are debated by the Parliament with a huge delay. However, if there is confidential information that were audited and to which the reports are referring, these documents are no longer public. As the reports are public only when final and an investigation of the Court of Account can take years until being finalised, sometimes the information is not made public in proper time.

On the positive side the legislative framework to ensure the accountability and the integrity of the Court of Accounts is relatively strong. The existence of a special code of conduct for the external auditors forming the staff of the court of Accounts is a positive element to ensure the integrity in practice.

Concerning the effectiveness of the Court of Accounts to fulfil its role there are no data concerning the implementation of the Court recommendations, although it is a criminal offence for the civil servant not to put in practice the recommendations of the Court of Accounts.

The table below presents the indicator scores which summarize the assessment of the Supreme Audit Institution – Court of Accounts, in terms of their capacity, its internal governance and its role within the Romanian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

391 We would like to thank to Mr. Cătălin Petrescu for his contribution to the study launched in 2010, who served as a basis of the present analysis.

Supreme Audit Institution – Court of Accounts					
Overall Pillar Score: 72.22 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 75 / 100	Resources	-	75	-	25
	Independence	75	75	25	25
Governance 66.67 / 100	Transparency	75	50	25	50
	Accountability	100	50	0	50
	Integrity Mechanisms	75	50	25	50
Role 75 / 100	Effective financial audits	100		0	
	Detecting and sanctioning misbehaviour	75		25	
	Improving financial management	50		50	

STRUCTURE AND ORGANISATION

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 Functioning and Organisation Regulation 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 chambers of accounts, 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 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 deployed on the basis of an activity program elaborated according to the provisions of the Law regulating its organization and functioning.

The Court of Accounts aims at ensuring that the law is applied in the management of the material and financial resources of the public institutions. Furthermore, the Court of Accounts is supposed to analyse the quality of financial administration on the basis of cost-effectiveness and efficiency

The Audit Authority shall be organized and shall operate to fulfil certain obligations in the field of external audit, which Romania has in its capacity as a European Union member state; these shall cover the non-reimbursable pre-accession funds granted to Romania by the European Union, as well as for the funds to be granted in the post-accession period. The Audit Authority, which shall have own competences and work procedures. The Audit Authority shall be an operationally independent body in relation to the Court of Accounts and to the other authorities in charge of the management and implementation of non-reimbursable community funds. The organization structure of the Audit Authority, the number of staff and the tables of organization of the Audit Authority shall be approved by the plenum of the Court of Accounts.

ASSESSMENT

Resources (practice)

To what extent does the audit institution have adequate resources to achieve its goals in practice?

The Plenum of the Court of Accounts has to adopt the budget proposal that will 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. In this way, the Court of Accounts has been financially independent from the 2004 legislature, meaning that it has drawn up and approved its own budget, which was transmitted to the Government, in order to be included in the state budget, which is, afterwards, submitted to Parliament for approval. However, the Court of Account cannot apply directly to the Parliament for the budgetary amendment.

The budget of the Court of Accounts was diminished in the past three years, as it happened for the majority of the state institutions, as a consequence of the economic crisis and a measure to curb the crisis. However, the Court of Accounts is excepted from the legal provision adopted in December 2009 stating that a new employment can be done in a state institution only if there are other 7 positions free³⁹².

The training opportunities, background and previous work experience for the human resources of the Court of Accounts is not fundamentally different from the respective ones for other important state bodies. The Court organise trainings for the personnel, as the periodical training is mandatory by law and employ its staff through public contest.

There is worthy to say that in 2010 the Court of Accounts published its Strategy for 2014. There is an important step for the institution and it can help the career development of the staff, as well as the development of the activity, as we shall see.

Independence (law)

To what extent is there formal operational independence of the audit institution?

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. The Court of Accounts reports to the

³⁹² The bill aimed to limit the number of state employees, as Romania is one of the European countries spending most of its budget on personnel/human resources.

Parliament of Romania, performing its activity independently, observing the provisions of the Constitution and of the laws of the state. No state body can, by law, influence the Court of Accounts' agenda, and it carry out its audits in accordance with a self-determined programme and methods. The Court of Accounts draft and adopt all internal regulations and procedure for its audits.³⁹³ However, the law stipulates that: "The decisions by the Chamber of Deputies or by the Senate, requesting the Court of Accounts to conduct controls, within its competences, shall be mandatory. No other public authority may request the Court to do so."³⁹⁴

The Plenum of the Court is formed by 18 counsellors of Accounts, appointed by the Parliament at the proposal of the Budget and Finances Permanent Commissions of the two Chambers. The members of the Court of Accounts shall be appointed by the Parliament, upon proposal of the permanent commissions for budget, finances and banks of the two Chambers, for a nine year term of office, which may not be extended or renewed. The Court of Accounts shall be renewed by a third of the counselors of accounts appointed by the Parliament, every three years, as of expiry of the current counselors of accounts' term of office. The Plenum decided on the number and structure of the institution's staff with management positions.³⁹⁵ The appointment of a third of the members every three years shall ensure the balance of the political options, because the members of the Court will always be appointed by two different legislatures. Still, in the Romanian context, considering the parties' negotiations, the ideal of the political independence is hard to reach.

The Parliament shall appoint the presidents and the vice-presidents of the Court of Accounts and of the Audit Authority from among the counsellors of accounts. The members of the Court of Accounts shall be independent in the exercise of their powers and duties and irremovable on the whole

³⁹³ <http://www.curteadeconturi.ro/sites/ccr/RO/Control%20si%20Audit/Pagini/Regulamente.aspx>

³⁹⁴ Law. no. 94/1992, Chapter I, Art. 3.

³⁹⁵ Law. no. 94/1992, Chapter V. Appointment and statute of the Court of Accounts staff. Art. 46.

term of office. They shall be state dignitaries and under the same incompatibilities as the ones provided by law for judges. The members of the Court of Accounts may not be members of political parties or unfold public political activities.³⁹⁶

External public auditors shall be subject to the incompatibilities provided by the Ethical and Professional Code of Conduct. They also may not be members of political parties or unfold public political activities. External public auditors shall enjoy stability³⁹⁷

The appointment made by the Parliament makes the President of the Court of Accounts to be a political figure. 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.

The law does not stipulate exactly the immunity of member and staff of the Court of Accounts from prosecutions resulting from the normal discharge of their duties. The stability of the staff, similar as for all civil servants, was interpreted as a form of immunity, but there are no legal provisions focusing the point exactly.

Independence (practice)

To what extent is the audit institution free from external interference in the performance of its work in practice?

The political independence of the Court of Accounts can be contested only by looking at its President. Nicolae Vacaroiu was, until 2008 one of the most important member of the Social Democratic Party. In the periods 1996-2000, 2000-2004 and 2004-2008 he was senator PSD of Argeş, serving in that capacity as President of the Senate's Permanent Bureau (1999-2000) and Chairman of the Senate (2000-2008) during two

³⁹⁶ Law. no. 94/1992, Chapter V. Appointment and statute of the Court of Accounts staff.Art 47-49.

³⁹⁷ Law. no. 94/1992, Chapter V. Appointment and statute of the Court of Accounts staff.Art 51-53.

consecutive terms of office (2000-2004 and 2004-2008). There are, consequently, accusations made by the media but also by administrative and political figures referring to the partisan manner of auditing of the Court.

However, no councillor of account was ever dismissed for a problem related to an incompatibility or to a possible conflict of interest. But the term in office of the councillors may not be extended or renewed over the nine years, the legal term of the office.

It is uncommon for a senior staff member to be removed from its position before the end of its term. It only happened with clear reasons, related to disciplinary liability. However in 2009 a central newspaper published the case of an auditor of the Court of Accounts who was fired as the result of an investigation made with professionalism but touching some sensitive institutions and local political actors.³⁹⁸

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Generally, the Court of Accounts issues notifications with regard to, first of all, the draft of the state budget and projects of law in the domain of finances. The other documents are the reports of accounts of the Court of Accounts missions. However, these documents are not public *ex officio*.

The Court of Accounts may submit to the Parliament or, by the intermediary of the county chambers of accounts, to the deliberative public authorities of the administrative and territorial units, reports in the domains under its jurisdiction, whenever the Court shall deem it necessary.³⁹⁹ The annual report of the Court of Accounts is debated by the

³⁹⁸ Cotidianul.ro, August 19 2009,

http://old.cotidianul.ro/scandal_la_curtea_de_conturi_vacaroiu_a_dat_afara_un_auditor_pe_ntru_ca_si_a_facut_datoria-95775.html.

³⁹⁹ Law. no. 94/1992, Chapter IV, Art. 40.

legislature. All the other reports are presented in the Parliament, and the legislature shall debate and adopt measures.

The annual reports of the Court, the report making the synthesis of the public finance on a domain or by year have to be public and published in the Official Gazette. However the law do not provide any other obligation excepting the annual activity report of the Court of Accounts. The reports are public information when final, after passing all the procedures and if there are not considered of general interest and published on website, there are offered by request base on the Freedom of Information Act.⁴⁰⁰

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.

Transparency (practice)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

The annual reports of the Court, the report making the synthesis of the public finance on a domain or by year, and the public reports on different issues considered to be also of general interest, including the reports requests by the Parliament chambers, are made public on the website of the institution. This is, in fact, more than the law is requiring as transparency measure.

While all documents and reports issued by the Court of Account should by law be presented to the Parliament, these presentations are made with an enormous delay. In June 2010 the Parliament debated the report for the

⁴⁰⁰ The webpage on the Freedom of acces to Information produse by the Court of Accounts can be find at:

<http://www.curteadeconturi.ro/sites/ccr/RO/Communicate%20de%20presa/Pagini/Acces%20la%20informatiile%20de%20interes%20public.aspx>.

year 2007.⁴⁰¹ In the same time, in July 2011 on the website of the Court there is not published the overall report for 2010. The report for 2009 was published, and submitted to the Parliament, but not yet debated.⁴⁰²

The information that is actually public in the Court of Accounts activity is the final reports and recommendations. However, if there is confidential information that were audited and to which the reports are referring, these documents are no longer public. As the reports are public only when final and an investigation of the Court of Account can take years until being finalised, sometimes the information is not made public in proper time.

The Court of Accounts' internal organisation, methods of audit, staff and financial capacity, and budget are made public on the website. The presentation of the information is not always very user friendly, still all necessary information is published. The regular reports of the Court of Accounts are also published on the website. The audits are public information when final and can be requested based in the Freedom of Information Act.

Accountability (law)

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

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 comprise of mainly the Court's observations on the audited execution accounts, the conclusions of its regular public and private entities, the detected law infringements and the measures taken.⁴⁰³

⁴⁰¹ www.cdep.ro.

⁴⁰² <http://www.curteadeconturi.ro/sites/ccr/EN/Publications/default.aspx>.

⁴⁰³ Art 12 of the Law on the organization and functioning of the Court of Accounts.

Moreover, starting with 2008 until 2015, the Audit Authority within the Court has the obligation to transmit to the European Commission annual control reports comprising of yearly auditing results on the management of European funds.⁴⁰⁴

The deadline for submitting the annual reports of the Court of Account is of 6 months after the receiving of the necessary documents from the institutions audited.⁴⁰⁵

The Court of Accounts is required to have its financial management audited itself. The Court of Accounts' budget shall be controlled by a commission set up in this respect by the two Chambers of the Parliament. The Court of Accounts shall submit the execution of the draft budget, in the first session of each year, to the Parliament for approval, with the visa of this commission.⁴⁰⁶

There are no legal provisions within the Law no. 94/1992 which allow administrative bodies audited by the SAI to challenge or appeal against audit results, with the exception of the juridical procedures and appeals. All the appeal procedure are described by the *Regulation on the organization and conduct of the Court of Accounts' specific activities*. The administrative bodies can challenge the audit results within 15 days. A commission to solve the petition have to be put in place. If the results communicated by the commission are not accepted by the administrative body it can appeal to the Administrative Court.⁴⁰⁷

⁴⁰⁴ Art 14 of the Law on the organization and functioning of the Court of Accounts.

⁴⁰⁵ Art 38 of the Law on the organization and functioning of the Court of Accounts.

⁴⁰⁶ Art 35 of the Law on the organization and functioning of the Court of Accounts.

⁴⁰⁷ Art. 204-210 and 227-229 of the *Regulation on the organization and conduct of the Court of Accounts' specific activities*.

Accountability (practice)

To what extent does the SAI have to report and be answerable for its actions in practice?

The Court of Accounts provide a comprehensive annual report on its work to the Parliament and the financial audit carried on by a commission appointed by the two chambers take place. The debates on the report, as well as the other debates of the Parliament reunited Chambers are published on the Chamber of Deputies website. All the other reports of the Court of Accounts are submitted to the parliament in practice and they can be challenged by relevant agencies. Still there are huge delays within the Parliament to debate and vote on these reports.

However, if the existence and transparency of the reports is ensured, the media and the civil society interested in keeping the public institution accountable are raising the question of the implementation of the Court recommendation and of the decisions made as a result of the reports of the Court, in order to ensure a better use of the public money in the future.

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

The external public auditors, the staff of the Court of Accounts, have its own code of ethics aiming to ensure the professional conduct and integrity of the Court. The principles promoted by the code are: the lawfulness, the independence, the integrity, the objectivity, the professional competences, the confidentiality, and the professional conduct.⁴⁰⁸

The code covers the incompatibilities and stipulates that the auditors cannot be in a conflict of interest, but the possible situations are not covered. This situation is covered by the Code of Conduct of the Civil Servants. The auditors are prohibited from being under the direct

⁴⁰⁸ http://www.curteadeconturi.ro/sites/ccr/EN/Shared%20Documents/Ethic_code.pdf

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. Therefore the Councilors of Accounts and the Staff of the Curt have to submit the declarations of assets and interests.

Gifts and hospitalities are forbidden. Second, it is forbidden for 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, other than those requests that are assigned to them.

As the case for many of the Romanian codes of conduct, no post-employment restriction is in place.

The code of ethics is not applicable to the councillors of accounts, the 18 members of the Plenum of the Court, among who the President and vice-president of the Court. For them only the incompatibilities present in the law text are applicable.

Integrity (practice)

To what extent is the integrity of the audit institution ensured in practice?

Speaking of integrity, proven conflicts of interests or incompatibilities have not been reported from 2005 onwards. As the counsellors were subject to the incompatibility stipulations similar to that applied to the judges, they were interdicted to hold offices or functions other than that of teaching. Still, 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. In conclusion we cannot assess the efficiency of the existing codes of ethics.

The Court of Account have 12 training centres all over the country. However, the trainings focus mainly on professional competences and

audit technical and there are not covering the integrity issues.

Effective financial audits

To what extent does the audit institution provide effective audits of public expenditure?

One of the Court of Accounts duties is to examine the effectiveness of internal audit within government departments. According to the 2010 report of the Court, out of the 2152 audit missions, 60% were audit missions, 31% were control missions and only 9% were performance audit missions. Concerning the financial audits, only 9% of them finalized with conformity certifications showing the full respect of procedure and correctness of public funds management. The 672 control missions generated a number of 9312 measures recommended to be implemented to solve the problems.⁴⁰⁹ The number of conformity certificates reduced to a half since 2009.⁴¹⁰ The explanation of the Court itself concerns the improvement of the audit activity, becoming more effective in identifying problems. However, the involution of the financial management quality within public institutions is serious.

The audits are regular and do to date, as the representatives of the Court of Accounts assess. They are presented to the legislature and recommendations are made and mandatory to be enforced and implemented.

⁴⁰⁹ The report of the Court of Accounts activity, 2010, <http://www.curteadeconturi.ro/sites/ccr/RO/Publicatii/Documente%20publice/Raport%20de%20activitate%202010%2017.12.2010.pdf>.

⁴¹⁰ The report of the Court of Accounts activity, 2009, <http://www.curteadeconturi.ro/sites/ccr/ro/Publicatii/Documente%20publice/Raport%20de%20activitate%202009.pdf>.

Detecting and sanctioning misbehaviour

Does the audit institution detect and investigate misbehaviour of public officeholders?

The Court of Accounts detects and investigates misbehaviour of public institutions regarding their financial management and the performance of the officeholders. It has adequate mechanisms to identify misbehaviour, access to all records relating to financial management, power to request necessary information, inclusively power to request support from other public institutions, independent experts' reports. The Court has the authority to investigate misbehaviour when related to the accounts of a public institution. It has to investigate the correctness of public expenses, but also the opportunity of these expenses. Moreover, the Court has the political power and independence to identify responsibilities of officeholders, and there is a criminal offence for the civil servant not to put in practice the recommendations of the Court of Accounts. However the Court has not the resources to answer and to follow all the notifications and there are delays in finalizing the files.⁴¹¹

There are no data concerning the implementation of the Court recommendation, although there is a criminal offence for the civil servant not to put in practice the recommendations of the Court of Accounts.

Improving financial management

To what extent is the SAI effective in improving the financial management of government?

The Court of accounts focus on on making comprehensive, well-grounded and realistic recommendations to promote efficiency in the use of state money. The auditors are following up on the recommendations they make, but the lack of resources determine delays in investigations and there are no statistics concerning the implementation of recommendations.

⁴¹¹ Interview.

The review mechanism of the Court of Accounts decisions is the usual one, in justice. Some of the Courts recommendations are annulled by Court, because for the objectors contest the recommendations concerning the opportunity of public expenses, as there is no clear competence of the Court in assessing this and no clear methodology of for such an assessment.

6.9. ANTICORRUPTION AGENCIES (ACA)

SUMMARY

Having their resources less affected by the financial crisis than other public institutions, Romanian institutions with an anticorruption mission are performing generally well.

However, even if well regulated, they are not defended against the accusations of being politically used and their public image is not so good. This is also supported by the fact that, sometimes, during investigations, media can disclose confidential information about the files, quoting inside sources. The general opinion in this case is that the inside information is made public deliberately to incriminate and damage the image of political opponents.

Moreover accountability is not a strong point of the ACA. These institutions start a large number of files but too few of them are finished and there are no mechanisms to ensure accountability for this situation. Even more, the cooperation with civil society is very weak.

The assessment of the role is average. For the investigation the average score is determined by the large number of unfinished files. For the prevention and education dimensions the low score is determined by the low level of interest of ACA for this activities.

STRUCTURE AND ORGANISATION

The Anti-Corruption Agencies in Romania (ACA) were, prior to the EU integration in 2007 and still are highly valorised but also controversial institutions, as their performance in fulfilling their role – to fight against

corruption – is the most important indicator for the Mechanism of Cooperation and Verification⁴¹² established by the European Commission.

Therefore there are three main agencies whose main goal is to fight corruption. The administrative anti-corruption agency is the National Integrity Agency (ANI). Moreover, Romania has established a specialised prosecution office to fight corruption: the National Anticorruption Directorate (DNA) within the General Prosecution Office. A couple of Ministries organized specialized anticorruption offices. The most important of these is the General Anticorruption Directorate (DGA) within the Ministry of Administration and Interior. The similar structure within the Ministry of Defense will not be analyzed, as it is less important and active at a general level.

Consequently, this pillar will analyze the capacity, governance and performance in fulfilling their role of three very different institutions:

- The National Integrity Agency (ANI) – an administrative body in charge of collecting, monitoring and verifying declarations of assets and interest in order to identify incompatibilities, conflicts of interests and illegally acquired assets.
- The National Anticorruption Directorate (DNA) within the General Prosecution Office – a prosecution office specialized in corruption offenses and offenses related to corruption
- The General Anticorruption Directorate (DGA) within the Ministry of Administration and Interior – a specialised body in charge with preventing and fighting corruption within the Ministry and working with a large number of police officers and police procedures.

Having to assess three so different institutions, each of them received a score, presented here. The general scoring of the pillar was obtained by the simple average of the scores of the three institution for each dimension assessed. The Scores were initially given from 1 to 5 and the

⁴¹² More details on the introductory section.

average is made from 1 to 5, keeping only whole numbers. Afterwards all the 1 to 5 scores were transformed on a scale from 0 to 100. The possible scores being: 0 for the 1 in the text assessment, 25 for the 2 in the text assessment, 50 for the 3 in the text assessment, 75 for the 4 in the text assessment and 100 for the 5 in the text assessment.

