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## EUROPEAN EXPERIENCE IN COMBATING CORRUPTION – THE ROMANIAN DEVELOPMENT

### I. WHAT IS CORRUPTION?

Corruption (from the Latin word *“corruptio”* – rottenness) is a social phenomenon, which in some countries has developed and generalized, growing to engulf, in the worst cases, all the structures and levels of the society (note the case of Somalia or South Sudan, which are cited as the most corrupted countries in the world)<sup>1</sup>.

This was, unfortunately, the case of the Romanian society no sooner than the beginning of the 21<sup>st</sup> century, in 2000, before the country's adherence to the European Union.

The most common perception of corruption is linked to unlawful appropriation of money, but in its deepest meaning corruption relate not only to public funds, but also to unlawful appropriation of power through illegal and/or immoral activities. Beside corruption, the abuse of power (criminalized in the form of “abuse of office” criminal offence) was and still is the other mass phenomenon that affects the daily life of Romanian citizens.

The culture of corruption has a long and, I would dare to claim, a historical tradition in the Romanian society, dating back to the XVIII century, due to the geographical position of the country in close vicinity to the Balkans region and under the influence of former Ottoman Turkish Empire.

Even though at general social level of perception, people usually reject corruption, some have no problem in using it as a strategy for “solving problems” or for financial and/or professional accomplishment.

By tradition, corruption is usually generated by social and economic factors (i.e. poverty, unstable legislation and an “easy enrichment” mentality embraced by some politicians and other socio-economic elites).

In 2016, Romanian Supreme Court of Justice ruled out that the appointment of individuals to certain public positions in change of paying/receiving money for the appointment, usually without complying with transparent, legal and regulatory procedures, is a phenomenon of upmost and extreme danger for the Romanian society, which may generate, foster and multiply corruption at an exponential rate. *“On their turn, the public servants/officials appointed in such a manner, are more likely to commit criminal offences in order to retrieve the money they paid, this meaning a multiplied misuse/extortion of the financial resources that should contribute to the development of the society”* [1].

<sup>1</sup> According to “Corruption Perception Index 2016” published by Transparency International Organization, Somalia is the last ranked country (position 176/176 with a total grade of 10 from 90), while South Sudan is the second-last one (position 175/176 with a grade of 11/90).

### II. SHORT HISTORY OF ROMANIAN COMBATING CORRUPTION – BEFORE AND AFTER INTEGRATION TO EUROPEAN UNION

In 2000, before EU-integration, Baroness Emma Nicholson stated that *“Romania must tackle the three main issues impeding its adherence process: corruption, corruption and corruption”* [2].

According to the European Commission intermediary report on Romanian Justice, dated March 2000 *“the country has solved some corruption cases, but the criminal sentences ruled out are too mild”* [3].

In 2006, through one of its mandatory Decisions, the Romanian National Defense Supreme Council declared corruption as a serious menace against national security [4; 5].

In the above-mentioned social and political context, the need for more severe sanction of corruption raised. The simple provisions of the Criminal Code regulating mainly the criminal bribe and abuse of office, tailored on the classical criminological model, were no longer sufficient.

During the adherence to the E.U. process, in 2000, the Romanian Parliament adopted the **Law No. 78/2000 on prevention, disclosure and criminal punishment of corruption**. Through continuous amending process, the said Law became a powerful and fully functional legal tool in fighting medium- and high-corruption.

The fight against corruption started in early 2000, through the establishment of a special prosecutorial unit, first named *The National Anti-corruption Prosecuting Office* (in Romanian language PNA). During its first years of existence, this investigative body gave a rather poor, inefficient performance, over 80 % of its investigations ending without indictment. More than that, there were voices claiming that is against the Constitution to have two different prosecutorial services within the Republic, the “regular” one (with general jurisdiction against all criminal offenses, including *low corruption*) and a “special” one, with given authority against *medium- and high- corruption* only.