National Integrity Agency (ANI)					
Overall ANI Score: 49.31 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 81.25 / 100	Resources	100	75	0	25
	Independence	100	50	0	50
Governance 33.33 / 100	Transparency	50	25	50	75
	Accountability	50	0	50	100
	Integrity Mechanisms	50	25	50	75
Role 33.33 / 100	Prevention	50		50	
	Education	0		100	
	Investigation	50		50	

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. Until 2007 several versions for this law have been elaborated, the final draft being unanimously approved on the 9 of May 2007 in the Senate, owing to the EU pressure of activating the safeguard clause. Further on, the Law 144/2007 establishing the ANI has been several times amended. The most important changes were made in 2010, after a decision of the Constitutional Court. Three different laws are shaping the ANI's activities: law number 144/2007, regarding its organization, law

number 176/2010 and law number 115/1996, both regarding integrity in exercising the public offices.

National Anticorruption Directorate (DNA)					
Overall DNA Score: 51.39 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 62.5 / 100	Resources	75	75	25	25
	Independence	50	50	50	50
Governance 66.67 / 100	Transparency	75	75	25	25
	Accountability	75	50	25	50
	Integrity Mechanisms	100	25	0	75
Role 25 / 100	Prevention	0		100	
	Education	0		100	
	Investigation	75		25	

The DNA was initially founded in 2002 as the National Anticorruption Prosecutor Office (PNA), a specialized prosecutor in fighting against the crime of corruption equal to the General Prosecution Office of the High Court of Romania. The fact that the law created a second General Prosecutor of Romania in the person of the head of PNA determined the Constitutional Court to assess some provisions of the law as unconstitutional. Since 2006 the office became a structure with legal personality within the Prosecutor's Office of the High Court of Cassation and Justice, specialized in fighting against corruption at medium and high level.⁴¹³ The DNA also has offices at local level in the 41 Romanian counties and in the capital city.

⁴¹³ <http://www.pna.ro/>

General Anticorruption Directorate (DGA)					
Overall DGA Score: 75 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 75 / 100	Resources	75	75	25	25
	Independence	75	75	25	25
Governance 83.33 / 100	Transparency	100	100	0	0
	Accountability	75	75	25	25
	Integrity Mechanisms	75	75	25	25
Role 66.67 / 100	Prevention	75		25	
	Education	50		50	
	Investigation	75		25	

The General Anticorruption Directorate is organized as a specialized structure within the Ministry of Administration and Interior. It is managed by a general director, usually a prosecutor appointed in this position. The general director is appointed by the minister thus, they have a direct hierarchical relationship. At the central level, the General Anticorruption Directorate is structured into as follows: the cabinet service, the control service, the human resources service, the structure of personal data, the investigation department, the inquest direction, the prevention direction and the support direction.⁴¹⁴ At the territorial level, the General Anticorruption Directorate has 41 county offices including the one in Bucharest.⁴¹⁵

⁴¹⁴ Rules of Organization and Function approved by the Order of the Ministry of Administration and Interior, number 275/2010, article 5

⁴¹⁵ Rules of Organization and Function approved by the Order of the Ministry of Administration and Interior, number 275/2010, Article 6.

ASSESSMENT

Resources (law)

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

Each of the Romanian ACA proposes its own budget and has a determined budget, according to the respective laws. Still, they don't have the final decision on the budget in any of the cases.

There are no formal guarantees of fiscal stability, the budgets of the ACA being subject to the budgetary amendments just like all the other public institutions and none of the laws is clearly stating an objective indicator for determining the budget. The budget is not increasing or decreasing, legally, if the number of cases addressed or the number of cases solved is changing.

The possibility to acquire further funding from their work on confiscating assets does not exist for Romanian ACA, as the confiscation of assets can only be decided by the courts. Nevertheless, other funding possibilities, including credits or non-reimbursable grants can be accessed by ACA in Romania. Still this cannot fund the core activities and salaries of the employees, only information campaigns, studies, development etc.

There is, however, an important difference between the three analyzed institutions. This difference lies in the level of decision over the budget and expenditures. The ANI president has the final decision over the institution budget, as an autonomous institution⁴¹⁶. The General Prosecutor of DNA answers directly to the General Prosecutor of Romania for the expenses decided, being a secondary authorising officer of accounts.⁴¹⁷ The General

⁴¹⁶ The Law number 144/2007 republished on the establishment, the organization, and the function of the National Integrity Agency, after the publication of the law 176/2010.

⁴¹⁷ The Emergency Ordinance number 43/2002 regarding National Anticorruption Department

Director of the DGA is a tertiary authorising officer of accounts, its independence in releasing accounts being even more limited.

Resources (practice)

To what extent does the ACA have adequate resources to achieve its goals in practice?

Each the Romanian ACA has been affected by the cuts in the state budget and the restrictions imposed because of the financial and economic crises in the last couple of years. Probably the most important measure affecting the three institutions equally was the impossibility to employ new staff for 6 out of 7 vacant positions.⁴¹⁸

Apart from the limited resources, we can identify for ANI and DGA some financial and material limits of the budget. After the decision of the Constitutional Court in 2010 regarding, among other things, the procedure of processing data of assets declarations, a new public portal and the recommendation of the external audit for the year 2010, the National Integrity Agency requested an additional budget during the year 2011 in order for it to perform its activities effectively. The ANI only received 36% of the requested amount.⁴¹⁹

For the DGA, the interviewed experts agreed that there are budgetary limits for the institutions, which are limiting its operational efficiency, as the technical equipment cannot be renewed.

Moreover, there has been some fluctuation within the personnel of all the three ACA. This situation seems to be a common situation for the budgetary institutions.

⁴¹⁸ More details are presented under the Public Sector pillar.

⁴¹⁹ The amount requested by the National Integrity Agency was RON 7.384.000, out of which the amount received by the National Integrity Agency was RON 2.700.000. For more information please see the annual report activity 2010 of the ANI.

The selection and the appointment of the integrity inspectors of ANI is based on a contest organized according to the special regulation approved by the National Integrity Council (CNI), openly published. The appointment of the inspectors of integrity and the appointment of the other public servants is made in accordance with Law number 188/1999 regarding the Statutes of civil servants.⁴²⁰

The prosecutors of the DNA are appointed by the order of the chief prosecutor of the DNA with the approval of Superior Council of the Magistracy. To be appointed within DNA the prosecutors must have a good professional qualification and reputation, a minimum of 6 years' experience as a prosecutor or a judge. The candidates are selected following an interview organized by the commission constituted in this aim.

The appointment, the promotion and the release of the police officers of the DGA within the structure of the judicial police are made in according to the competence norms approved by the order of the Ministry of Administration and Interior and by the expert opinion of the general prosecutor of the High Court of Cassation and Justice.

A general assessment of these provisions is that there generally is adequate academic background and sufficient previous work experience of staff members. This indicator is particularly strong for DNA. However, for none of the ACA the employees complete an initial/specialized training course in order to become new staff members. Moreover, their ethical screening before employment is identical to the one performed for the other respective state bodies: for the integrity inspectors as for the civil servants, for the prosecutors of DNA as for the magistrates under judiciary, for judiciary police officers as for the police officers under the law enforcement agencies.

⁴²⁰ The Law number 144/2007 republished on the establishment, the organization, and the function of the National Integrity Agency, after the publication of the law 176/2010, article 18, paragraph 2 and 3.

The reports of ANI, DNA and respectively DGA show that that employees of the institutions benefit from training and seminaries specialized on their respective activities.

For ANI, both the president and the vice-president are appointed after being recruited by means of open competition and they need have graduated law or economics, and to have had no political affiliation, as party members in the last three years.

The Chief Prosecutor of DNA is considered to be the first deputy of the General Prosecutor of the Prosecution Office of the High Court of Cassation and Justice, and is appointed according to the regulation of the judiciary. He/She is appointed for 3 years, with the possibility to be reappointed only once. The appointment by the President is made at the recommendation of the Minister of Justice with the notification of the Superior Council of Magistracy (CSM).

The General Director of DGA is usually a prosecutor appointed in this position. The General Director of the DGA is appointed in function by the Minister, as they have a hierarchical relationship.

Independence (law)

To what extent is the ACA independent by law?

The National Integrity Agency is an autonomous administrative institution. To ensure its independence, the National Integrity Agency has its own budget which is an integral part of the state budget.⁴²¹ According to the principle of operational independence, the president, the vice-president and the integrity inspectors of the Agency will not request or receive dispositions(?) relating to assessments on the wealth of, the conflicts of

⁴²¹ See the Law number 176/2010 regarding integrity in exercising the public officials and dignities, in order to modify and complete the Law number 144/2007 regarding the establishment, organization and function of the National Integrity Agencies, as well for the modification and completion other normative acts , article 8.

interest and the incompatibilities of any public authority and institutions or person.⁴²²

The DNA is a structure with legal personality within the Prosecutor's Office of the High Court of Cassation and Justice, specialized in fighting against corruption at medium and high level corruption.⁴²³ The DNA is an independent entity in a relationship with the courts, the prosecutor's office attached to them and with other public authorities, exercising its attributions under the law to ensure that the law is respected.⁴²⁴ The DNA is subordinated to the General Prosecutor of Romania and carries out its activity under the authority of the Ministry of Justice. This is an anomaly of the Romanian judiciary system, taking into account that according to the Constitution and the national law, the prosecutor and the magistrates, are part of the judicial branch; they are subordinated to the executive authority.

The General Anticorruption Directorate fulfils its activities according to provisions of the Emergency Ordinance of the Government, number 30/2007, which provides that the General Anticorruption Directorate is organized as a specialized structure within the Ministry of Administration and Interior. The General Anticorruption Directorate is in direct relationship with the Ministry of Administration and Interior, regarding the functional subordination. From an operational point of view the DGA should be independent.

In order to protect ACA from political interference the leaders of the institutions: President of ANI, Chef Prosecutor of DNA and General Director of DGA cannot be members of a political party.

⁴²² The Law number 176/2010 regarding integrity in exercising the public officials and dignities, in order to modify and complete the Law number 144/2007 regarding the establishment, organization and function of the National Integrity Agencies, as well for the modification and completion other normative acts , article 33, paragraph 3.

⁴²³ See Emergency Ordinance number 43/2002 regarding National Anticorruption Department and the Rules of internal Orders of the DNA.

⁴²⁴ See Emergency Ordinance number 43/2002 regarding National Anticorruption Department, article 2.

The recruitment of the President, Vice-president and Secretary General of ANI is made on clear professional criteria on the basis of an open competition and an examination in the Senate. The president of the National Integrity Agency is appointed in function by the Senate, for a single non-renewable 4 years mandate.

The recruitment of the Chef Prosecutor of DNA is made on clear professional criteria, still without an open competition, but at the recommendation of the Ministry of Justice. The Chief Prosecutor is appointed for a period of 3 years with the possibility to be reappointed only once.⁴²⁵

The staff and the heads of the respective ACA are protected against removal in accordance with the respective provisions of the sector of activity of the agency: the integrity inspectors of ANI are protected as civil servants, the prosecutors of DNA as magistrates, the police offices of DGA as judiciary police officers.⁴²⁶

Generally the same provisions are valid for the immunity from prosecutions resulting from the normal discharge of their duties.

Independence (practice)

To what extent is the ACA independent in practice?

The representatives of ACA present the institutions as being totally independent, operating in a professional and non-partisan manner. However, the media, civil society and the public opinion are not so optimistic.

ANI and DNA have been repeatedly accused of instrumenting political cases.⁴²⁷ Even if none of the accusations is founded and true, the trust of

⁴²⁵ See the Law 303/2004 regarding the status of the magistrates, article 54, paragraph 1

⁴²⁶ More details under the respective pillars.

⁴²⁷ <http://www.ziare.com/geoana/psd/reactii-la-ancheta-deschisa-de-ani-asupra-lui-mircea-geoana-video-991209>, <http://www.newz.ro/stire/126436/rizea-despre-ancheta-ani-e-un->

the public and public sector officials in the efficiency and the independence of these bodies is affected.

There is no common policy that the ACA staff to be removed from their position before the end of their term. However, there were cases in ANI that will be developed under the accountability indicator.

ACA are not limited in their investigations by other law-enforcement agencies, and their independence in term of investigative powers is generally high, being menaced only by the interference of political parties through corruption, as it can be seen in the examples above. There are few evidences concerning these interferences, but the damage at the level of the public opinion and trust is significant.

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

All ACA have to publish their annual reports and to present them to the supervising bodies for each of the respective institutions. ANI has to present its report and audit report within 5 days to the National Integrity Council. ANI also has to present trimestrial reports to the National Integrity Council.

DNA has to present its report no later than February the year after the assessed one to the General Prosecution Office, CSM and Minister of Justice.

[dosar-politic-imi-voi-dovedi-in-instanta-nevinovatie.html](http://www.gradesibiu.ro/2011/09/27/deputatul-cindrea-despre-ancheta-ceruta-de-ani-%E2%80%9Ein-spatele-acestei-campanii-murdare-sunt-interese-exclusiv-politice%E2%80%9D/),
<http://www.gradesibiu.ro/2011/09/27/deputatul-cindrea-despre-ancheta-ceruta-de-ani-%E2%80%9Ein-spatele-acestei-campanii-murdare-sunt-interese-exclusiv-politice%E2%80%9D/>, http://www.realitatea.net/secretar-general-ani-s-au-facut-presiuni-politice-asupra-agentiei_853575.html, <http://www.ziare.com/stiri/dna/dna-veriga-solida-a-unui-lant-ruginit-1107602>, <http://www.stiripolitice.com/2011/07/dna-nu-l-putem-ancheta-pe-borbely-din-cauza-presiunilor-politice/>, http://www.e-politic.ro/Parlament/Tudor-Chiurariu-Daniel-Morar-este-lipsit-de-credibilitate-Exclusiv-120735_7.html.

DGA is also required to publish its activity report.

All the ACA have to observe the confidentiality constraints and consideration, and on the other hand to respect the freedom of information act, Law no. 544/2011.⁴²⁸

Transparency (practice)

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

The ACA make information actively publicly available on their website, in a clear manner and with a useful level of detail. The declarations of assets and interests required by the law are also properly published. The website of ANI is: www.integritate.eu, the website of DNA is www.pna.ro (the acronym being a heritage of the 2002-2006 period when the institution was The National Anticorruption Prosecution office), and the website of DGA is: www.mai-dga.ro.

Generally ACA publish on their website all information required by law to be made publicly available. However, there are two important issues that have to be underlined under the assessment of the practice of the transparency in Romanian ACA.

On one hand, ANI was requested to make its procedures of investigation public, as they are, by nature, civil or administrative procedures, and not police or judiciary procedures, which can be confidential. The Centre for Juridical Resources (CRJ) sued ANI in court, asking for the declassification of these procedures but the case failed in the summer of 2011 after more than a year. For the moment the motivation of the judge has not yet appeared. There is important to say that CRJ is going to appeal after identifying a vulnerability of the judiciary procedures: in the cases concerning classified documents only a small number of judges can appear

⁴²⁸ More details under the public sector pillar.

in court, having the authorization of the National Office of State Secret to access secret and classified documents.⁴²⁹

On the other hand, DNA has another important problem concerning ensuring the confidentiality of the entire information of the investigations. There have been cases when the media is quoted judiciary sources inside DNA and revealed confidential information to the public.

Accountability (law)

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

All ACA are required to file annual reports, to make them public and to present them to the respective bodies to which they are accountable and make them publicly available on the website.

A common legal framework for ANI and DGA is the framework regarding the whistle-blowers' protection. The law 571/2004 regulates protection measures regarding those people who complained or informed over the infringements of the law, committed by the people with leading or executive position.⁴³⁰ However, the law is not applicable to magistrates and therefore to the prosecutors of DNA.

ANI is accountable to the National Anticorruption Council and to the Senate⁴³¹. The aim of the National Integrity Council, as the representative body under the parliamentary control, the warrant of the independence and as the supervisor of the activities of the Agency, is to make recommendations regarding the strategy and the activity of the Agency. Thus, the National Integrity Agency have to present trimestrial reports of activity to the National Integrity Council which analyzes and makes

⁴²⁹ Radu Nicolae, CRJ

⁴³⁰ More details under the public sector pillar.

⁴³¹ The accountability shall not be confounded with the subordination. ANI shall be independent, but it files reports to the CNI and through this to the Senate.

recommendations regarding the report . The analysis of the CNI will be submitted to the Senate.⁴³²

ANI files reports on their investigations, irrespective of their findings, also, and present these reports to the interested parties when they are finished. ANI cannot issue resolutions on the basis of its reports, but it only can inform the prosecution office. The interested party can complain over the report to the administrative court.

ANI is required to have an independent audit carried off, until March the year after the assessed one. The audit report has to be presented to the CNI.

The CNI can be considered, in a way, an oversight committee including the citizens in this work and ensuring, in this way, the citizens' oversight over the ANI. The CNI is made out of a member appointed by each parliamentary group of the Senate and minority group of the Chamber of Deputies, a representative of the Ministry of Justice, a representative of the Ministry of Public Finance, a representative of the National Union of County Councils of Romania, a representative of the Association of Municipalities of Romania, a representative of the Association of Towns in Romania, a representative of the Association of Communes of Romania, a representative of senior civil servants and a representative of civil servants, appointed by the National Agency of Civil Servants; a representative appointed by agreement between the associations of magistrates, legally constituted; a representative appointed by the civil society organizations, legally constituted, working in human rights, legal or economic-financial field. However, the Council is validly constituted if the entities mention above appointed at least half plus one of its members. We consider that this provision represents vulnerability on the functionality of the Agency, because, taking into account the competences of the National Integrity Council, it doesn't respect the principle of representation.

⁴³² Strategic Document on the activity of National Integrity Council, January 2011

DNA is accountable to the Ministry of Justice and shall submit an annual activity report before the Superior Council of Magistracy and the Ministry of Justice. The annual report emphasizes statistical data regarding the criminal investigation activity, while each case's investigation report and Prosecutor's charge is confidential. The judicial review mechanism for the DNA's work is the ordinary judiciary one, the appeal in court.

The independent external Audit is not mandatory for DNA, and there is no citizen oversight committee for DNA. The only body including representatives of the civil society overseeing DNA's activity is CSM, with two representatives of the civil society out of 19 members. As underlined above the magistrates are not protected by the whistle-blowers' protection law.

The General Anticorruption Directorate is directly subordinated to the Ministry of Administration and Interior.⁴³³ The report has to be publicly made available on the website. The investigation reports are confidential during the investigation itself, but they can be made public afterwards. The same judiciary review mechanism available to citizens in what police work is concerned is also available for DGA.

The independent external Audit is not mandatory for DGA.

With DGA works a representative and overseeing body named: the *Strategic Committee for Supporting and Assessing the General Anticorruption Directorate*. It organizes the cooperation mechanisms with the civil society, and it was founded by a decree of the Ministry of Administration and Interior 1154/2006. This consultative body has monitoring, analysis and assessment tasks related to the activity of the General Anticorruption Directorate and it reunites representatives of the Ministry and several NGOs. Different from the CNI, working to overview the activity of ANI, the representatives of the civil society in the *Strategic*

⁴³³ According to the Rules of Organization and Function approved by the Order of the Ministry of Administration and Interior, number 275/2010, article 2, paragraph 3 and the Government Decision, number 416/2007, regarding organizational structure of the Ministry of Interior and Administrative Reform.

Committee are not candidates examined by the Senate or other representative body. They are named, without any preliminary procedure, by the Ministry of Administration and Interior. The *Strategic Committee* analyze the DGA reports and reform initiatives and issue recommendations.

Accountability (practice)

To what extent does the ACA have to report and be answerable for its actions in practice?

The ACA activity reports are made available online; they are posted on the website and are presented in a clear manner.⁴³⁴ The ACA activity reports consist of information about the financial resources, human resources, infrastructural resources, operational activity, institutional transparency, institutional cooperation, public agenda and external audit for ANI. They are clearly presented and with an appropriate level of detail.

However, the timing of the report submission is not a strong point for ANI. In 2010 ANI's President failed for several months to present its report to the CNI, the accountability of the institution being annulled in practice.