In late 2005, the PNA reorganized as a department within the General Prosecutor's Office of the Republic, called the “Anti-corruption National Department”. It was early 2006 when it eventually became what today is known as the **Anti-corruption National Directorate** (in Romanian language and hereinafter **the DNA**)

The results immediately started to show-up. For example, in 2015<sup>2</sup> only over 1,250 alleged perpetrators were indicted and sent by the DNA in Court for

<sup>2</sup> The D.N.A. performance on 2015 is analyzed as the most recent official data because the Official Report on D.N.A. activity on 2016 is not available yet.

corruption or committing criminal offences related or assimilated to corruption. The competent Criminal Courts confirmed, through definitive rulings, over 90 % of the raised indictments. Among those, 1 former prime minister of the Republic, 5 ministers and no less than 21 members of the Parliament were found guilty of corruption and sentenced to prison. Measures for provisional seizure of property and attachment of property were taken for a total value over half billion euro (500,000 euro) [6].

### III. ROMANIAN LEGAL FRAMEWORK AND LEGAL ENTITIES IN PREVENTING AND COMBATING CORRUPTION

#### III.1. Preventing corruption – The National Agency for Integrity (ANI)

- The establishment of the ANI

One of the key points of the Chapter of Justice and Internal Affairs from the negotiations for the adherence of Romania to the E.U. regarded the necessity to find out the most efficient solution for controlling the incompatibility regime as well as the fortune of state dignitaries, judges and prosecutors, Military/Police/Border Police personnel and public servants.

The necessity for establishment of the ANI raised up after the European Commission expressly asked for a viable, working mechanism for implementing and controlling the e-declarations. GRECO (the *Group of States against Corruption*) also strongly supported this request.

Therefore, in 2007 the Romanian Parliament adopted the *Law No. 144/2007 on establishing, organizing and functioning of the ANI*.

- What the ANI is and what does it do

According to its statutory law, the ANI is an operationally independent institution, which exercise the administrative control on e-declarations, conflicts of interest and incompatibility regime of the above-mentioned categories of Romanian citizens. **The National Council for Integrity** monitors the whole activity of the ANI for Integrity and gives the general guidelines regarding the National Strategy for Integrity. The National Council annually presents the activity report on integrity in front of the Senate (the higher chamber of the Romanian Parliament).

Within the ANI work a special public servants category, called **inspectors of integrity**. They have only administrative jurisdiction and no judicial authority. Whenever they discover grounds for alleged criminal offenses regarding the regime of e-declaration, legal conflict of interests and/or incompatibility, they send the whole file to the DNA prosecutors for proper criminal investigations<sup>3</sup>.

According to the statutory law, the ANI President, his deputy and the inspectors for integrity are legally banned to request and/or accept any suggestions or indications regarding their activity from any other State authority, public institution, legal entity or natural person.

<sup>3</sup> Law No. 144/2007 on establishing, organizing and functioning of the ANI.

#### III.2. Combatting corruption – The Anti-Corruption National Directorate (DNA)

- What is and who works for the DNA

DNA is a **prosecutorial unit specialized in combating medium and high profile corruption**; its design follows a model adopted also by other E.U. Member States, such as Spain, Austria, Belgium and Croatia.

Within the Romanian Judicial system, DNA is an **autonomous investigative body, independent** in relation to the Criminal Courts, to other prosecutorial units, as well as in relation to other public authorities<sup>4</sup>. It has a rather complex structure: its prosecutors heavily rely in their investigations on the expertise of specialized anti-corruption criminal investigators from the Judicial Police<sup>5</sup>, as well as highly trained and proven specialists such as economists, finance and banking system experts, customs and tax evasion experts, IT personnel. All these experts work together as Joint Task Units assigned for each criminal investigation, under the direct supervision and control of DNA prosecutors. All DNA personnel (either prosecutor, Judicial Police officer or other expert) is prohibited/legally banned to hold any other official position(s) within other legal entity (either State authorities or private legal entities, no matter which), except teaching/training positions within the university educational system. This specific requirement was meant to give reasonable legal guarantees for the autonomy and independence of the criminal investigations performed by DNA.

- What does DNA do

DNA has the legal authority to conduct criminal investigations against criminal offences of corruption and criminal offences directly related to corruption in three main directions<sup>6</sup>:

**a) Medium and high profile corruption** – according to the relevant legal provisions, there are

<sup>4</sup> Law No.78/2000 on prevention, disclosure and criminal punishment of corruption.