Moreover, in practice, at this moment in 2011, the National Integrity Council doesn't have in its structure all the representatives mentioned by law, this being possible according to the law. Even more, the position of substitute for the representative of the civil society organization is vacant (the Senate hasn't yet appointed a substitute from among the civil society organizations)

Moreover, the content of past reports on the operational activities is controversial. ANI made public the number of cases they sanctioned and sent to the prosecution office. However, the real performance indicator should be lower, as there are an important number of cases contested and

⁴³⁴ <http://www.integritate.eu/home/rapoarte-de-activitate.aspx>, http://www.pna.ro/bilant_activitate.jsp?id=20#, <http://www.mai-dga.ro/index.php?l=ro&t=70>

failed in court by the interested parties . The number of successful investigations made by ANI is therefore lower than the one presented in their reports.⁴³⁵ This is also slowing the efficiency of the judiciary review mechanism in practice.

Concerning whistle-blowing, the Advocacy and Legal Advice Centre (**ALAC**) of TI-Romania received information from two whistle-blowers. Both of them have been dismissed afterwards. The case of one of them is particularly interesting. The whistle-blower information concerned several illegal expenses of the ANI managers (President and Secretary General). The whistle-blower was dismissed after a period when the managers refused to allow her to enter the institution. At the same time the Court of Accounts audited ANI and find the information of the whistle-blower correct. ANI contested the Court of Accounts audit report but lost in the front of the High Court. In another trial the whistle-blower wins and has to be re-employed. Two days after she is dismissed again without further explanation. A new trial is on-going.

Integrity (law)

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

The norms of professional conduct stipulated by Code of Conduct of Civil Servants are binding for those persons who occupy a public function within central and local public authorities and institutions, as well as within the autonomous public authorities, including for the employees of ANI. Moreover, there is a special code of ethics and professional conduct for the staff of the National Integrity Agency. The norms on ethics and professional conduct provided by the present Code are compulsory for the staff of the ANI. The Code of ethics and professional conduct aims to

⁴³⁵ National Report on Corruption, 2009, http://www.transparency.org.ro/politici_si_studii/studii/national_coruptie/2009/NCR2009ro.pdf.

enhance the quality of professional activity, a good management on fulfilling all the job tasks.

DNA staff had no specific code of conduct, but the magistrate, the police officers and the public servant were compelled to follow their respective deontological codes. The absence of a specific code of conduct represents one of the vulnerabilities identified within the institution of DNA. When we can not talk about a unitary system of rules on the level of a public institution this may be a problem which may influence the organization and function of the public institution, in this case, the function of the DNA. The prosecutors within the DNA are obligated to respect the provision of the Magistracy Code of Conduct.⁴³⁶

The employees of the General Anticorruption Directorate have to respect the provision of the Code of Conduct of the civil servants with special status, approved by the Government Decision, number 9991/2005. The Government Decision emphasizes that the employees of the General Anticorruption Directorate have to respect some basic principles in their activities as follows: the principle of legality, equality, impartiality, loyalty, moral integrity, professionalism, respect and operational independence.

The General Directorate of the General Anticorruption Directorate shall not perform any other public or private office/function, except for teaching positions in higher education.

All applicable codes of conducts and the law regarding the transparency and integrity in the public sector cover asset declarations, incompatibilities and conflict of interest rules identifiable from the interest declarations. These codes also cover rules on gifts and hospitality. However, there are no post-employment restrictions for civil servants and magistrates.

Moreover, in 2010 the regulations regarding the National Anticorruption Agency changed and from that moment on some data on the interest and assets declarations are no longer publically presented. Even more, the procedures of ANI became longer and the decisions are no longer directly

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For more information, please see the Judiciary Pillar

presented to the court, but to a commission of magistrates or to the prosecution office. The new law appeared after the old one was declared unconstitutional by the Constitutional Court, which observed that the law does not assure the protection of personal data and that the ANI is acting as a prosecution office without the constitutional right and therefore being vulnerable to abuses. The modification of the law attracted criticism from the European Commission, through the MCV report⁴³⁷. However, the civil society appreciated the Constitutional Court's decision as putting an end to several cases started by ANI but failing in court.⁴³⁸

There is no standard practice of integrity screening during ACA recruitments, other than those for the other institutions of the same kind (administration, prosecution office, police department), for any of the assessed institutions.

Integrity (practice)

To what extent is the integrity of members of the ACA(s) ensured in practice?

Generally the codes of conduct are effective in practice and the staff is regularly trained on integrity issues, as they have to oversee the implementation of these regulations at different levels for other public sector employees as well.

However, there were important suspicions over the integrity of the President of the National Anticorruption Agency. Even if not proved, the accusations are affecting the reputation of the institution and the trust of the citizens.

Moreover, concerning both ANI and DNA the Advocacy and Legal Advice Centre (**ALAC**) of TI-Romania received information from whistle-blowers. The information provided to the authorities by the whistle-blowers of ANI,

⁴³⁷ The European Commission Decision of 13 December 2006. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0056:0057:EN:PDF>
⁴³⁸ <http://www.cri.ro/Reminder-asupra-ANI-529> (press release of CRJ, June 18th 2010)

regarding illegal expenditures of public money were confirmed by the Court of Accounts and later by the High Court of Cassation and Justice. For DNA the situation is more difficult, as the law does not provide protection for magistrates' whistle-blowing. However the evidence possessed by ALAC is strong, but should remain confidential for the moment.

Prevention

To what extent do the ACA engage in preventive activities regarding fighting corruption?

On the prevention side, ANI has to ensure the publication of all assets and interest declarations. All public institutions have to collect this declaration within a deadline (15 of June), to publish them on their own website and to present these declarations to the ANI integrity inspectors. This is the preventing side of the ANI activity. The other side is the control of these declarations, that falls under the investigation dimension.

As presented above the content of past reports on the operational activities is controversial. ANI made public the number of cases they sanctioned for not submitting the declarations. However, the real performance indicator should be lower, as there are an important number of cases contested by the interested parties in court and failed. The number of successful investigations made by ANI is therefore lower than the one presented in their reports.⁴³⁹

The other institution assuming prevention is the DGA. It operates a system of online or phone reports for citizens and it has a specialized prevention department in charge with training for public servants, and mainly for police officers and other employees of the Minister of Administration and Interior and in charge with information campaigns. Also, the Service of Anticorruption studies carried out analyses and case studies for identified

⁴³⁹ National Report on Corruption, 2009, http://www.transparency.org.ro/politici_si_studii/studii/national_coruptie/2009/NCR2009ro.pdf.

individual, organizational and external factors that rest at the base of committing acts of corruption by the employees of the Ministry of Internal and Administrative Reform. The studies are published on the website.⁴⁴⁰

In 2010 ANI sent to the court/ the prosecutor/the disciplinary comities 291 files as a result of its activity of verifying declarations. Out of these 291, 175 files have been forwarded to the prosecutor, 110 files have been forwarded to the disciplinary comities and 6 file have been forwarded to the court. Also, the number of people verified was: 1593 and the number of finalized files was: 1576.⁴⁴¹

ANI and DNA do not publish any kind of research or study on their website.

Concerning anticorruption legislation, the ACA can propose legislation for their own regulation, but they do not receive and respond to anti-corruption advice requests for drafting regulations or carrying out other activities from the public and/or other government agencies.

Education

To what extent does the ACA engage in educational activities regarding fighting corruption?

Apart from DGA, none of the ACA actively seek to educate the public on fighting corruption. According to the law ANI and DGA have to work with the civil society within the National Integrity Council and within the *Strategic Committee* respectively.

On one hand the civil society in the *Strategic Committee* of DGA is named without an open procedure by the Ministry, but, on the other hand the cooperation between the civil society and DGA is good.

Concerning the representative of the civil society in the National Integrity Council, he is in an opened conflict with the President and Secretary General of ANI, who accused him, for ridiculous reasons, of making public

⁴⁴⁰ <http://www.mai-dga.ro/index.php?l=ro&t=69>

⁴⁴¹ www.integritate.eu

inside information of the agency. From this point of view the assessment of the educational role and namely of the performance of ANI in cooperation with the civil society is very bad.

Investigation

To what extent does the ACA engage in investigation regarding alleged corruption?

Investigation is the main competence for all the three assessed ACA. All three institutions are well-defined and clearly distinguished from other law enforcement agencies in what their specific competences are concerned.

In practice the majority of the ACA work is not related to high ranking officials from the ruling party/administration, but there are cases started in all the assessed institutions. Generally the started high corruption cases are still on-going and unfinished at the level of ANI and DNA.

Regarding the operative activity of the ANI, in 2011, until June, a total number of 3270 investigations (534 complaints and 2736 ex officio complaints) were closed and 3120 was reopened as ex officio complaints.⁴⁴² ANI's proactivity is one of its strengths, still it has determined an important number of accusations regarding its lack of independence and the fact that it starts investigations against the political opponents of the people in power, which affects at least the image of the Agency.⁴⁴³

Until the 30th of June 2011 there were finished: 6 files regarding confiscation of the unjustified wealth, 52 files regarding the finding of the incompatibility state, 11 files regarding the fact –finding of administrative conflict of interest, 18 files regarding possible facts of criminal corruption

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http://www.integritate.eu/UserFiles/File/Rapoarte/RaportDeActivitate_Apr_lun_2011.pdf.

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See supra, the independence dimension.

One of the issues related to the investigations carried out by the DNA and DGA is that DNA is using the help of DGA police officers in its investigations. Some problems appear when the prosecutors are indicting people who are not employees of the Minister of Administration and Interior relying on an investigation made by DGA. As DGA only has jurisdiction over the employees of the Minister of Administration and Interior, from a procedural point of view their investigation is null and void and even if proved guilty the accused can be acquitted because of a procedure mistake.

A comparative analysis of the main indicators leads to the conclusion that in 2010, the criminal investigation activity of the National Anticorruption Directorate increased by 19.75% in the number of cases to be solved (5827 compared to 4866 in 2009) and increased by 11.93% in the number of solved cases (2957 compared to 2642 in 2009). The solutions ordered by the prosecutors on the merits of the case increased by 7.65%, in 2014 cases, compared to 1871 in 2009. In 943 cases the prosecutors ordered their transfer to other institutions for lack of jurisdiction or they ordered the connection of the cases.⁴⁴⁴ However 2870 cases remained unsolved, 5 of them with unknown author (compared to 2224 cases, of which 7 with unknown author in 2009), which represents 49.26% of the total number of cases to be solved (45.71% in 2009). Thus, one can notice a small increase of only 3.55% between the cases remained unsolved and the cases to be solved.

During the 2010, 2000 criminal acts were investigated and submitted for prosecution. There were 40.15% more than in previous year, 2009. Out of them, 424 were submitted to the National Anticorruption Directorate, and 1576 were submitted to Prosecutor Office of the High Court of Cassation and Justice.

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<http://www.pna.ro>

6.10. POLITICAL PARTIES⁴⁴⁵

SUMMARY

According to the Global Corruption Barometer the Political Parties are among the most corrupt organisations in Romania, receiving a score of 4.5 on a scale from 1 (free of corruption) to 5 (extremely corrupt).⁴⁴⁶

With a very difficult procedure of establishing new parties and an electoral threshold of 5% of votes, the Romanian political party system is designed to perpetuate the existing parliamentary parties. The resources available legally for a new party are so limited that the real concurrence for existing parties is excluded. While the opposition parties in the parliament enjoy similar rules and resources as the government parties, the new and small parties face unfriendly and limiting rules concerning both their setting up and their financial resources.

Moreover, the lack of exact information concerning the member lists of existing parliamentary parties allow in practice the existence of an uncontrolled source of revenue. The actual transparency of parties is minimal. Parties are not obliged to declare the total number of their members. The information is very important, as significant amounts of money are declared by the parties as being members' contributions or members' donations. As there is no clear independent registration of these members, the mechanism of members' contributions or members' donations can be used for unregistered sponsorships.⁴⁴⁷

All analysts of the Romanian parties agree that interest groups and clientelistic relationships dominate the parties' life. Generally the

⁴⁴⁵ We would also like to thank to Mr. Dan Sultănescu, director of the PRO Institute and a specialist in Romanian politics for his contribution to the study launched in 2010, who served as a basis of the present analysis.

⁴⁴⁶ http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results and http://www.transparency.org/ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf

⁴⁴⁷ Cristian Pirvulescu, interview for the NIS analysis.

candidates of political parties are recruited from business men and local business men. The phenomenon grew stronger after 2008 when the electoral system changed to a single candidate constituency.

Political Parties					
Overall Pillar Score: 34.03 / 100					
	Indicatori	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 43.75 / 100	Resources	25	25	75	75
	Independence	75	50	25	50
Governance 33.33 / 100	Transparency	50	25	50	75
	Accountability	50	25	50	75
	Integrity Mechanisms	50	0	50	100
Role 25 / 100	Interest aggregation and representation	0		100	
	Anti-corruption commitment	50		50	

STRUCTURE AND ORGANISATION

According to existing data from the Registry of Political Parties, held by the Bucharest Municipal Court, in 2009, 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).

ASSESSMENT

Resources (law)

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

The association in political parties is free under the Romanian Constitution and the law of the political parties. However, parties promoting defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality are prohibited by law. The political parties or organizations which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional. Parties are mentioned by the Constitution, but their role is described by the specific law.

The legal process of establishing parties is particularly difficult in Romania. A new party has to have at least 25.000 founding members, from at least 18 counties, at least 700 founding members in each county. Parties can appeal to the rejection of their registration in court. The most frequent situation is the rejection of the court because the minimum number of founding members, 25,000 is not met and the chances of the appeal of parties are very low.

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. 33/2007 concerning the organization of elections for the European Parliament; Law no. 35/2008 concerning the election of the Chamber of Deputies and the Senate).

The main income sources are represented by donations, member subscriptions, incomes derived out of the parties' collateral activities and state funding⁴⁴⁸. 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). According to this law, political parties receive a sum equivalent to 0.04% of the national budget⁴⁴⁹. This sum is divided between the parties and there are several obligations 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 in 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 state⁴⁵⁰.

There are several rules stated in 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.

As to private funding, the law imposes a set of limits on the parties: the member subscription fee cannot surpass annually 48 minimum wages; the donations have to be smaller than 200 minimum wages, 500 minimum

⁴⁴⁸ This matter will be discussed in the integrity section.

⁴⁴⁹ In absolute terms, this threshold should be roughly 30.27 million RON. According to the data of the Permanent Electoral Authority state funding will rise in fact in 2009 to 7.26 million RON.

⁴⁵⁰ Up to 2008, the control over political funding and spending was assigned to the Court of Audit. For details see accountability section.

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 up 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 budget⁴⁵¹ (0.050% in an electoral year). The limits of donations determine the persons and companies wanting to donate over the limit to hide their donations. The regulation as it is now is not limiting the capacity of the parties to fundraise, but are limiting the transparency.

Resources (practice)

To what extent do the financial resources available to political parties allow for effective political competition?

There are big gaps between the regulations and practical possibilities available for parliamentary parties and the ones for the small and new parties. Moreover, the oversight of the financial management of the biggest parties is difficult and ineffective. From this perspective the effective political competition between the establishment and new-comers is not ensured.

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 of PSD and PNL 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.

⁴⁵¹ In absolute terms, in 2009 this threshold is 18.92 million RON.

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). While the opposition parties in the parliament enjoy similar rules and resources as the government parties, the new and small parties face unfriendly and limiting rules concerning both their setting up and their financial resources.⁴⁵² During the electoral campaign the parliamentary parties are again advantaged by the law. In practice small parties have even less air time comparing to big parties, as their time is generally granted during the day periods with lower ratings.

It is difficult to appreciate the balance between private and public funding of political parties. The state bodies, mainly the Permanent Electoral Authority, who took over the responsibilities of the Court of Account in controlling party financing, fail in discovering the unregistered sponsorships for parties. After the changing of the electoral law in 2008, the party sponsorships are made by local business men entering the party and the Parliament. Afterwards they conduct their actions in the Legislative in order to recover the “investment in the party” and they participate to the government with a local agenda, losing the national interest from their sight.⁴⁵³

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

The general framework (set forth by Law no. 14/2003 on the political parties and Law no. 334/2006 on the political parties’ financing) establishes several conditions for the organization of the political parties.

⁴⁵² Cristian Pirvulescu, interview for the NIS analysis.

⁴⁵³ Interview and the report on the Parliamentary Elections in 2008 of Pro Democracy Association.

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”⁴⁵⁴. The activity of parties that through their actions, propaganda or their internal statute infringe upon the Constitution is forbidden by law.

The authorities in charge, namely the law courts, can refuse the registration of a party because of an insufficient number of supporting signatures. The law is requiring 25.000 members at the beginning⁴⁵⁵ Political parties can also be banned if the court decides it infringes the freedom of speech and it practice a hate and anti-national speech, if they are secret organizations and if they promote the single-party systems and they act against democracy.⁴⁵⁶ The party can also be dissolved if it has no activity, no general assembly or candidates nominated for 5 years. A party can also be considered as not following its aims if it doesn’t receive 50.000 votes at national level. In practice no party has been banned for this reason.⁴⁵⁷

The independence of the political parties is to be analysed 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 main variable in the equation of state funding is the number of votes a party receives during elections.

⁴⁵⁴ Art. 2 of the Law no. 14/2003

⁴⁵⁵ The 25.000 founding members must be registered in at least 18 counties and no less than 700 in each county.

⁴⁵⁶ Cap VII of the Law no. 14/2003.

⁴⁵⁷ Ibidem.

At the same time, the sums received by parties from the state are far smaller than the cost of an electoral campaign. In 2008, for instance, the sum awarded by the state to six parties was slightly larger than in the previous year, approximately 11 million RON, roughly 2.5 million Euros, due to the fact that in 2008 two elections were held; in 2009, state funding was reduced by 30%. In this context, the parties cannot be considered as being limited in their actions by the state funding. Experts appreciate that parties use state funds to strength their independence and to affect politically the public bodies.⁴⁵⁸

The only authorities directly overseeing the parties are the Permanent Election Authority and the Court of Accounts. The competent body for the control of the party funding and the implementation of the law is the Permanent Election Authority, which now exercises the functions that were within the competence of the Court of Accounts under previous legislation.⁴⁵⁹ The law establishes certain prohibitions and restrictions, including a ceiling for campaign expenses.⁴⁶⁰ Unfortunately, the expert opinion is that simplicity of the law and the limited resources of the Permanent Electoral Authority make the party financing control inefficient.⁴⁶¹

From the point of view of the political relation with the public bodies, legally, there are not institutions able to interfere with the political parties decisions. The government oversight reasonably designed and limited to protect public interests.

⁴⁵⁸ Interview

⁴⁵⁹ The Court of Accounts retains the function of controlling the subsidies which political parties receive from the state budget.

⁴⁶⁰ For a presidential election, the maximum expenditure limit for a party or political alliance which has nominated a registered presidential candidate, or for independent candidates, is 25,000 minimum salaries. The official minimum salary for 2009 was 600 RON (around 140 Euro); thus, the spending limit for each nominating party or alliance, or independent candidate, was around 3.5 million Euro.

⁴⁶¹ Expert interviewed and civil society reports: Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php.

Independence (practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

One can find some examples of situations when the courts refused to register parties because they did not have the required number of supporting signatures from founding members: 25.000 from at least 18 counties, at least 700 in each county. Sometimes courts accused parties of forging signatures in order to reach the number.⁴⁶² Experts assume there is a limit met for new parties' registration by older, bigger and parliamentary parties, designing the law. In fact the big number of required supporting signatures from founding members is considered to be the most important limit to the existence and independence of the political parties in Romania.⁴⁶³

For opposition parties, present in the Romanian Parliament, the limits put by the state institutions and indirectly by the governing party are more subtle. Generally they take the form of administrative controls. However it would be hard to advance the hypothesis that opposition parties are suffering from oppression from the authorities.⁴⁶⁴

Detention or physical attacks against political party members do not happen, although they occurred in 1990-1991 when the multi-party system was developing.⁴⁶⁵

⁴⁶² In 2011 the attempt to register a Party of the People by a well known journalist was banned by the court because of irregularities in the signing lists.

⁴⁶³ Cristian Preda, Sorina Soare, *Regimul, partidele si sistemul politic din Romania*, Nemira, 2008.

⁴⁶⁴ Cristian Pirvulescu, interview for the NIS analysis.

⁴⁶⁵ Dan Pavel, „Nu putem reuși decât împreună!”. *O istorie analitică a Convenției Democratice (1989-2000)*, Iași, Editura Polirom, 2003.

Transparency (law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

The transparency requirements on Romanian political parties are minimal. 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 resources⁴⁶⁶. However what parties publish by law is a comprehensive table and financial report, including global money amounts, without highlighting the individual donors, either firms or persons, if their contribution is less than 10 average salaries.

The law imposes some semi-transparent conditions for the benefactors. On 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 requirement should be sufficient to ensure the transparency of finances, but there are no clear provisions to ensure its proper implementation.⁴⁶⁷

The 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

⁴⁶⁶ This matter was discussed in detail in the resources and accountability sections

⁴⁶⁷ Interview.

and facilitate verification,⁴⁶⁸ limiting the verification activity and the transparency.

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.

Disclosure and reporting on the expenditures for the campaign are required only after the election and are to be effectuated within 15 days from the publication of the final election results. Financial reports for the periods between elections are public through annual reports and have to be made public in the official gazette.

Transparency (practice)

To what extent can the public obtain relevant financial information from political parties?

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 political parties, in spite of dire accusations concerning this aspect, brought forward in the media.⁴⁶⁹

The actual transparency of parties is minimal. Parties are not obliged to declare the total number of their members. The information is very important, as significant amounts of money are declared by the parties as

⁴⁶⁸ The Emergency Ordinance 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 Emergency Ordinance no. 749/2007.

⁴⁶⁹ Reports of Pro Democracy Association.

being members' contributions or members' donations. As there is no clear independent registration of these members, the mechanism of members' contributions or members' donations is used to commit money laundering of unregistered sponsorships.⁴⁷⁰

Also, some sponsors do not make their name public in order to avoid tracing their contribution to the party when receiving government contracts if the party wins elections.⁴⁷¹

However, it should be mentioned that most of the Romanian political parties have enhanced their communication strategies by making use of online information means. But this generated very violent political campaigns via internet.⁴⁷²

Accountability (law)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

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 Accounts in controlling the funding of the parties will be maintained (article 35, paragraph 2 of Law no. 334/2006) – the provisions regarding the Court of Accounts have been active up to the 1st of January 2007 (the term was prolonged afterwards to the 31st of December 2007, by the Emergency Ordinance no. 8/2007). From that day onwards, the PEA has become the leading authority on party funding

⁴⁷⁰ Cristian Pirvulescu, interview for the NIS analysis.

⁴⁷¹ Ibidem.

⁴⁷² Expert interviewed and civil society reports: Prezidentiale 2009 - Raport de observare a alegerilor pentru Presedintele Romaniei din 2009, March 2010, p.72. Available at www.apd.ro/publicatii.php.

control. The parties have an obligation of cooperating with the PEA 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). Unfortunately, the expert opinion is that simplicity of the law and the limited resources of the Permanent Electoral Authority make the party financing control inefficient.⁴⁷³

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 the 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).

Law no. 14/2003 imposes minimal organizational conditions meant to reduce centralization and the build-up of political accountability of the

⁴⁷³ Cristian Pirvulescu, interview for the NIS analysis.

highest echelons of the party. Therefore, according to article 10 of the 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.

Accountability (practice)

To what extent is there effective financial oversight of political parties in practice?

As the reports submitted by the parties to the Permanent Electoral Authority are very simple and the party financing mechanisms are generally very complicated in order to avoid control, and taking into account the lack of human resources of the Permanent Electoral Authority especially in the field of party financing control, the control of parties is limited in scope and not very efficient.⁴⁷⁴ The parties do not have a special account dedicated to funds' administration for the electoral campaign and they do not declare the transfer of money for the electoral campaign before the electoral campaign, which make the controls of the PEA very difficult and their findings unsatisfactory. Furthermore, the reports submitted by parties do not include the identity of donors and, because of the lack of resources for control of the PEA, there are very few controls of the actual observance of the legislative framework concerning the identity of donors and the maximum value of the donations allowed.

Obviously, the internal committees 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

⁴⁷⁴ Interview

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. However the central circles of high power and the local circles dependent on the “local barons”, leaders of patronage networks at local level, can misappropriate the accountability purposes.⁴⁷⁵

Integrity (law)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

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 parties 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 party status. Also, the gain or loss of the position of party member is subject solely to the internal jurisdiction of the party. Therefore, the party establishes its own criteria and its own integrity limits.

⁴⁷⁵ Interview.

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 concerning the selection of party leadership, the selection of candidates and the decision-making processes regarding party platforms. However the internal democracy is limited, more by the practice, than by the regulations. Delegates to national conferences of the parties often vote during late hours of the night in spaces that do not ensure the secrecy of the vote.

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* may not become party members (PNL); people who are not deemed and known as honest citizens, with a good reputation, may not 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) may not become members and also “people currently prosecuted for various crimes may 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. 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.

Integrity (practice)

To what extent is there effective internal democratic governance of political parties in practice?

At internal level, within the first three parties in terms of electoral support, institutions with a quasi-judicial 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 role⁴⁷⁶ 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 bodies⁴⁷⁷.

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.

According to the Global Corruption Barometer the Political Parties are among the most corrupt organisations in Romania, receiving a score of 4.5 on a scale from 1 (free of corruption) to 5 (extremely corrupt).⁴⁷⁸

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. It seems that the most important decision in the Romanian parties is either at local level or at the level of public officials holding central governmental positions. The internal committees are generally more formal and following the instructions of the local power centres of the parties.⁴⁷⁹

⁴⁷⁶ The collegial leadership bodies are usually fulfilling this purpose.

⁴⁷⁷ Self-suspension as a procedure is stipulated in the statutory acts of PNL and PSD, in the latter case as a member's right of a primarily image value.

⁴⁷⁸ http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results_and
http://www.transparency.org/ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf

⁴⁷⁹ Interview.

Interest aggregation and representation

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

The Romanian parties tend to be more and more stable and to have more and more articulate and distinct political parties. However the populist speech is also more and more used.⁴⁸⁰

All analysts of the Romanian parties agree that interest groups and clientelistic relationships dominate the parties' life. Generally the candidates of political parties are recruited from business men and local business men. The phenomenon grew stronger after 2008 when the electoral system changed to a single candidate constituency. The motivation for entering parties and candidate is double: the reputation and the possibility to take advantage of public funds for the personal business.⁴⁸¹ For this reason corruption is a very important but also sensitive issue for political parties, for their reforming members inside and for the civil society working to keep them accountable as well.

Consequently the legitimacy of political parties among the population and the trust of citizens in political parties have the lowest rate comparing to other institutions. Only 17% of the Romanians put their trust in political parties.⁴⁸² Consequently the linkage between the political parties and the civil society is almost absent.

⁴⁸⁰ Cristian Preda, Sorina Soare, *Regimul, partidele si sistemul politic din Romania*, Nemira, 2008.

⁴⁸¹ Cristian Pirvulescu, interview for the NIS analysis.

⁴⁸² The Institute of Research of Life Quality.

http://www.iccv.ro/valori/newsletter/NLVR_NO_5.pdf

Anti-corruption commitment

To what extent do political parties give due attention to public accountability and the fight against corruption?

The public accountability and the fight against corruption are central subjects on the Romanian public and media agendas, mainly because of their importance in the EU accession and EU integration processes and because Romania is still the subject of a Cooperation and Verification Mechanism. The issue is still approached in a direct and personal way. The speeches focus on the sanctioning dimension and there are few constructive propositions for the restructuration of the corrupt systems and institutional pillars.

6.11. MEDIA

SUMMARY

In 2010, the Freedom House rating on the freedom of press gives Romania a score of 43 out of 100, generating an evaluation of a partly free press. Problems identified are also in the course of the National Integrity System Assessment. The most important: Defamation remains a criminal offense, and politicians have used civil lawsuits to combat media criticism.

Moreover, the unbalanced representation of parties in media, mainly during electoral campaigns, makes the media cover less the interests of the society.

The pressures the editors put on the journalists' shoulders, more or less aggressively, limit even more the independence of the media.

According to the Global Corruption Barometer, media is one of the sectors most affected by corruption. On a scale from 1 (free of corruption) to 5 (extremely corrupt) media was scored in 2010 at 3.1 and in 2009 at 3.4. The trend is ascending from 2004, when the media received a score of 2.6.

The resources of the media are very limited, and for many institutions or groups seeking press representation the online operations are the only surviving solution.

The financial data of the media companies are not a matter of transparency, which can lead to abuses in their fiscal management.

Considering the accountability and the integrity mechanisms, they are ensured by self-regulation. The solution of self-regulation is the only one accepted by journalists, but, for the moment, the agreement is not going too far and there are several codes of conduct and bodies implementing

the codes, creating a lack of coherence in ensuring the effective and efficient implementation of the codes.

However, considering all its limitations and including several abuses of the presumption of innocence, the investigations of corruption cases, the information offered by the press over corruption and over governance issues make the media one of the most effective pillars in playing its role of fighting corruption in the national integrity system.

Media					
Overall Pillar Score: 55.25 / 100					
	Indicatori	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 31.25 / 100	Resources	25	25	75	75
	Independence	50	25	50	75
Governance 54.17 / 100	Transparency	50	50	50	50
	Accountability	75	50	25	50
	Integrity Mechanisms	50	50	50	50
Role 83.33 / 100	Investigate and expose cases of corruption practice	100		0	
	Inform public on corruption and its impact	75		25	
	Inform public on governance issues	75		25	

STRUCTURE AND ORGANIZATION

After 1990 the number and diversity of Romanian media was very high. 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 has evolved ever since, mushrooming in the early 90s, stabilizing in the early 2000s and currently undergoing a concentration and consolidation process.

We generally distinguish between local and national media. The local is very active at local level, but often very limited in resources. We also distinguish between specialised news media and entertainment media.

More and more the ownership of the media is influencing its policies or at least its perception, as media is far from being a profitable business and stays more an instrument to deliver different kind of political messages.

Romania has a public national TV station, broadcasting 7 national programs (one HD) and 5 regional programs, and a public radio station, broadcasting 8 national programs (one exclusively online) and 8 local programs. In addition there are a large number of national, regional and local private TV and radio stations. There are several, out of which two (*Realitatea TV* and *Antena 3*) are more important TV news stations.

The printed press faced a decline in the last couple of years. Some of the most important newspapers: *Cotidianul* or *Gandul* decided to close their printed division and to publish only online. The important newspapers remained on the market are distributed with books or other incentives for readers. Several other major internet portals such as *hotnews.ro* have established firmly on the media scene. The most important news agency *Mediafax* has also an important news website opened to the general public.

ASSESSMENT

Resources (law)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

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 Audio-visual 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 could have in the same market (locally or nationally). The current mechanism is described in *Chapter IV of the Audio-visual 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 law⁴⁸³ (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

⁴⁸³ Law 300/2004 regarding the authorization of natural persons and family associations deploying independent economic activities (Lege nr. 300/2004 din 28/06/2004 privind autorizarea persoanelor fizice si a asociatiilor familiale care desfasoara activitati economice in mod independent)
http://www.avocatnet.ro/content/articles/id_4409/Constituire/persoana/fizica/autorizata/si/asociatie/familiala.html

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.⁴⁸⁴

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, and 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 Audio-visual 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 Audio-visual Law⁴⁸⁵.

⁴⁸⁴ Audiovisual Law, article 44, <http://www.cna.ro/The-Audio-visual-Law,1655.html>

⁴⁸⁵ See also V Transparency

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.

Resources (practice)

To what extent is there a diverse independent media providing a variety of perspectives?

The Romanian local print media is very powerful.⁴⁸⁶ TV stations and radio survive based on protocols with central stations from Bucharest, as local advertising only is not enough to keep these media organizations alive.⁴⁸⁷ As a general Remarque we can say there the financial resources of the press are not adequate to make it efficient. Several examples of media limiting or closing operations because of the financial problems, at local and national level, can be cited. The most important could be the newspapers *Cotidianul* and *Gandul*. They totally stopped to appear printed and are operated only online⁴⁸⁸ Related to the financial general difficult situation of the press, the perception of the corruption in the press is high.

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.

According to the Global Corruption Barometer, media is one of the sectors most affected by corruption. On a scale form 1 (free of corruption) to 5 (extremely corrupt) media was scored in 2010 at 3.1 and

⁴⁸⁶ Stated during interview by Ioana Avadani.

⁴⁸⁷ Stated during interview by Ioana Avadani.

⁴⁸⁸ Stated during interview by Adina Stancu.

in 2009 at 3.4. The trend is ascending from 2004, when the media received a score of 2.6.⁴⁸⁹

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 population⁴⁹⁰. 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 quality⁴⁹¹), 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.

As a consequence, the broad spectrum of political spectrum is not cover. However, the most important political positions are presented by the press. Marginal political positions, as, for example the ecologists, are left apart. Concerning the capacity of the press to cover the broad spectrum of social interests and groups, this is happening very much with the online press. The TV, radio and printed press fail at representing marginal groups and a broad spectrum of professional interests.

From a financial point of view the press is affordable and almost everybody can have access to information. Tabloid newspapers are distributed for free in the Bucharest metro and the public transport in other cities of the country.

⁴⁸⁹ http://www.transparency.org.ro/politici_si_studii/indici/bgc/2010/GraphandTables_ro.pdf.

⁴⁹⁰ According to the European barometer 69 (spring 2008), page 7 and 29-30, http://ec.europa.eu/public_opinion/archives/eb/eb69/eb69_ro_nat.pdf

⁴⁹¹ Television Across Europe, EUMA, original reports of 2006, p.22 (<http://www.mediapolicy.org/tv-across-europe/the-2005-television-across-europe-reports/television-across-europe-2005-2006-international-edition/book1.pdf/view>) and Follow-up reports of 2008, pp.39 and following (<http://www.mediapolicy.org/tv-across-europe/follow-up-reports-2008-country/media-followup-overview-web.pdf/view>)

The professional training of the journalists is mixed. There is difficult to assess their preparation and professional performance as a group.⁴⁹²

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

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 witnessing – 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.⁴⁹³ 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. There were not passed into law, but there is a constant attempt in the Parliament to over regulate media.⁴⁹⁴

The Mass media enjoy constitutional protection, being the only industry benefiting from such a legal privilege; *article 30 of the Constitution*⁴⁹⁵ 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 limits on the exercise of the freedom of expression (i.e. not to harm the honour and dignity of persons, not to defame the country

⁴⁹² Stated during interview by Ioana Avadani.

⁴⁹³ Stated during interview by Ioana Avadani.

⁴⁹⁴ Stated during interview by Ioana Avadani.

⁴⁹⁵ The Constitution of Romania, (Constitutia Romaniei), http://www.presidency.ro/?_RID=htm&id=16

and the nation, not to promote war or hate speech, etc.) *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 Audio-visual Law⁴⁹⁶

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 audio-visual media services. Paragraph 2 of the same article states that “Editorial independence of audio-visual 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,

⁴⁹⁶ The Audio-visual Law (Legea 504/2002 Audiovizualului, as amended in December 2008), <http://www.cna.ro/The-Audio-visual-Law,1655.html>

independent of the editorial point of view.”⁴⁹⁷ Editorial independence is further reiterated by Article 8, while Article 14 describes the obligations of the two public broadcasters for fairness, objectivity and pluralism. For the public media the hiring/promotion/firing of the editorial or managerial personnel 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.⁴⁹⁸ They can, under the law hire and dismiss the personnel (including the editorial one).

Independence (practice)

To what extent is the media free from unwarranted external interference in its work in practice?

In 2010, the Freedom House rating on the freedom of press gives Romania a score of 43 out of 100, generating an evaluation of a partly free press, having in mind that Defamation remains a criminal offense, and politicians have used civil lawsuits to combat media criticism, the unbalanced representation of parties in media, mainly during electoral campaigns, and the pressures the editors put on the journalists’ shoulders, more or less aggressively.⁴⁹⁹

More than state interference, Romanian media has been subject to party interference. Parties in power and important opposition parties have at central or at local level media organisations that they influence, by

⁴⁹⁷ The law for the functioning of the public media services (Legea 41/1994 privind organizarea si functionarea Societatii Romane de Radiodifuziune si a Societatii romane de Televiziune), hereafter called Law on SRR-SRTV, <http://www.cna.ro/LEGE-Nr-41-din-17-iunie-1994.html>.

⁴⁹⁸ Law on SRR-SRTV, art. 20, <http://www.cna.ro/LEGE-Nr-41-din-17-iunie-1994.html>

⁴⁹⁹ <http://www.freedomhouse.org/template.cfm?page=251&year=2010>.

sponsorship mainly, as the media business is not at all a profitable one. The definition provided by the Audio-visual code is not making the due difference between the censorship and editing a news or reportage to ensure its quality. Therefore no case of censorship was found by a verdict of the National Audio-visual Council.

Therefore, taking into account the influence of parties, the very difficult economic situation of the media and the uncleanness of the censorship provision, self-censorship is widespread.

There is no fear for journalists to assert their right to freedom of expression, except the fear of losing their job, because very often the economic survival of the journal or TV station is dependent on a local political or business man or a national business man, where business and politics are in a close relationship.⁵⁰⁰

On the other hand, the media companies, journals or radio and TV stations are, lately, harassed by the government, when criticising the political power. This harassment takes the form of repeated, insistent and sometimes abusive administrative controls, especially regarding the finances. Both leading news TV stations were controlled by state bodies last year for more than 100 days each. If taking into account only the length of these controls there can be considered a form of harassment. The journalists, especially at local level, can be intimidated by several law suits were they are accused of mean libel. Still the accusations are not well based and these actions in law end by being only intimidation tools. Both the administrative abusive controls and the intimidating law suits have, however, a direct effect in the self-censorship.⁵⁰¹

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),

⁵⁰⁰ Stated during interview by Ioana Avadani and Adina Stancu.

⁵⁰¹ Stated during interview by Ioana Avadani and Adina Stancu.

produced by the Media Monitoring Agency⁵⁰², 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.

Transparency (law)

To what extent are there provisions to ensure transparency in the activities of the media?

New and explicit obligations regarding transparency were introduced when Romania updated its broadcast legislation to harmonize it with the Audio-visual media Services Directive. The amendments adopted took effect in 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”:

1. name, legal status, social headquarter;
2. 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 audio-visual license;
3. names of the persons in charge of the trade company management and of those that are mainly in charge of the editorial responsibility;

⁵⁰² Press Freedom in Romania report, editions 2005,2006, 2007, 2008 (Raport privind libertatea presei in Romania, editiile 2005, 2006, 2007, 2008), <http://www.mma.ro/>

4. data of media services provider, including the e-mail and web-site, for rapid, direct and efficient contact;
5. list of publications edited by the respective legal person and list of the other program services that it provides;
6. financial and balance sheet performance as well as the profit and losses account;⁵⁰³
7. regulatory or supervisory competent authorities.
8. Any changes in these categories of information shall be announced to CNA within 30 days.

From a legal point of view the transparency of the media can be considered satisfactory. The information missing for a real transparent press are the ones regarding the financial data. There is no general requirement imposed on 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.⁵⁰⁴

Transparency (practice)

To what extent is there transparency in the media in practice?

The financial data of the media companies are not a matter of transparency, 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

⁵⁰³ This provision has been abrogated during the debates in the Media Committee of the Chamber of Deputies, being considered as an excessive load on broadcasters, a source of possible abuses from the part of the public and an "abuse of democracy".