<sup>5</sup> The Romanian Criminal Investigative System established the Judicial Police, following the French model. According to this model, the National Police splits in two main professional bodies, in terms of criminal investigating authorities: **the Judicial Police** (composed of all Police criminal investigators, both commissioned and non-commissioned Police officers) and **the Administrative Police** (composed of all Police personnel, other than Judicial Police). Within the Administrative Police are to be found all other specialized police units, such as Community Police, Traffic Police, Patrol Police, Anti-Riot Police etc. Beside regular criminal investigators, the Judicial Police has also **specialized Anti-Corruption Units, specialized Organized Crime and Terrorism Fighting Units**, and last, but not least, **the Forensic Police**. Only the Judicial Police personnel has legal authority to conduct criminal investigations; any criminal investigative activity performed by the Administrative Police personnel is invalid under the Romanian Criminal Procedure Code mandatory provisions and not to be counted as grounds for raising the indictment.

<sup>6</sup> Law No.78/2000 on prevention, disclosure and criminal punishment of corruption.

three requirements for a criminal offense to enter this category:

- the value of the bribe exceeds 10,000 euro
- either the total prejudice exceeds 200,000 euro or
- the alleged act of corruption was committed by a highly positioned official or public servant (such as members of the Parliament or Government, ministers and their deputies, judges and prosecutors, Military/Police/Border Police commissioned officers, Tax Evasion Service or Customs officials, County/Regional Governors and their deputies, mayors of municipalities and their deputies, heads or members of County/Regional Councils, etc.)

**b) Criminal offenses against the financial interest of the E.U.** – unlawful gain of money from European funds, illegal reduction or unlawful change of destination for such funds;

**c) Criminal offenses of highly profiled economic and financial crime**

- Where from the DNA takes its information on alleged corruption cases

The most frequent channels for informing the DNA prosecutors regarding the alleged criminal cases of corruption are the following:

- Applications/reports on criminal offenses of corruption filled in the applicants (both natural and legal persons);
- Reports on criminal offenses of corruption filled in by the alleged author of the criminal offenses of corruption itself – the so-called *self-denouncement*;
- Reports on criminal offenses of corruption filled in by state-authorities and/or officials with control jurisdiction, such as Tax Evasion Service, The

Financial Guard (the Economic and Fraud Police within the Romanian Ministry of Public Finance), OLAF Romanian Department (European Anti-Fraud Office) of other state and local authorities for which is mandatory to report criminal offenses of corruption they have become aware of while performing their official duties;

- Reports on criminal offenses of corruption received from Police, from other Prosecutorial Units or from Secret/Intelligence Services;

- Reports on criminal offenses filled in by the DNA prosecutors based on open-sources or public facts, such as mass-media articles – the so-called *ex-officio* reports).

- How is the DNA organized

The DNA is structured on two levels<sup>7</sup>:

- **The central level** is composed of units, sections and other departments and has countrywide jurisdiction. The DNA Chief-prosecutor heads the whole shop. As the DNA is a prosecutorial unit, its Chief-prosecutor is under direct coordination of the General Prosecutor of the Republic, but the latter one has no legal authority to order the former on starting or closing corruption criminal investigations. The decision on opening criminal investigations always falls under the CPC provisions only; this way, the system itself guarantees the autonomy of the DNA.

- In the field, there are **15 territorial units** based in those municipalities where the Appeals Courts work. Each DNA territorial unit's jurisdiction is limited to its territory, covering up to three counties of the country. A Chief-prosecutor, directly subordinated to the DNA Chief-prosecutor, heads each territorial unit.

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## ЄВРОПЕЙСЬКИЙ ДОСВІД БОРОТЬБИ З КОРУПЦІЄЮ – РУМУНСЬКИЙ ШЛЯХ

Автором зроблено спробу відповісти на питання, що таке корупція, досліджено коротку історію боротьби з корупцією в Румунії до та після інтеграції в Європейський Союз, а також румунську правову основу та юридичних осіб у попередженні й боротьбі з корупцією.

<sup>7</sup> Law No.78/2000 on prevention, disclosure and criminal punishment of corruption.