⁵⁰⁴ See supra: Resource (law) of the media chapter.

power.⁵⁰⁵ 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 2006⁵⁰⁶, 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 changed⁵⁰⁷, 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 legislation⁵⁰⁸, corroborated with the broadcast one, the broadcasters have the right to choose if they participate or not in the coverage of the

⁵⁰⁵ Country reports for Romania, European Commission, 2003 (<http://www.europeana.ro/romania/raportul%20de%20tara%20privind%20Romania%202003.htm>) and 2004

(http://www.anr.gov.ro/docs/rapoarte/Raport_periodic_asupra_progreselor_inregistrate_de_Romania_2004_182.pdf)

⁵⁰⁶ Emergency ordinance 34/2006 regarding the allocation of contracts of public procurement, of contracts of concession of public works and concession of services (Ordonanta de urgenta nr. 34/2006 privind atribuirea contractelor de achizitie publica, a contractelor de concesiune de lucrari publice si a contractelor de concesiune de servicii), http://www.anrmap.ro/index.php?option=com_content&task=view&id=120&Itemid=4&lang=ISO-8859-2

⁵⁰⁷ Emergency ordinance 19/2009 regarding some measures related to the legislation on public procurement (OUG 19/2009 privind unele măsuri în domeniul legislației referitoare la achizițiile publice), http://www.anrmap.ro/index.php?option=com_content&task=view&id=120&Itemid=4&lang=ISO-8859-2

⁵⁰⁸ The Parliament adopted a different law for each electoral consultation over the last 20 years. These laws have been complemented by norms adopted by CNA, detailing the modalities in which the broadcaster should cover the electoral campaign, the monitoring rules and the sanctions.

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.

Accountability (law)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

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 programs⁵⁰⁹.

⁵⁰⁹ Stated during interview by Ioana Avadani.

A more nuanced approach is reflected in the Audio-visual law, which states that the liability for the content of broadcast program services, including audio-visual commercial communications “is incumbent, according to the law, on the audio-visual 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 95¹ describe the offences and sanctions that the National Broadcast Council (CNA - 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 purposes other 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.

The accountability ensured by the constitution, as a general rule and by the codes adopted by journalists is considered to cover the situations where it is needed. Any additional regulation is rejected by journalists and experts in the field as being an interference and threat to media independence.

Accountability (practice)

To what extent can media outlets be held accountable in practice?

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 audio-visual sector, including the content related ones. CNA works based on the Audio-visual 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 Audio-visual Code⁵¹⁰ 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 analyzes 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 decisions of the council are often contested. Moreover the journalists and experts agree there are many cases where the body fail to apply a

⁵¹⁰ Decision no.187 /2006 regarding the regulation of the content of the audiovisual program services, aka Audiovisual Code (Decizia nr 187/2006 privind Codul de reglementare a continutului audiovisual), updated in 2009, <http://www.cna.ro/Decision-no-187-of-April-3-2006.html>.

sanction, when needed. An important example is related to the regulation and respect of regulations during the electoral campaign⁵¹¹.

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 site⁵¹², 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 the Romanian Press Club (CRP - the association of the press owners), the Associations of the Romanian Journalists, Media Sind, journalists' trade-union, 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). Probably the most pertinent examples are the law suits

⁵¹¹ Active-Watch the Media Monitoring Agency and the Pro Democracy Association reports published during and after the electoral campaigns in 2009, 2008, 2007 showed this situation.

⁵¹² <http://www.tvr.ro/articol.php?id=1480> .

started by the President of Romania against several journalists and press owners.⁵¹³

However, right to reply is offered formally, but generally it has not the same impact as the first news as well as the correction of erroneous information.

Concerning use of new media, media usually have forums such as blogs, chats with reporters and editors or other ways for the public to interact with the people who collect and disseminate the news. In fact important changes in consumers' behaviour can be noticed: most news are taken by internet, while TV is a space of changing or confirming one's opinion. Very important newspapers disappeared from printing to leave only online and an important bulk of their readers move themselves online as well. TV is less a space of pure news, but comments are numerous and the rating of these comments stays high.⁵¹⁴

Integrity (law)

To what extent are there provisions in place to ensure the integrity of media employees?

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.

The codes deal generally with the same basic ethical principles: the definition of the "journalist", the truth, double-checking of information,

⁵¹³ The cases were presented by media. More information in the articles: http://www.realitatea.net/un-jurnalist-de-la-cotidianul-a-fost-dat-in-judecata-de-traian-basescu_354696.html, <http://www.romanalibera.ro/actualitate/politica/procesul-dintre-traian-basescu-si-dinu-patriciu-aproape-de-final-240895.html>, <http://www.antena3.ro/romania/basescu-dat-in-judecata-de-jurnalistul-sorin-rosca-stanescu-pentru-calomnie-74336.html>.

⁵¹⁴ Stated during interview by Ioana Avadani.

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 8⁵¹⁵ 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*⁵¹⁶ 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

⁵¹⁵Codul Deontologic al Clubului Roman de presa,
<http://www.pressclub.ro/publicatii/cod.html>

⁵¹⁶Codul deontologic al Conventiei Organizatiilor de Media,
<http://www.cji.ro/userfiles/file/documente/STATUTUL%20JURNALISTULUI%20COM.pdf>

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)⁵¹⁷ The formulation is similar to the one in the CRP Code.

When it comes to the protection of sources, the principle is enshrined in different pieces of legislations, as well as in all deontological codes. 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. 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. 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.⁵¹⁸

Integrity (practice)

To what extent is the integrity of media employees ensured in practice?

The media employees integrity is practically ensured by different private bodies, the initiators of the codes of conduct for media. Depending of the code to which the journalist is a part there is a different body dealing with the integrity issues occurred. There is a good thing there are auto-regulated bodies and codes. On the other hand, the practice of this bodies

⁵¹⁷ Collective Work Contract, Annex, (Contractul Colectiv de munca, Anexa) - <http://www.mediasind.ro/cla.pdf>

⁵¹⁸ Law on the organization and functioning of the national press agency Rompres (Legea 19/2003 privind organizarea si functionarea Agentiei de presa Rompres), <http://www.rompres.ro/documents/agerpres.pdf> Numele agentiei a fost schimbat in Agerpres in 2008.

is not unitary and coherent from one case to another and therefore their performance is average.⁵¹⁹

While all these codes mentioned above are not different in terms of principles and rules, their wording may be different and with various nuances. More important, their implementation varies, 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 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 binding and applies to all employers and employees in the media, irrespective of whether 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 Journalists 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 (SRR⁵²⁰ and SRTV⁵²¹), the Association of the Romanian Journalists (journalists and editors who separated themselves from the Romanian Press Club), and the Union of Professional Journalists. All the self-regulatory documents cited above contain provisions regarding the right and/or the duty of journalists to protect their sources.

⁵¹⁹ Stated during interview by Ioana Avadani and Adina Stancu.

⁵²⁰ Romanian Society of Radio

⁵²¹ Romanian Society of Television

Investigate and expose cases of corruption practice

To what extent is the media active and successful in investigating and exposing cases of corruption?

As media is not a profitable business and investigative journalism is expensive, investigative journalism is not among the most important journalistic activities. In depth reporting, investigations and other such “value-added” journalism pieces are a rare occurrence, especially in television. However lately the main TV stations promote at least one reportage program and the most important news papers publish investigations. At local level investigations are rare, mainly because of two reasons: they are too expensive and the freedom of local press is more fragile and threaten by the local political “barons”⁵²².

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. The situation is considered to be a limit of the corruption cases exposure role of the press, as the cases are abandoned without further explanation after a spectacular beginning and there are often TV trails conducted by journalists discussing the cases and accusing without any respect for the innocence presumption.

Well known corruption investigations started as being newspapers investigations, as the affair determining the resignation of the Youth and Sport Minister in 2009. However, the cases are very rare.

⁵²² Stated during interview by Ioana Avadani.

Inform public on corruption and its impact

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

There are not consistent specific programmes run by the media to educate the public on corruption and how to curb it. However the investigations published and broadcast contain some elements of information over the phenomenon of corruption in general or in a specific sector. Some specific TV investigative reportage programmes succeeded in broadcasting information on the mechanisms of corruption in some specific sectors (e.g.: public contracting, building and infrastructure, the health sector, environment and forest protection, trade-unions, etc.).

However, as there is an important lack of understanding regarding deep corruption issues among the journalists, education is first needed by the journalist before initiating programmes to educate the public against corruption. Very often administrative problems are immediately defined as corruption. The evidences are missing and the exposure to a law suit of a good faith journalist confusing mal-administration and corruption is ensured, making the pillar weak enough.⁵²³

Inform public on governance issues

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Although very heterogeneous, an important part of the press is regularly reporting on government activities. Therefore public can easily obtain information about the government activities through media. There are still two problems that have to be raised: the first lay with the lack of objectivity of the press, determined by the difficult financial situation and limited independence of the media presented above. The second problem is related to the access of the journalists to some key information.

⁵²³ Stated during interview by Ioana Avadani.

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. 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.

6.12. CIVIL SOCIETY

SUMMARY

Enjoying an open legal framework and developing efficient internal mechanisms to ensure transparency, accountability and integrity, Romanian civil society organizations failed, however, generally, in cooperating with other pillars for their profit and in order to fight corruption.

There are too few exceptions of active and successful organizations in fighting corruption. Their image and trust is low as there are registered conflicts with the media. Moreover they are perceived as politically biased as many trade unions' leaders became candidates supported by political parties and many NGOs are associated with parties or politicians.

The level of business involvement in the civil society activities is still low and the openness of political parties and public institutions is only formal and with few important results.

Civil society					
Overall Pillar Score: 47.22 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 62.5 / 100	Resources	75	25	25	75
	Independence	100	50	0	50
Governance 41.67 / 100	Transparency	-	50	-	50
	Accountability	-	50	-	50
	Integrity Mechanisms	-	25	-	75
Role 37.5 / 100	Hold government accountable	50		50	
	Policy reform	25		25	

STRUCTURE AND ORGANIZATION

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 is comprised of nongovernmental organizations – associations and foundations, professional associations, trade-unions, political parties, religious associations, private sector and, last but not least, the citizens.

The chapter is going to analyse organised civil society, namely the organizations pursuing a cause or mission: the associations and foundations, the organizations pursuing an interest: trade-unions, employers' associations, and professional associations. We present only marginally the religious associations, representing a special type of the civil society organization.

On the other hand, private universities are generally organized as foundations under the same legislation as NGOs. They will not be analysed

under this chapter. Moreover, there are several NGOs organized under special legislation: Commerce Chambers, inter-municipality associations, elders associations. These organizations of the civil society will also be left aside, considering their marginal role in the civil society movements.

Among the Romanian NGOs 26% have no revenues and 40% have revenue under 10.000Euros/year. Only 4% of the NGOs dispose of 72,3% of the funds of the sector.⁵²⁴ 68% of the NGOs have no employees, 7% have one, 9% have 2-3 employees.⁵²⁵ In this context we can say that, in terms of financial resources, civil society structures in Romania lacked sufficient internal financial support in order to pursue their own mission. 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, international institutions or from organizations or institutions from other states⁵²⁶, accordingly to the expert opinion.

Surveys carried out as part of the CSDF's Civil Society Index, along with ISRA Marketing and Research Center, 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)⁵²⁷. Furthermore, the 1998-2007 Public Opinion Barometer showed that the proportion of those participating regularly to voluntary activities ("several

⁵²⁴ Ibid, p. 49.

⁵²⁵ Ibid, p.51.

⁵²⁶ The European Union, the United Nations Organization, the World Bank, 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.

⁵²⁷ Civil Society Development Foundation (CSDF), *op.cit.*, p. 22.

times a month or more often") was less than 2%⁵²⁸.

ASSESSMENT

Resources (law)

To what extent does the legal framework provide an environment conducive to civil society?

In Romania, the existence of civil society is based on the constitutional right of association⁵²⁹, according to which citizens may freely associate into political parties, trade unions, employers' associations and other forms of association, and on the freedom of assembly⁵³⁰. 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 circumstances⁵³¹. Therefore legally the civil society organizations are totally free in advocating and criticizing the government.

⁵²⁸ Gabriel Bădescu, Mircea Comșa, Dumitru Sandu, Manuela Stănculescu, 1998-2007 Public Opinion Barometer, october 2007, Soros Foundation Romania, available at http://www.osf.ro/ro/fisier_acord_publicatii.php?publicatie=70, accessed the 30th June 2009.

⁵²⁹ Art. 40 from the Constitution of Romania, published in the Official Monitor of Romania, Part I, No. 767 of 31/10/ 2003

⁵³⁰ Art. 39 from the Constitution of Romania, published in the Official Monitor of Romania, Part I, No. 767 of 31/10/ 2003 "public meetings, demonstrations, processions or any other assembly shall be free"

⁵³¹ Art. 53 - Restriction on the exercise of certain rights or freedoms: (1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe. (2) Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.

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 organizations⁵³²). They are currently functioning on the legal basis of the Government's Ordinance no. 26/2000⁵³³. 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. Accordingly, the Court verifies whether the constitutional limits of exercising the right of association and all the legal conditions are respected. There is a simple, quick and inexpensive process. In case of the rejection of the first attempt to register an organization, the representatives of the founding members can appeal to a higher court.

Employers' associations are defined as autonomous organizations of employers, apolitical, created by juridical persons of private law, without a patrimonial aim⁵³⁴. A minimum number of 15 members are required for their existence. Generally, they follow the rules applicable to associations and foundations already presented. 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 entity⁵³⁵. According to the law; employers' associations enjoy the right of being consulted each time legislative initiatives concerning employers' activities, economic development, reorganization, privatization or liquidation are under debate.

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

⁵³² The National Register of NGOs:

<http://www.just.ro/MeniuStanga/PersonnelInformation/tabid/91/Default.aspx>

⁵³³ Regarding associations and foundations, published in the Official Gazette of Romania, No. 39 of 31st January 2000, with the following amendments and completions

⁵³⁴ Art. 1 from Law of employers' associations no. 356/2001, published in the Official Gazette, Part 1, no. 380/2001 of 12th July 2001

⁵³⁵ Art. 8 from Law of employers' associations no 356/2001

servants, which are found in national and international legislation, but also to promote their professional, economic, social, cultural, and sports interests⁵³⁶. According to the law, the existence of a trade union supposes the membership of at least 15 employees from the same branch or profession. Its legal personality is acquired by Court decision.

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 religious associations are equal before the law⁵³⁷. The creation of a religious association⁵³⁸ presupposes at least 300 members holding Romanian citizenship or residing in Romania and who associate on grounds of their common religious belief.⁵³⁹ 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 income of NGOs comprise member subscriptions (except for foundations), rates and dividends resulted from placing the available funds 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-

⁵³⁶ Art. 1 from Law of trade unions no. 54/2003, published in the Official Monitor, Part 1, no. 73 of 5th February 2003

⁵³⁷ Art. 9 from Law no. 489/2006 regarding religious freedom and the general regime of cults, published in the Official Monitor, Part 1, no. 11 of 08/01/2007

⁵³⁸ Art. 40 from Law no. 489/2006

⁵³⁹ Annex to Law no. 489/2006, containing the List of recognized cults in Romania

retroactivity and co-financing⁵⁴⁰. **No tax exemptions are in place for associations and other civil society organizations.**

The income of employers' associations is made up of subscriptions, registration taxes, and contributions for the fund that is allocated to negotiation regarding collective labour contracts, but also of specific activities, donations, sponsorships⁵⁴¹. 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.

Resources (practice)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

According to the latest report of the Civil Society Development Foundation, there are 55.660 nongovernmental organizations registered, but only 38%, 21.319 of them are active enough to register annually their reports.⁵⁴² According to the Romanian Civil Society Index Report⁵⁴³ from 2008, certain social groups have been particularly poorly represented in NGOs, such as "the socially disadvantaged" (representing 29% of the total population) or the "rural population group or rural dwellers" (making up around 40% of the Romanian population). Most of the NGOs are active in the fields of

⁵⁴⁰ Law no. 350/2005 concerning the regime of non refundable finances from public funds allocated for non profit activities of general interest, published in the Official Monitor of Romania, Part 1, no. 1.128 of 14th December 2005

⁵⁴¹ Art. 17 (2) from Law no 356/2001

⁵⁴² Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, pp.25-26. Available at <http://www.fdsc.ro/pagini/cercetare.php>.

⁵⁴³ Civil Society Development Foundation (CSDF), *Dialogue for Civil Society. Report on the state of civil society in Romania 2005*, p. 25. The Report was part of an international action-research project coordinated by CIVICUS: World Alliance for Citizen Participation. Available at <http://www.fdsc.ro/documente/16.pdf> , accessed at 30th of June 2009.

sport and entertainment, education, social, health, religion.⁵⁴⁴

In Romania, NGOs' participation in a federation or network at the national level has remained rather improbable. 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.⁵⁴⁵

After EU accession, the Romanian civil society sector was no longer able to rely exclusively on external funding. Still, public policies have not been proactive 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, mainly because the

⁵⁴⁴ Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, pp. 27-28

⁵⁴⁵ *Ibid.*, p. 43. See also U.S. Agency for International Development (USAID), "The 2007 NGO Sustainability Index", p. 187, available at http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2007/romania.pdf, last accessed at 30th June 2009.

complicated procedure and the low level of trust of citizens in NGOs.⁵⁴⁶ On the other hand the Romanian foundations are more fundraisers than donors and companies⁵⁴⁷ are not an important donor. Only 23% of the NGOs received donations from companies practicing CSR.⁵⁴⁸

After EU accession, structural funds have been one of the main sources of funding for large projects aiming at having an NGO-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. 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.⁵⁴⁹

A minority of the Romanian citizens have belonged to at least one NGO. According to the Public Opinion Barometer from October 2006 and October 2007⁵⁵⁰ 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. Moreover 49% of the NGOs have less than 10 members. On the other hand, only 3,7% of Romanians ever volunteered for NGOs.⁵⁵¹

⁵⁴⁶ Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, p. 63.

⁵⁴⁷ *Ibid*, pp. 68-70.

⁵⁴⁸ *Ibid*, p. 81.

⁵⁴⁹ *Ibid*, p. 53. See also Civil Society Development Foundation (CSDF), *Nongovernmental organizations' involvement in the accession and absorption of structural funds*, Bucharest 2010. Available at: <http://www.fdsc.ro/pagini/cercetare.php>.

⁵⁵⁰ Civil Society Development Foundation (CSDF), *Dialogue for Civil Society. Report on the state of civil society in Romania 2005*, p. 87.

⁵⁵¹ Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, p. 86.

The membership of trade unions has been estimated at around two million members⁵⁵², 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 information⁵⁵³. In any case, trade unions have suffered substantial decreases in membership, as they have been heavily affected by the process of economic transition.

The trade union resources are also based on their legacy.⁵⁵⁴ After 1990 the legacy of the Romanian General Union of Trade Unions (Uniunea Generală a Sindicatelor din România - UGSR) was divided between three new free trade union confederations. These three established a company to administrate the real estate of the UGSR. It can only administer, but not dispose of the real estate and other properties. The company is another revenue source for the trade union main confederations.⁵⁵⁵

⁵⁵² General Confederation of the Romanian Industrial Employers (UGIR-1903), *Trade Unions and Employers Unions in Romania*, available at http://www.ugir1903.ro/download/sindicat_si_patronate_in_Romania.pdf; last accessed at 30 June 2009; see also L. Fulton, *Worker representation in Europe*, Labor Research Department and ETUI-REHS: 2007, available at <http://www.worker-participation.eu/national-industrial-relations/countries/romania/trade-unions#ftn2>

⁵⁵³ Aurora Trif, "Overview of industrial relations in Romania", *South-East Europe Review*, 2/2004, p. 54, available at [www.boeckler.de/.../South East Europe Review 2004 02 trif.pdf](http://www.boeckler.de/.../South_East_Europe_Review_2004_02_trif.pdf), accessed at 30th June 2009.

⁵⁵⁴ Before 1990 the Romanian General Union of Trade Unions (Uniunea Generală a Sindicatelor din România - UGSR) was a megalithic association of trade unions. All employees were obliged to be part of a trade union, and all trade unions were part of the UGSR. The mandatory contribution for the trade union was 1% of the salary. Therefore in 1990 UGSR had a legacy of over 300 million USD. This legacy also included buildings, hotels and touristic facilities in most of the resorts in Romania, sport and culture facilities in the main Romanian cities.

⁵⁵⁵ On the other hand serious allegations were made against the trade union leaders concerning their decision when managing this company. The subject is underlined under the "Integrity" chapter.

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

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*⁵⁵⁶.

Furthermore, legislation regarding the possibility of NGOs acquiring the public utility status has become stricter in 2007.⁵⁵⁷ Basically, this status has meant, on the one hand, official recognition by the authorities of the nongovernmental organizations that distinguished themselves from others

⁵⁵⁶ Art. 1, (1) from Ordinance no. 37 of 30 January 2003 amending and completing the Government Ordinance no. 26/2000 on associations and foundations.

⁵⁵⁷ 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

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 non-profit 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.⁵⁵⁸

In spite of the constitutional freedom of association, art. 4 from the above mentioned law⁵⁵⁹ 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 Defence 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

⁵⁵⁸ Evaluation made by the interviewed expert.

⁵⁵⁹ Law no. 54/2003

participate in the administration councils, for discussing issues related to their professional, economic, social, cultural or sportive interest.⁵⁶⁰

The state does not have to be represented in civil society organization boards, and there is no provision allowing the state to interfere to pursue legitimate government interests. However, there are no provisions extending the right to privacy to the Civil Society Organizations.

Independence (practice)

To what extent can civil society exist and function without undue external interference?

The detention or arrest of civil society actors because of their work never happened in Romania after 1989. However more subtle undue government interference can be described in the last three years, after Romanian accession to EU. The Romanian civil society organization with limited independence can be divided in two: organizations suffering intimidations, harassing or attacks and organizations adopting voluntarily friendly and supportive attitude towards the government or a party.⁵⁶¹ The former category includes organizations accused by fellow activist that falsified studies or ignored data in their materials and public positions to favour the government or a party. The problem is both one of integrity and one of independence.⁵⁶²

The former category is not considerable in number. Still some actions against activist need to be mentioned. The most common attacks are made through media openly supporting the government and insulting or attacking civil society activists, either civil society or trade-union members. Yet state institutions can also be involved. Important Romanian NGOs suffered financial sabotage by unacceptable delays in the reimbursement

⁵⁶⁰ Ibid.

⁵⁶¹ Opinion of NGO leaders, stated during interviews.

⁵⁶² Ibid.

of structural found, offered by the EU, but managed by Romanian institutions.⁵⁶³

The independence issue is also very important in the case of trade-unions. Several trade-unions' leaders became members of one of the main Romanian parties. The analysts do not agree on the legitimacy of the political enrolment of the trade-unions' leaders. Important questions are raised concerning the independence of their organizations towards state bodies after their election as Members of the Parliament. On the other hand the protection mechanisms for the trade union leaders are well implemented, and there are no direct attacks occur.⁵⁶⁴

Transparency (practice)

To what extent is there transparency in CSOs?

Important civil society organizations inform the public on their activities using press releases or new media, websites, blogs, the facebook etc. The majority of leading NGOs publish their annual reports and financial statements on the websites. The statute of public interest requires the NGOs to publish their reports and financial statements on the Official Monitor of Romania and to submit the report to the Ministry of Justice. The list of members of the board of directors is, also, generally, published.

In fact, according to the organization's mission and type, the degree of involvement of citizens in the activities of NGOs is very diverse. Think-tank organizations are, by their nature, less exposed to direct contact with the citizen, their mission being to produce a number of materials and to initiate specialized debates. The transparency and impact of such

⁵⁶³ After leading a successful public campaign in 2009 against the government refuse to openly debate the legal codes, TI-Romania experience includes harassment from state institution accusing the management of the association, media attacks and financial sabotage by unacceptable delays in structural found reimbursement. Ather NGOs affected by the same situations would be Pro Democracy Association, the ActiveWatch – Media Monitoring Association, the Centre for Legal Resources.

⁵⁶⁴ Opinion of NGO leaders, stated during interviews.

organizations should first be evaluated at the level of the decision makers. On the other hand, self-help organizations or social service providers have a clear beneficiaries' group (e.g. disabled) and they also touch the wider circle formed by their families, and all those who feel solidarity with them in the community. Environmental organizations are able to mobilize large numbers of volunteers during their greening campaigns. Also, civic organizations have wide media coverage and thus gain broad public recognition.⁵⁶⁵

However, surveys conducted at various times over more than a decade, indicating an upward trend (slow, but steady) of the public image of the NGO sector. According to the last Civil Society Indexes⁵⁶⁶, although NGOs were active in promoting transparency in public affairs, the existence of genuine internal transparency and accountability within NGOs remained limited. 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.⁵⁶⁷

On the other hand the practice of publishing the annual reports and financial statements for the general public is not common for trade-unions and employers' associations. None of the main five confederations of trade union published these documents on its websites.

⁵⁶⁵ Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, p. 83.

⁵⁶⁶ Civil Society Development Foundation (CSDF), *Dialogue for Civil Society, op.cit.*, P. 7; see also Lorenzo Fioramonti, V. Finn Heinrich "How Civil Society Influences Policy: A Comparative Analysis of the CIVICUS Civil Society Index in Post-Communist Europe", CIVICUS: World Alliance for Citizen Participation, p. 21, available at <http://www.civicus.org/new/media/CIVICUS.ODI.Fioramonti.Heinrich.pdf>, last accessed at 30th June 2009.

⁵⁶⁷ Opinion of NGO leaders, stated during interviews.

Accountability (practice)

To what extent are CSOs answerable to their constituencies?

Romanian NGOs are generally small organizations. 49% of the Romanian NGOs have less than 10 members. In this case the boards and/or members can easily provide oversight of organizational activities. Some of the main Romanian organizations also co-opted in their boards public figures from outside the organizations. Still, the practice is marginal.

On the other hand, concerning the accountability of the NGOs to the public and citizens the trust of the Romanians in their civil society organizations is very low. In 2010 32% of the Romanians trust the NGOs and 53% of them mistrusted the NGOs.⁵⁶⁸

The opposite occurs when analyzing the trade unions. The big number of members generates a relatively weak capacity of keeping the accountability. The problem becomes acute when analyzing the relationship between trade union members and the leaders of the trade union national confederations, representing these members in negotiations with the government.⁵⁶⁹

Integrity (practice)

To what extent is the integrity of CSOs ensured in practice?

Although corruption and integrity are important topics for civil society debates, there are no consistent efforts among civil society organizations to self-regulate and therefore there is no sector wide code of conduct. 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

⁵⁶⁸ Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, p. 84.

⁵⁶⁹ Opinion of NGO leaders, stated during interviews.

been accused of being used by political parties or of receiving illegal funds from political parties.⁵⁷⁰

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. However there is no transparent mechanism of monitoring the implementation of the code of conduct of each separate organization.⁵⁷¹

The situation becomes more complex regarding trade-unions. The Parliament of Romania past a new bill of the National Integrity Agency (ANI) in 2010.⁵⁷² After the adoption of the new law the trade union leaders at national level have to fill and to register the assets and interest declaration to the National Integrity Agency, in charge with checking them. Important accusations unjustified assets, conflict of interest and traffic of influence in administrating the trade union assets, were made against these trade union leaders both by the state institutions⁵⁷³ and by the media⁵⁷⁴. As the official investigation has begun in March 2011 (present April 2011) it is too soon to draw any conclusions. There are two possible comments. If these investigations are not well founded, then there are attacks of the state institutions against these men. Or the investigations are conducted with good faith and there is an important integrity issue

⁵⁷⁰ Opinion of NGO leaders, stated during interviews.

⁵⁷¹ TI-Romania status and internal regulation.

⁵⁷² See supra ACA and Constitutional Court chapters

⁵⁷³ In February 2011 ANI started the cross-examination of the most important trade union leaders. In march 2011 the president of one of the main five trade union confederation was accused of corruption in the management of the company administrating the real estate legacy of the Romanian General Union of Trade Unions. The judicial investigation is only at the beginning (present April 2011)

⁵⁷⁴ A very good reportage, the latest broadcast, is available at:

<http://stirileprotv.ro/stiri/romania-te-iubesc/romania-te-iubesc-cat-valoreaza-si-ce-s-a-intamplat-cu-averea-sindicatelor.html>

regarding the trade union leaders.⁵⁷⁵

Hold government accountable

To what extent is civil society active and successful in holding government accountable for its actions?

According to the 2010 Directory of Civil Society in Romania, 12.53% of NGOs are civic organizations and organizations aiming at influencing policy. The vast majority (69%) focuses on democracy and human rights, 15% are considering consumer rights, 45.5% fight against discrimination and 56% are active in the field of good governance and public policy change. In 2001, a coalition of Romanian NGOs successfully acted as a catalyst for consensus on the adoption of the Law on Access to Public Information⁵⁷⁶. Still there is a continuing need for sustained efforts of nongovernmental organizations, media, and citizens, for smooth implementation of this law and public administration mindset change in Romania. Monitoring activities were carried on the law enforcement, and published reports containing the application of the law, irregularities noticed in practice, and proposals. Among the organizations caring this type of activities are APADOR-CH, Academic Society of Romania, Institute for Public Policy, Pro Democracy Association, TI-Romania.⁵⁷⁷

Nongovernmental organizations have carried out activities with a resounding impact on society empowering citizens to hold their political leaders accountable. Once the adoption of legislation on public access to information and once the declaration of assets and interests became mandatory for public officials, there are very strict monitoring approaches to the officials' wealth and expenditure. Examples are: the formation of the Coalition for a Clean Parliament and the Coalition for a Clean Government. Public Policy Institute (PPI) undertakes monitoring of expenditure on

⁵⁷⁵ Opinion of NGO leaders, stated during interviews.

⁵⁷⁶ Detalii adoptarea 544

⁵⁷⁷ Civil Society Development Foundation (CSDF), *Romania 20101. Civil Society. Profile, Trends and Challenges*, pp. 158-170.

parliamentary business. IPP also been documenting the monitoring of the parliamentary session, reports containing updated information on the presence of deputies and senators to work in plenary and committees, proposed legislative initiatives, policy statements made at the beginning of term.⁵⁷⁸

Policy reform

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

In Romania, we are witnessing the development of interest for public participation in decision-making since 2000, largely as a result of external pressures programs channeled through international financial and technical assistance.⁵⁷⁹ In this context 33,4% of the NGOs sent several observations and propositions to decision makers, either using the transparency law, or using other advocacy methods.⁵⁸⁰

According to the Agency for Governmental Strategies in 2007 from 11.761 proposals formulated by civil society organizations (manly NGOs) 6.586 were included in the government projects. In 2008 the number of the proposals diminished to 7.662, but the proportion of the integrated ones remained over 50%: 4.520.⁵⁸¹

However, from the NGOs formulating propositions, only 12,4% were satisfied by the fact that their proposals were integrated in the decision at national level. The percent is only a bit higher for the local level of decision: 16%.⁵⁸² The difference between the governmental evaluation and the civil society evaluation is so big because the important difference in perspective. The NGOs often consider the consultation of the civil society

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid, pp. 114-118

⁵⁸⁰ Ibid, p. 115.

⁵⁸¹ Ibid, p. 113

⁵⁸² Ibid, p. 117.

made by the public institutions as being only formal, without satisfactory outputs, results and impact.

Some of the most active and well-known non-governmental organizations are the one aimed at preventing and combating corruption, in particular through research, documentation, information, education and public awareness. Among them Transparency International Romania, Academic Society of Romania, Pro Democracy Association, APADOR-CH, Legal Resources Centre, Institute for Public Policy, the Civil Society Development Foundation. Promoting civic behavior to reject corruption and encouraging young journalists involved in promoting civic values and practices, investigating issues of corruption than to reporting civic behavior and its rejection, was the main objective of the national campaign "Do not give bribes!". At least 5 major projects were run in 2008-2009 in order to promote the whistleblowers' protection according to the law. In fact the law itself was adopted at the initiative of Transparency International Romania. Important projects were also carried on to better regulate the party financing and electoral campaigns.⁵⁸³

However, the influence of these projects is limited. Key problems raised by civil society are still not adopted by the government.

On the other hand, the trade unions and business and employers' associations are part of the institutionalized social dialogue, as part of the Social and Economical Council. Their influence power is considerably bigger. Moreover, the social partners, trade unions and employers' associations may also initiate legislative proposals that have to be addressed to the appropriate public authorities. Still, the Social and Economic Council do not receive all the legislative projects, as stipulated by the law.⁵⁸⁴

An example is the campaign "Stop the codes". In March 2009 the Romanian Cabinet sent to the Parliament the drafts of four fundamental legal codes: the Civil Code, the Criminal Code, the Code of Civil Procedure

⁵⁸³ Ibid.

⁵⁸⁴ Opinion of NGO leaders, stated during interviews.

and the Code of Criminal Procedure. The drafts have not had the advice of the Social and Economic Council; they were not subject of the public consultation mandatory according to the law of decisional transparency; the Ministry of Justice didn't conducted the impact studies on the four codes, mandatory according to Romanian and European legislation. A coalition of 28 NGOs, trade unions and business associations started to work to determine the government to respect the laws. Major points were also raised concerning vulnerabilities to corruption offered by the codes. The coalition obtained some changes in the codes text, but many of the problems remained. The capacity to influence policy of the civil society is still low, not because its expertise, but because the closure and refuse to debate and negotiate of public institutions, mainly when important changes are taken into account.⁵⁸⁵

⁵⁸⁵ Opinion of NGO leaders, stated during interviews.

6.13. BUSINESS

SUMMARY

The score given for business freedom in Romania after the assessment performed by The Heritage Foundation & The Wall Street Journal is 72.0, with a 0.5 point loss since last year⁵⁸⁶. The Romanian evolution (among all the world's economies assessed by the DB Rank) over the last two years is a poor one, considering the economic climate from the global perspective. Even though there are no important obstacles to starting a business, especially during the last years, the Romanian private sector has been facing important obstacles in operating their business, as the legislation is unclear, incoherent and unstable.

Presently, the general trend is to only implement conduct codes as public statements about the integrity of the company but the lack of transparency concerning the content of these codes of conduct is a clear indicator of the little engagement to the promoted values.

586 2011 Index of Economic Freedom

Business					
Overall Pillar Score: 36.81 / 100					
	Indicator	Current situation		To be achieved	
		Law	Practice	Law	Practice
Capacity 43.75 / 100	Resources	50	25	50	75
	Independence	50	50	50	50
Governance 29.17 / 100	Transparency	25	25	75	75
	Accountability	50	25	50	75
	Integrity Mechanisms	25	25	75	75
Role 37.5 / 100	Anti-Corruption policy engagement	50		50	
	Support for/engagement with civil society	25		75	

STRUCRURE AND ORGANIZATION

During the last two decades, the Romanian economy has undergone a root-and-branch transformation, associated with the transition from a system based on central planning and state ownership into one based on free market economy, with private ownership as its founding principle. However, the experiences of the centralized, corruption-conducive planning system left its mark on the corporate and legal culture of private entrepreneurs in an era of transformation. The privatization process has also influenced the environment and mainly the integrity environment. An important role is played by the foreign investors in Romania.

There are two regulated markets, represented by two institutions: the Bucharest Stock Exchange (Bursa de Valori Bucuresti – BVB) and the Rasdaq,

a stock exchange based in Sibiu. Similar regulations related to integrity are used by both of them.

ASSESSMENT

Resources (law)

To what extent does the legal framework offer an enabling environment for the formation and operation of individual businesses?

Regarding the measures promoted by the Romanian government to enable the formation, operation, and insolvency of businesses we turned to the snapshot reflecting all cumulative changes in an economy's business regulation as measured by the *Doing Business* indicators -such as a the time reduction for starting a business thanks to a one-stop shop or an increase in the strength of investor protection index thanks to new stock exchange rules that tighten disclosure requirements for related-party transactions. Apparently, starting a business requires 6 procedures, takes 14 days, costs 3.0% of income per capita and requires paid in minimum capital of 0.8% of income per capita. The cost of setting up a business has actually decreased considerably over the last years from 10.9 to just 3.0 % of income per capita. It is worth mentioning that the number of procedures and the number of days necessary to set up a company have actually grown to 6 procedures from 5 respectively from 9 days to 14. Romania made starting a business more difficult by requiring a tax clearance certificate for a new company's headquarters before company registration. Even though Romanian amended regulations related to construction permitting to reduce fees and expedite the process, in 2010 construction permit costs rose because of a new fee equal to 0.05% of the project value.

The registration procedures are similar for SA and SRL. However, it is the experts' opinion to entrust a specialized lawyer in order to avoid the

bureaucracy. There is a wide consent that even though the laws governing all the procedures a company needs to perform do exist, they are often vague or suffer numerous changes that can create confusion both for the local entrepreneurs as well as with the public servant, starting with the clerks. These procedures, involving up to 18 documents to present and 16 activities to do, are to:

- Obtain a certificate from the Trade Registry providing the availability of the proposed company name and make reservation of the name;
- Deposit funds in a bank and obtain a document confirming bank deposit of sufficient funds.
- Obtain a certificate from the fiscal administration agency giving clearance for the headquarter of the office
- Register with the Unique Office of trade registry with the Bucharest Tribunal; obtain court registration, publication of notice and registration for statistical purposes and social security;
- Register the employees' contracts with the Territorial labor Inspectorate (done online).

It is the attorneys' opinion that 2010, the second consecutive year of economic crisis generated a decrease of at least 20% in new companies' registrations. The relatively recent law requesting that every company should have an individual social headquarter brought about more complications for the business sector. The new law was publicly blamed for being unclear because it didn't detail the procedure to be followed when one needs to obtain the certificate on how many social headquarters are registered at the same address. Also, the order failed to mention the procedure to comply with to erase social headquarters from the database of the financial public administration. Therefore, the duration of the procedure necessary to obtain the certificate attesting that no other company uses the same headquarter has become twice as lengthy as it used to be.

The "Ease of doing business Index", averaging the country's percentile rankings on 10 topics, ranked Romania 14th among Eastern Europe& Central Asia countries and 72nd in the World. The index was composed of

scores for various factors influencing a company's lifespan and evolution:⁵⁸⁷

	Starting a business	Dealing with Construction	Getting electricity	Registering property	Getting credit	Protecting Investors	Paying taxes	Trading across borders	Enforcing contracts	Resolving Insolvency
2012	63	123	165	70	8	46	154	72	56	97
2011	31	122	164	64	8	44	151	49	54	109

Even though no significant reform has been made to strengthen the legal rights of lenders and borrowers under collateral and bankruptcy laws, and increase the scope, coverage and accessibility of credit information, entrepreneurs' access to credit is very good, considering that Romania stands 8th in the ranking of 183 economies⁵⁸⁸.

Investor protection in Romania has a score of 6 out of 10 points and ranks averagely well, in the first 50, globally. Considering the regulations that lead to a good investors' protection, it appears that regulation has been improved over the last years, even though not significantly. It is apparent that even though the extent of disclosure is relatively high, scores are very low on director liability and ease of shareholder suits, a fact that has been confirmed by experts consulted on the matter⁵⁸⁹.

⁵⁸⁷ Ease of doing business Index (Worldbank), <http://ease-doing-business.findthebest.com/d/d/Romania>

⁵⁸⁸ <http://ease-doing-business.findthebest.com/d/d/Romania>

⁵⁸⁹

[http://doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/ROM.pdf](http://doingbusiness.org/~/media/fpdkm/doing%20business/documents/profiles/country/ROM.pdf)

The recent economic crisis has determined economies around the world to make tax payment faster and easier for businesses. By simplifying tax payment and reducing rates, some economies have seen a rise in tax revenue. Romania has also made paying taxes easier for companies by introducing an electronic payment system and a unified return for social security contributions and it also abolished the annual minimum tax after previously introducing other tax changes among which a new minimum tax on profit that made paying taxes more costly for companies and after increasing labor taxes in 2010.

Currently, in Romania, the insolvency procedure is based on two significant commercial principles: a) the attempt to recover the company through reorganization; b) the organization of bankruptcy proceedings in a manner enabling the creditors to recover their receivables in as much as possible. Presently, one can say that Romania has modern insolvency regulations. A robust bankruptcy system functions as a filter, ensuring the survival of economically efficient companies and reallocating the resources of inefficient ones. Fast and cheap insolvency proceedings result in businesses' speedy return to normal operations and increase returns to creditors. Romania amended its insolvency law to shorten the duration of the insolvency proceedings but to this moment no change has become obvious considering that resolving insolvency takes 3.3 years on average (a constant over the last years)⁵⁹⁰.

Romania has restructured and harmonized its national laws protection of property rights (including intellectual property) in order to conform to applicable European Union regulations, including the European Patent Convention, which Romania ratified in 2002.

Further, as a member of the World Trade Organization (WTO), Romania also agreed to comply with the WTO's rules for trade related aspects of intellectual property, which is an international standard for the protection of IP. Romania's legal protections for IP should offer sufficient protection

⁵⁹⁰ <http://doingbusiness.org/data/exploreconomies/romania?topic=resolving-insolvency>

and enforcement mechanisms for owners of IP developed by Romanian contractors or employees.

Interviews conducted both with prestigious lawyers specialized in offering consultation and support to the private sector on commercial matters and with the representative of one of the most important regional chambers of commerce representing the local entrepreneurs, the feedback we received on the legal framework governing the formation and operation of a company was the same: the laws pertaining to this are well structured and comprehensive. Nonetheless, the practice isn't. The vagueness of some of the procedures gives space to personal interpretation performed by the public clerk and to delays even on the simplest procedures. This is where the personal experience of the legal representative comes in very useful and this is why, in the case of business men why try to legally represent themselves, the period of time needed to set up a company can become lengthier. The inefficiency of government bureaucracy is the second issue on the agenda of the most problematic factors for doing business.

Resources (practice)

To what extent are individual businesses able to form and operate effectively, in practice?

The process for business registration and operation has been streamlined in recent years. The score given for business freedom in Romania after the evaluation performed by The Heritage Foundation & The Wall Street Journal is 72.0, with a loss of 0.5 points since last year⁵⁹¹. The Romanian evolution (among all the world's economies evaluated by the DB Rank) over the last two years is a poor one, considering the economic climate from the global perspective. In their estimations on the future development of the Romanian economy during 2012, the overview that in

⁵⁹¹ 2011 Index of Economic Freedom

2011 ranked Romania 65th downgraded Romania by 7 positions for 2012. Apparently, it has become significantly more difficult to start a business (DB 2012 Rank is 63 while last year it was 31, with a change in rank of 32 positions) and it is just as difficult to perform trading across borders (from 49nd position in 2011 to the 72nd in 2012, with a loss of 23 positions) a fact that is particularly concerning, taking into consideration that we are still in the early years since Romania's accession to the European Union and greater efforts should be made to facilitate the integration on the single market economy.⁵⁹²

On a closer look, significant progress has been made in terms of registering procedures. The number of days necessary to set up a company has decreased from 14 to 10. The cost associated with setting up a business has been reduced from 10.9 to just 3.0 % per capita income. The paid-in Minimum Capital has dropped from 1.5% to 0.9%⁵⁹³.

Arbitration often appears as a viable alternative to state justice, particularly adapted to disputes between corporate entities, preferred by the business environment, considering some of the advantages it offers: arbitrators' experience in business law and international economic relations; confidentiality: the sessions aren't open to the public; efficiency: the procedures should be finalized in 5 months after the setup of the arbitral tribunal. In commercial litigation these terms are doubled while the arbitral award may be enforced in the same conditions as a court decision⁵⁹⁴.

Even though substantial amendments have been brought to Romania's bankruptcy laws- introducing, among other things, a procedure for out of court workouts- that made dealing with insolvency easier - no change has

⁵⁹² Ease of doing business Index (Worldbank), <http://ease-doing-business.findthebest.com/d/d/Romania>, p. 7

⁵⁹³ Ease of doing business Index (Worldbank), <http://ease-doing-business.findthebest.com/d/d/Romania>, p. 17

⁵⁹⁴ Musat&Asociatii, Doing Business in Romania, 8th Edition, 2011, p. 246

become obvious in the time or cost of this proceeding⁵⁹⁵. By improving the expectations of creditors and debtors about the outcome of insolvency proceedings., well-functioning insolvency systems can facilitate access to finance, save more viable businesses and, thereby, improve growth and sustainability in the economy overall. In this matter, Romania's evolution is a rather poor one, considering that the average time it takes in Romania to close a business is 3.3 years as opposed to the good practice example of Ireland where it only takes 0.4 years. Also, the recovery rate (cents/dollar) is of only 25.7 and the cost (% of the estate) is 11%⁵⁹⁶.

Following the step-by-step evolution of a standardized case study, data on resolving a commercial dispute through the courts has revealed that a total of 31 procedures is necessary in the process, it takes 512 days and costs 28.9% of the claim to enforce a contract. Globally, Romania strands at 56 in the ranking of 183 economies on the ease of enforcing contracts where the regional average is 37. There have been various changes on this matter: some negative (like the fact that the number of days it takes to solve such a case hasn't decreased and is considerably higher than the region's average; over the last three years the cost of the procedure expressed as percentile of the claim rose from 19.9 to 28.9) and some close to neutral (the number of procedures decreased from 32 to 31)⁵⁹⁷.

Stronger investor protection matters for the ability of companies to raise the capital needed to grow, innovate diversify and compete. This is all the more crucial in times of financial crisis, when entrepreneurs must navigate through defiant environments to finance their activities. On this matter Romania ranked 44 out of 183 economies and was given a score of 6.0 on a scale from 1 to 10⁵⁹⁸. Property and contractual rights are recognized, but enforcement through the judicial process can be difficult, costly, and

⁵⁹⁵ Ease of doing business Index (Worldbank), <http://ease-doing-business.findthebest.com/d/d/Romania>, p. 99

⁵⁹⁶ Idem, p. 98

⁵⁹⁷ Idem, p. 95

⁵⁹⁸ Idem, p. 68

lengthy. Even when court judgments are favorable, enforcement of judgments is inconsistent and can require further lengthy appeals.⁵⁹⁹

A very important limitation of the business resources is given by the incoherent, unpredictable and unstable legislation. The Fiscal Code changes several times a year, and the changes have to be implemented in a couple of months, abusing the exception from the rule that all the Fiscal Code modifications will be implemented starting the next fiscal year. On the other hand, the Commercial Code was annulled by the new Civil Code, which came into force in October 2011. Several changes are, at the moment, unclear and their impact was not assessed previously.⁶⁰⁰

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activity of private businesses?

The Heritage Foundation's Economic Freedom Report ranked Romania 29th out of 43 countries in the Europe region in 2010, with an overall score higher than the world average; Romania has demonstrated slow but steady improvement in the index in recent years. The report points out, however, that labor freedom, property rights, and freedom from corruption lag behind other countries in the region, and that Romania's judiciary remains vulnerable to corruption and inefficiency⁶⁰¹.

Foreign investors point to the excessive time it takes to secure necessary zoning permits, environmental approvals, property titles, licenses, and utility hook-ups. National and local officials often cannot provide potential

⁵⁹⁹ Ina Dimireva, Romania Investment Climate 2009, last modified 04 november 2009, www.eubusiness.com

⁶⁰⁰ www.opriticodurile.ro

⁶⁰¹ 2011 Index of Economic Freedom, Romania, <http://www.heritage.org/Index/Country/Romania>

investors with clear and comprehensive information on what permits or approvals are needed, or how they are to be obtained. Romania enacted a "Silent Approval" Law in 2003 to reduce bureaucratic delays, but it has yet to be universally enforced or recognized. Additionally, regulations change frequently, often without advance notice, and may be vaguely worded and poorly explained. These changes, which can significantly add to the costs of doing business, can complicate investors' business plans.⁶⁰²

Investments involving the public authorities (central government ministries, county governments, or city administrations) are generally more complicated than investments or joint ventures with private Romanian companies. Large deals involving the government – particularly public-private partnerships and privatizations of key state-owned enterprises – can become stymied by vested political and economic interests, or bogged down due to a lack of coordination between government ministries. While a Public-Private Partnership (PPP) Law was passed by the GOR in 2010, there are concerns that the new law – which allows public authorities to award PPP projects without competition – may not facilitate private investment as originally anticipated. How the new PPP law will be implemented will be of considerable interest in the next few years. Investors have generally encountered greater success with less complex agreements, involving small- to medium-sized private and state enterprises.⁶⁰³

Administrative Disputes Law no. 554/2004 allows any individual or entity to file legal action against public administrative offices and institutions whenever their rights are violated by and administrative act or by an unjustified refusal by an administrative authority.

What experts we have consulted have observed is that during the recent financial crisis a typical behavior in Romania became chronic. Due to

⁶⁰² 2011 Investment Climate Statement- Romania, Bureau of Economic, Energy and Business Affairs, March 2011, www.state.gov

⁶⁰³ Idem.

budget shortfalls, the state became prone to adopting measures contrary to those encouraging economic growth, a fact that can be easily observed when considering that the VAT was increased by 5 percentage points, the highest increase in Europe. Therefore, even though we cannot say that the state has abused its powers to gain access to private sector assets or resources, we can say that the measures adopted were contrary to the private sector's best interest and that general opinion is that some of the measures made it difficult for some smaller companies to survive the financial crisis and opened some backdoor for bigger economic players that can indeed influence the policy-making process and encourage the adoption of unfair commercial measures.

Independence (practice)

To what extent is the business sector free from unwarranted external interference in its work, in practice?

The corrupt influence over parliamentary votes on laws to support private interests was identified by the largest proportion of respondents, with more than 4 in 10 reporting being affected by the practice. Several other forms of corruption affect as many or more firms than simple bribery. Indeed, while the effects of bribery may resonate most strongly with firms that are engaged in bribery, capture of the state by private economic interests may alter the very environment in which all firms—even the completely honest ones—must operate.⁶⁰⁴

A system that provides economic freedom allows for greater diversity, promoting creativity and innovation. In this context, the favoritism in decisions of government officials is another detractor from a fair trade

⁶⁰⁴ Diagnostic Surveys of Corruption in Romania, analysis prepared by the World Bank at the request of the Government of Romania, www.worldbank.org

system⁶⁰⁵. As we can see from the table listed below on all matters referring to the ethical behavior both of firms as well as that of public administration and political leaders the scores are very low. This stands as proof of a very fragile balance that can suffer perturbing influences both ways.

Indicator	Value	Rank / 142
Intellectual property protection	3.0	98
Public trust of politicians	1.9	119
Favoritism in decisions of government officials	2.5	115
Wastefulness of government spending	2.7	107
Ethical behavior of firms	3.4	103
Transparency of government policy making	2.9	140

Even though there are many examples of government officials abusing office to exploit the private sector, it is a known fact that the latter generally avoid taking action against the public clerks performing the abuse. No official information or statistics on the matter exist but the fact that some of the biggest consultancy agencies and legal practices publish their own recommendations on how to counter the abuses occurring during a routine financial investigation makes a clear point. Of the test cases where the intervention of a legal counselor was necessary to file an administrative appeal it is worth mentioning that on more than one occasion the same company was exposed to a series of abusive exaction which would have cost him several million RON or up to USD 10 million. Nonetheless, the truth is that most small and medium companies do not face such enormous costs and the lawyers representing them testify that the general trend is to avoid taking action against public institutions or

⁶⁰⁵ The Global Competitiveness Report 2011-2012, World Economic Forum, p. 305

public representatives for fear of further repercussions on the company's actions.⁶⁰⁶

Transparency (law)

To what extent are there provisions to ensure transparency in the activities of the business sector?

Organizations required, under Romanian law, to conduct a financial audit are: (a) companies which closed a financial year, meet minimal criteria (have total assets of over 3.65 million euro, have net turnover over EUR 7300000, have an average number of employees during the financial year greater than or equal to 50); (b) public companies, or other public interest corporations as credit institutions, insurance/reinsurance entities regulated and supervised by the Supervisory Commission of Private Pension System Society of brokerage, entities regulated and supervised by National Securities Commission, companies whose securities are admitted to trading on a regulated market, companies and national companies, legal persons belonging to a group in society and in the consolidation by a parent applying International Financial Reporting standards, leasing companies and legal persons other than those above, who receive grants or state guarantee.

The Chamber of Financial Auditors of Romania (CFAR) affiliated to International Federation of Accountants is the professional body that manages, coordinates and authorizes the development of the financial audit activity in Romania. In Romania, the right to exercise the profession of auditor is granted by the Chamber of Auditors. The accountant also have an associative body regulating their activity: the Body of Accountant Experts and Authorized Accountants in Romania (BAEAAR). As the auditors, there is a code of conduct the accountants must observe.

⁶⁰⁶ Interview.

The transparency standards for stock exchange require businesses to file annual, semi-annual and “current” reports with the public, the National Securities Commission (NSC) and the regulated markets. Secondary regulation defining the reports’ content has not been issued. Half yearly reports must be submitted within two months of the reporting period’s end, and annual reports with four months of year-end. BSE and Rasdaq listing rules set disclosure requirements for each listing tier.⁶⁰⁷ Current reports identifying significant material events must be submitted within 24 hours and are published in the NSC Bulletin and at the NSC’ information office. According to NSC regulation, the annual report must include a balance sheet, profit and loss, cash-flow statement, statement of exchanges in equity, notes to financial statements and an audit report and must provide data on current or proposed company activities such as significant changes in the company’s business plan or structure, the main object of its activity and sales markets, main suppliers and competitors identities of directors, executive directors, censors and auditors, number of employees, company assets, and significant contracts concluded during the past year.

Transparency (practice)

To what extent is there transparency in the business sector in practice?

General data on the registered companies like names of directors, contact details or annual reports are available to the public but the process of obtaining such information can be quite troublesome since they, most likely, aren’t available on the official company site or with the same public office. Information available from the Trade Registry and the NSC includes company statutes/articles of association, annual reports and financial statements and the identity of directors, key executives and censors. Some

⁶⁰⁷ Report on the observance of standards and codes (ROSC), Corporate governance, country assessment
Romania , April 2004

market analysts (and the Accounting and Auditing ROSC) reported that the Trade Registry information is outdated, missing or otherwise difficult to obtain.

Financial auditing and reporting are applied effectively, especially since for most agents it represents a legal obligation but, according to companies subject to it and to their legal representatives, the quality of these audits is on some occasions questionable. The legal framework and the procedure standard are rather vague and allow personal interpretations. The ownership structure of businesses is not publicly available neither on the official site of the company, nor on public registry sites.⁶⁰⁸

The reports of companies on Corporate Social Responsibility are generally only focused on the positive aspects of the CSR activities and only directed at marketing level, without taking into account the first responsibility of the company: to transparently report its actions. Moreover, even though there is growing interest in corporate social responsibility in Romania coming from both companies and the general public, the segment of anticorruption isn't present among the publicly debated topics. Companies currently use reporting on CSR for the extra publicity and engage with more humanitarian missions. None of them make public disclosures regarding their fight against corruption.

However, fraud detection and prevention do not seem to be among the strengths of Romanian companies. This fact is proven on numerous occasions and also by one of the largest studies of its kind, the Economic Crime Survey coordinated by Pricewaterhouse Coopers (PWC) globally. According to their findings, one third of the incidents of economic crime reported in Romania are detected by chance or by means beyond the influence and control of management, as opposed to via anti-fraud

⁶⁰⁸ Interview.

systems and controls. This compares to 32% in Central & Eastern Europe and 40% globally⁶⁰⁹.

Given the other findings in the PWC report, these numbers suggest that:

- in addition to undetected incidence, there may also be instances of fraud detected but not reported;
- companies are more prone to fraud as a result of the impact of the current economic downturn;
- the decline in the financial performance of companies may have lead to tightening budgets, downsizing, and less focus and attention on internal controls that would otherwise have detected incidents of economic crime.

The quoted study⁶¹⁰ states several very relevant matters concerning company measures to prevent fraud:

- nearly 82% of the surveyed Romanian companies mentioned that they had not changed the frequency of conducting fraud risk assessments in the last 12 months compared to 12 months ago.
- in addition, 18% of Romanian companies had not performed any fraud risk assessment in the last 12 months.

One should note that global results have shown a clear correlation between the frequency of fraud risk assessments and the number of detected frauds⁶¹¹.

⁶⁰⁹ Pricewaterhouse Coopers , Economic Crime in a downturn, The 2009 Global Economic Crime Survey, January 2010, Romania, www.pwc.com/crimesurvey , p. 6

⁶¹⁰ Ibidem.

⁶¹¹ Ibidem.

Accountability (law)

To what extent are there rules and laws governing the oversight of the business sector and corporate governance of individual companies?

Romania's corporate governance framework is based on civil law, although securities legislation has been influenced by the Company Law no. 31/1990, amended 17 times over the last 11 years. The Capital Market Law sets the basic rules for the equity market.

Institutions were established in the '90s in order to create an adequate environment for private, independent, economic entities, such as the Trade Registry. The information recorded by the Trade Registry is quite extensive and mirrors the information required to be specified in the constitutive act. However, not all the information can be accessed by the public and some are available only for shareholders. The public records are available only for a fee.

The Law on Securities and Stock Exchanges no. 52/1994 is the second pillar of the corporate governance system in Romania, dealing with the specific situation of the "public companies"- business entities that raise capital through public subscription or whose securities have been subject of a public offer. The assistance received from Canadian and British experts produced a modern piece of law with a touch of common law that is not always congruent with the Romanian legal tradition. This law governs not only corporate shares but also bonds and all securities issued by the government or local authorities. The intention is to facilitate the financing of business corporations and to provide public access to accurate, safe and exhaustive information regarding the securities traded on the market and the issuing companies. Based on the Securities and Stock Exchange Law and complementary to it, the National Securities Commission – a supervisory and regulatory authority- issues explanatory rules and directives, which deal in detail with every chapter of the law.

The National Securities Commission (NSC) was established through Law no. 52/1994 as a legal “autonomous administrative authority” supervising the activities of the stock exchanges, financial intermediaries, enforcing disclosure requirements and insider trading laws and overseeing takeovers.. Under Romanian Public law, the NSC isn’t subordinated to the government, it is subject only to parliamentary control. The five members of the Commission are appointed by the Parliamentary for a five-year term. The NSC published in the Official Gazette of Romania all the regulations and directives issued and it often cooperates with the professional associations in the elaboration of regulations and instructions. Even though there are some directives for regularly informing investors about the status of issuers of securities, confidential and privileged information, public offerings, etc, there are no firm rules providing for the NSC to promptly and completely inform the investors. Under the Securities Law, the NSC has been vested with limited regulatory powers. It is for this reason that the NSC may authorize professional bodies to issue their own regulations regarding the conduct of market operators, trading mechanisms, accounting rules, or it may delegate part of its monitoring prerogatives. The NSC has relatively strong authority over supervised and licensed entities (brokers), but more limited authority over securities issuers, and has no general duty to protect shareholder rights.

Another institution collaterally involved in the investigation of corruption crimes is the Competition Council, an autonomous administrative authority, part of the central public administration of specialty, which functions based on the attributions entrusted by Competition Law no.21/1996 republished, with the subsequent amendments and completions. The main novelty associated with the involvement of this institution in the fight against corruption through public procurement through the establishment of the Tenders and Petitions Directorate.

Listed companies are not obliged to adopt all the requirements, but the Bucharest Stock Exchange asks them to transmit annually a statement of compliance or non-compliance with the Code of Governance, in which to

justify why the company failed to comply fully with its recommendations. Although the code is designed for companies listed on the Stock Exchange regulated market, the principles can be followed by Rasdaq companies as well. Also, we congratulate the recent decision made by The Bucharest Stock Exchange recently to voluntarily adopt the principles stipulated by the Corporate Governance Code it promotes, even though it needn't do that since the Code isn't mandatory for the category it is listed with.

Another concerning aspect with current legislation is that Managers and company executives can be, and for limited liability companies must be, insured against possible losses that they and the company itself would support as a result of performance of the administrator and / or executive director. Currently, the practice of tax authorities is to not allow the deductibility of costs of such professional liability insurance in calculating taxable income only to the extent that insurance premiums are included in income and taxed as such salary. This aspect was brought to attention by one of the biggest audit companies in Europe, active in Romania as well. To their opinion, management staff doesn't expose personal risk, but risks inherent in their duties. Consequently, interest in acting to protect the delegate with an official mandate from the company is the company's interest, not the individual's. The company's costs should not be considered a personal benefit adjacent wages. The company considered spending for insurance premiums to be deductible because they were made to protect assets and interests and, therefore, is costs incurred for the purposes of income (i.e. to safeguard them). Tax inspectors have found that insurance concerns strictly the administrators / directors and executives have emphasized that, according to the policy in question, the company will be compensated only if and insofar as it has compensated the insured legally⁶¹².

⁶¹² Popescu, Camelia, *The deductibility of risk insurance premiums*, Pricewaterhouse Coopers, http://www.pwc.com/ro/en/Publications/PwC_Articles/Curierul_Fiscal/eductibilitateprimea_sigurare.jhtml.

The financial regulator overseeing companies is the National Fiscal Administration Authority, and under this institution the Financial Guard and the County Fiscal Administrations. For the stock market the National Council of Mobile Values is the overseeing body.

Accountability (practice)

To what extent is there effective corporate governance in companies in practice?

One of the most important aspects brought to surface by the recent financial crisis was that, to this moment, corporate governance based on self-regulating mechanisms, hasn't been very efficient and that a better company management is necessary not only to reduce the probability of a new crisis but also to make companies more competitive. The Foreign Investors Council (FIC) recommends that Romania's corporate governance code should be drafted by a diverse group of persons comprising a Code Committee where no participant may wield undue influence. The Code Committee should represent as many as possible of the above stakeholders. The Code should enjoy broad consensus after constructive debate. As proof of that consensus, all companies seconding persons to serve on the Code Committee should adopt the Code.

Regardless of recent legal attempts, listed companies are far from having a management that takes into account the interests of all shareholders. Corporate governance principles are ignored by smaller issuers and applied with great inconsistency by the greater ones. The idea of an administration with a high degree of transparency is not too appealing to company administrators, although the business environment has circulated the idea insistently over the last years. For one reason or another, companies do not consider it a priority to move to the "Plus" category in the stock

exchange market, which covers only issuers who have mastered these principles.⁶¹³

The evaluation of the professionalism of the staff of the Financial Guard and the County Fiscal Administrations is not the best, as there are important vulnerabilities to corruption that have to be assessed. On the other hand, as the rules of the stock market are not mandatory, the overseeing body is not effective enough according to the interviewees' opinion.

There is a serious mindset in Romanian companies that needs to be addressed if fraud is to be prevented – people are prone to committing fraud when they believe others do it as well. This stresses the need for strong corporate communication and a very clear “tone from the top” that is also followed by decisive action when fraud is identified. Indeed, while 60% of Romanian companies have reported that they are going through a period of financial decline, 56% of Romanian companies have reported that the number of economic crimes has increased in the last 12 months, and 44% have reported increases in the cost of fraud, compared to 43% in Central & Eastern Europe and 42% globally. At the same time, 66% of Romanian companies falling victim to economic crimes have detected more than 100 incidents during the last 12 months⁶¹⁴. Financial statement fraud, asset misappropriation and corruption and bribery seem to be the most prevalent types of economic crime in Romania 67% of Romanian companies that have reported economic crime in the last 12 months indicate that they have experienced financial statement fraud, compared to 80% in Central & Eastern Europe and 63% globally.⁶¹⁵

In the case of economic crimes committed by management and employees, 67% of Romanian companies have dismissed the principal perpetrators, while 44% have taken either civil or criminal action against

⁶¹³ Interview.

⁶¹⁴ The 2009 Global Economic Crime Survey – Romania

⁶¹⁵ Idem

them. A not-so encouraging finding is that 33% of Romanian companies either only warned the principal perpetrators or did not take any action whatsoever. This is higher than the Central & Eastern Europe (25%) and global (23%) results, and shows an inadequacy and reluctance on the part of Romanian companies when it comes to effective fraud response. Our experience shows that Under the OECD convention, Government officials are considered to be a particular risk with regards to corruption because they have the ability to award valuable contracts, or grant favors, and yet are often paid relatively little.

Minority shareholders claimed that abuses by majority (often foreign) shareholders had resulted in a dramatic deterioration in the financial performance of many companies.

The leniency policy is an efficient way of detecting anticompetitive agreements. In a nutshell, through the leniency policy the undertakings involved in such practices have the opportunity of benefiting from full immunity to fines or from a reduction of them. In order to benefit from this preferential treatment of the Competition Council, these undertakings must initiate on their initiative the cooperation with the Romanian competition authority, must submit all the available information and evidences and must collaborate during the entire investigative procedure. If following the investigations it is concluded that bodies of the central and local administrations have infringed the law by implementing anticompetitive regulations, the Competition Council requests their harmonization with the normal competitive environment. These measures appear all the more necessary considering two indices included in The Global Competitiveness report 2011-2012. According to this study we should be concerned by the high level of Favoritism of decisions in government officials (we ranked 115 out of 142 positions) and by the ethical behavior of firms (rank 103 out of 142). These two indicators point

out the high level of vulnerability of these two segments that can put significant pressure on the entire national integrity climate⁶¹⁶.

Integrity mechanisms (laws)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Sector- wide codes of conduct are not a practice in Romania. According to Romanian legislation, liberal professions are treated differently. For each of them there is a special piece of legislation stating how the profession is organized and how it functions. One of the provisions is the obligation to join the official body supervising the professional activity of the practitioners. There are 32 different professions regulated by 32 laws mentioning the obligation to create and obey a professional conduct code. These codes are comprehensive and cover individual behavior regarding general obligations, obligations to society, to the public interest, to the client, to the profession, to colleagues, to the order of which the individual is part of and to the public institutions. Even though some of the dispositions make reference to actions that can be associated with corruption, it is not specifically banned.

The business environment presents a clear tendency among the multinational companies active in Romania to import the mother-country ethics code and translate them without a thorough analysis of the local business condition. This fact can be considered to be a sign of the lack of intention to put these codes into practice. Other than the financial institutions like banks and insurance companies, most economic agents do not have specialized conformity departments to supervise the integrity climate and the department in charge with applying this code of conduct is

⁶¹⁶ The Global Competitiveness Report,
http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf

often the human resources one, a fact that leaves an open door to arbitrary decisions or corruption. Another problem is the absence of well-built whistleblowing mechanisms to offer protection to the whistleblower and incentivize him/her to take action. Often, even though the employee has decided to report a corruption action, he/she drops his charges before any action is taken against the perpetrator because he is afraid of the repercussions at the work environment or that he might actually lose his/her job.

Even though codes of conduct haven't spread across all sectors and sometimes the ones that do exist do not comprise an anticorruption engagement, the legislation on the matter, specially the criminal code and the criminal special law is comprehensive and applies to all individuals and private or public companies and to all Romanian citizens including when operating business abroad.

To this moment, bidders for public contracts aren't required to have any kind of ethics programs, business principles and integrity pacts are not implemented in Romania. Even though attempts have been made to determine companies to voluntarily adopt corporate codes of conduct, there still are entire sectors that resist them while other only adopt some principles without creating the mechanisms to enforce them. The chief compliance officer is a position created only in the areas where the vigilance against any type of financial criminal activity is very high or where the company is interested in collaborating with other foreign companies that require them to have an efficient integrity system.

Integrity mechanisms (practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Presently, the general trend is to only implement conduct code as public statements about the integrity of the company but the lack of transparency concerning the content of these codes of conduct is a clear indicator of the little engagement to the promoted values. Secondly, the organization of the conformity structures most often leaves no possibility to take stand against the higher management structures like the CEO or the company board of directors. According to The Global Competitiveness Report, Romania's national integrity system scores low on all the indicators that would suggest a clean business environment. We emphasize here three indicators particularly important to our research, representing Romania's position in a ranking with another 141 countries: transparency of policy making (140), favoritism in decisions of government officials (115) and the ethical behavior of firms (103). Considering the very low position we held in all these aspects, the fact that we held the 63rd position according to irregular payments and bribes suggests that, actually, this isn't only a matter of bribing but that corruption here is also a way of serving interest in exchange for immaterial assets such as power in the decision making process and promoting others' interest as opposed to the public interest.

Nonetheless, this information is inconsistent with the findings of the National Anticorruption Directorate (NAD). According to the 2010 Activity Report of the NAD, as a result of the 220 indictments, only 3 were legal persons. Considering the corruption offences or the ones that are assimilated to those of corruption, both performed with the clear involvement of the business sector, the DNA report further mentions that, following investigation, offences were sent to trial as follows: 96 for tax evasion, 17 for money laundering. In 2010 the courts ruled final conviction decisions for 11 directors/presidents or commercial companies and 32 associates/administrators of commercial companies and 1 president of a

Financial Investment Company SIF, 1 bank president, 3 managers of national companies or autonomous administration. The tax evasion was mainly committed during operations with excisable products like tobacco, petroleum, energy products, in cereal trade food product supply, waste collection, intercommunity acquisition of merchandise, merchandise import and in excisable operation with alcohol⁶¹⁷.

Whistle blowing policies are rare or nonexistent with most companies where often employees restrain themselves from notifying the compliance officer for fear of losing their jobs or suffering some other kind of consequence. There is no public blacklist of companies that engage or have engaged in corruption practices and money laundering but we have had confirmation from several big foreign companies present in Romania that, by obeying their own national legislation, they request their business partners to certify that they do have conduct codes as a condition to start any collaboration. The trend to this moment has been to convince individual companies to implement integrity mechanisms either through collaboration policies, through legislation for some liberal professions or by participation the Plus Tier of the Bucharest Stock Exchange. Still, presently, integrity pacts are a novelty in Romania and Transparency International-Romania has started a national project that aims to convince as many representatives of the business sector to sign 5 such pacts. Nonetheless, in the numerous consultations we have had with the companies it seems that they only perceive corruption as an exogenous factor. Also, training on integrity matters is current practice only for high-risk institutions like banks and insurance companies or in multinational companies and less if at all in big Romanian companies. Integrity training is not a concern for small and medium companies.

To conclude on the matter of the integrity of those working in the business sector, the national legislation is comprehensive but general, with no direct target to business, and it offers the incentives to disclose corruption

⁶¹⁷ National Anticorruption Directorate, Activity Report 2010, Summary, p. 22.

deeds, but the institutions in charge with monitoring and investigating corruption cases are overwhelmed by the large amount of cases they have to investigate coming from both the public and private sector. Under these conditions, the existence of integrity mechanisms with more companies would greatly contribute to the efficiency of the state structures and would help prevent the actions that damage company reputation and financial situation by identifying risk situations.

Anti-corruption policy engagement

To what extent is the business sector active in engaging the domestic government on anti-corruption?

Even though there is growing interest in corporate social responsibility (CSR) in Romania coming from both companies and the general public, the segment of anticorruption isn't present among the publicly debated topics. Companies currently use reporting on CSR for the extra publicity and engage with more humanitarian missions. None of them make public disclosures regarding their fight against corruption.

However, some of the representatives of the private sector in Romania, and among them the Council of Foreign Investors (FIC), have caught up to the high level of interest manifested by the press and the public opinion and to that of the Romanian Government considering the fact that high level of corruption was one of the first reasons appealed by the EU member states that vetoed Romania's access to the Schengen Area. In some larger cities in Romania foreign business associations reuniting a considerably high number of members have made public appeals to the Romanian Government to address the problem of corruption. The US Embassy in Romania actually makes a public recommendation to legal persons involved in a business to consider joining these associations since

it raises the possibility of complaining as a group about specific corrupt practices.⁶¹⁸

In response to concerns voiced by the FIC Members, the Ministry of Public Finances (MF) took steps to improve the consultation process regarding fiscal regulation, by the creation of working groups made up of Ministry officials and representatives of the private sector to discuss each section of the Fiscal Code and related norms. Nonetheless, more recently, the initiative of the American Chamber of Commerce in Romania (AmCham Romania) and FIC to propose some modifications to the Fiscal Code did not meet the same enthusiasm from the public officials. Another example of businessmen's associations calling for the Government to take a stand against corruption is a public interview offered by the President of the British Romanian Chamber of Commerce, Raymond Braden, that stated that in Romania corruption is "scandalous," as it affects current activities⁶¹⁹.

UN Global Compact hasn't been too vividly promoted locally and not many institutions have adopted the 10 principles it promotes. To this moment only 10 Romanian institutions are part of the UN Global Compact, of which only 7 are business companies, 8 are NGO's and one adherent is an academic institution.

⁶¹⁸ Maintaining growth, A report by the Foreign Investors Council, February 2009, Bucharest, p. 11, <http://www.fic.ro/whitebook/whitebook.html>

⁶¹⁹ British investors say corruption is scandalous in Romania, Romanian Times, 12.07.2011, http://www.romaniatimes.at/news/Business/2011-07-12/15804/British_investors_say_corruption_is_scandalous_in_Romania

Support for/engagement with civil society

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

It is quite difficult to make an assessment of the involvement of business in campaigns coordinated by civil-society organizations generally, especially since most of them keep private about their financial sources but we can openly state that Transparency International-Romania has benefited from the support of important companies on its previous and current campaigns regarding integrity in the corporate are. Corporate social responsibility (CSR) is a relatively new type of awareness raising activity and it currently focuses on humanitarian missions, predominantly dedicated to noble causes such as helping children in distress, building health centers and preserving nature, causes that have greater appeal with the public.

However, the involvement of business in anti-corruption partnerships with civil society is still low among the companies and other representatives of private sector. The examples are rare. During a recent contest named “Restart Romania”, a partnership between the United States Embassy and some other important agents like Cisco, Microsoft, The French American charitable trust, The Romanian American Foundation and many other companies, that asked the persons or legal persons to submit project ideas concerning the improvement of democracy in Romania, the first evaluation belonged to the community and they chose 10 projects for the finals. Of these projects, no less than 6 were directly linked or by association to the idea of fighting corruption. This is the best poll conducted recently to prove people’s interest in fighting corruption and their engagement to correct the issue.⁶²⁰

⁶²⁰ <http://restartromania.netsquared.org>

7. CONCLUSIONS AND RECOMMENDATIONS

Overall the Romanian National Integrity System is assessed as 'average' in this report. Joining the European Union helped to strengthen the integrity system, but the economic crisis, affecting resources and the independence of the institutions has increased the vulnerabilities at all levels.

In this context Transparency International Romania take the opportunity to reiterate general recommendations for the national integrity system:

- For the Legislature and the Executive pillars
 - The reduction of the use of emergency decision-making mechanisms.
 - Strengthening mechanisms for ensuring MPs' and members' of the cabinet liability for fraud and corruption.
 - Introducing a regular mechanism of impact assessment for all public policies.
- For the Judiciary pillar
- The unification of jurisprudence, by ensuring the effectiveness and utilisation by all Courts of the justice portal available.
 - Applying the accountability mechanism in a timely and objective manner, observing the independence of justice and ensuring its impartiality.
- For the public sector pillar
 - Institutions have to elaborate, implement and maintain strong procedures, proportionate to the risk of corruption and in accordance with the resources and complexity of the institution.

- The leadership of the public administration have to be engaged in implementing a zero tolerance to corruption policy, recognising that bribery is against fundamental values as integrity, transparency and accountability and that bribery destroys efficacy.
- A decisive engagement against corruption in public services as public health, education, social security and utilities. Development of specific strategies to fight corruption on these sectors.
- Standardization of administrative procedures in central and common frameworks for the organizational structures.
- The introduction of a uniform quality management system in central and local government structures.
- An annual assessment of vulnerability to corruption of public authorities and institutions.
- Adopting the integrity pacts by all contracting authorities.
- Introducing a bonus mechanism for tenderers who have adopted ethical and integrity principles in business.
- Payment for services or goods purchased only based on independent certification of contractual obligations.
- Increasing the motivation standard for the administrative decisions.
- Enforcing a black-listing system for public procurement bidders not respecting their contracts in other situations.
- Development of a special curricula referring to Ethics and Integrity in superior education institutions on public administration, sociology, political science, and in other education institutions providing employees for the public sector.

- For the Law Enforcement Agencies
 - Establishing a transparency standard for decisions and documents managed by the law enforcement agencies.
 - Establishing a comprehensive and objective system for entering the institution and promotion of personnel in order to avoid nepotism and ensure performance.
- For the electoral management bodies
 - Stabilization and codification of electoral legislation and a strong commitment to the legislature and the executive for not modifying electoral legislation more than a year before the elections, according to European standards.
 - Implementation of a system of reporting and monitoring electoral campaign programs and expenses.
 - Implementing a control system for in-kind contributions to political parties.
 - Insuring the independence and professionalism of polling station presidents.
- For the Anticorruption Agencies
 - Unequivocally establishing a system of public law in respect of the conduct of public offices and dignities, according to the principle of proportionality. Regulating in this respect a system of assets and interests declarations and specific incompatibilities, prohibiting other sources of income than wage / salary in order to achieve consistent relationship to art. 44 (9) of the Constitution.
 - DNA should establish a set of appropriate mechanisms for the individualization of the offense, to determine applications for sanctioning submitted to the court and

- to increase the speed in investigating high-level corruption cases.
- Strengthening sanctioning mechanism should be accompanied by a centralized data-base of cases and internal policy of information, publicity and media coverage, to improve the effectiveness and objectivity of the approaches
 - For the Court of Accounts
 - Restoring the power to control to the Court of Accounts, together with the external audit delegate, and establish policies and complementary approach for the two main duties incumbent to the institution: control and audit. Improve public relations policy and active promotion of partnership with civil society organizations and media
 - Increase public internal auditors' independence.
 - For the political parties
 - Parties will not provide, directly or through intermediaries, benefits and incentives to voters. Parties will be limited to conduct the election campaign based on positive messages on the quality of programs and the candidates
 - Parties will deter, under penalty of exclusion, their local representatives to accompany the benefits paid as social assistance with any electoral campaign, recognizing that this practice is an indirect type of buying votes
 - Parties will not engage militants to carry voters to the polls, recognizing that this practice presents a major vulnerability for direct purchase of votes

- Parties will not accept donations or sponsorships if they cannot be transparently recorded and reported the Permanent Electoral Authority
- Parties will not accept donations or sponsorships if they are conditioned by donors or sponsors with future public contracts
- Parties will not accept donations or sponsorships if they come from illegal sources
- The parties will report to competent authorities and civil society if they observe any irregularity in the electoral process
- For the business
 - Corporate structures should be transparent, including the public and transparent disclosure of all subsidiaries.
 - Existing anti-corruption and transparency commitments should be verifiable by independent third party monitors.
 - Company reporting on anti-corruption programmes should meet international standards such as the UN Global Compact – Transparency International Reporting Guidance on the Compact’s 10th Principle (anti-corruption).
 - Full details of companies’ fields of operations should be published as well as their profit and loss accounts, with transfers made to governments and local communities reported on a country-by-country basis.
 - Policies and decisions on political contributions should be decided by the company board and in consultation with its shareholders.
 - Political contributions and lobbying should be included in corporate reporting.

- Bribery and corruption risks must be assessed across companies' entire supply chains.
- Companies should undertake due diligence, as appropriate, in evaluating prospective contractors and suppliers to ensure that they have effective anti-bribery programmes.
- Companies should make known their anti-bribery policies to contractors and suppliers and contractually require equivalent standards.
- Companies should join and actively participate in collective anticorruption initiatives and multi-stakeholder processes at the sectorial level.
- Companies should empower whistleblowers who experience or witness bribery and corruption through effective whistleblower policies and procedures.

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Lege privind responsabilitatea ministerială, Legea nr. 115/1999

Legea nr. 161/2003 privind unele măsuri pentru asigurarea transparenței în exercitarea demnităților publice, a funcțiilor publice și în mediul de afaceri, prevenirea și sancționarea corupției.

Lege nr. 115/1996 privind declararea și controlul averii demnitarilor, magistratilor, funcționarilor publici și a unor persoane cu funcții de conducere

Legea nr. 78/2000 pentru prevenirea, descoperirea și sancționarea faptelor de corupție

Legea nr. 303/2004 privind statutul judecătorilor și procurorilor

Legea nr. 304/2004 privind organizarea judiciară

Legea nr. 317/2004 privind Consiliul Superior al Magistraturii

Legea nr. 334/2006 privind finanțarea activității partidelor politice și a campaniilor electorale

Legea nr. 176/2010 - privind integritatea în exercitarea funcțiilor și demnităților publice, pentru modificarea și completarea Legii nr. 144/2007 privind înființarea, organizarea și funcționarea Agenției Naționale de Integritate, precum și pentru modificarea și completarea altor acte normative

Ordonanța de urgență nr. 34/2006 privind atribuirea contractelor de achiziție publică, a contractelor de concesiune de lucrări publice și a contractelor de concesiune de servicii

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Web resources

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www.senat.ro

www.guv.ro

www.ccr.ro

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www.curteadeconturi.ro

www.integritate.eu

www.pna.ro

www.mai-dga.ro

www.apd.ro

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