

The Judicial System Reform and the Fight Against Corruption in Romania

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Abstract

The reform of the judicial system in Romania had a main component oriented to the fight against corruption. This conduct played an important part in the development of the Romanian economy in the post-communist era, leaving important scars over the countries budget. The present article aims to underline the efforts taken in the last 13 years so that the Romanian judicial system can improve its fight against corruption starting from within, but also with the corruption in the Romanian public authorities.

Key words: judicial system, corruption, anti-corruption national strategy

J.E.L. classification: K40; K49; P37

1. Introduction

Judicial system reform needs to help ease the process of fighting corruption. While this might seem easy to understand as a principle, the actual efforts into putting this into practice mean a coordinated effort on behalf of: EU authorities and Romanian authorities (legislative, executive and judicial powers). Romania had to adopt measures in order to prove it can be capable in raising its standards when it comes to fighting corruption. The Cooperation and Verification Mechanism (M.C.V) had to play its part in this European effort to help evaluate Romanians judicial reforms. In the past 15 years Romanian Governments have adapted and included in their public policies a judicial component as well.

2. Theoretical background

The Government of Romania together with the European Union prepared a report on the reform in public administration and justice, a project that evaluated in May 2013 the results of the National Reference Strategy 2007-2013. We must first distinguish between judicial reform and the fight against corruption. Thus, the process of Romania's accession to the European Union also involved the establishment of the Cooperation and Verification Mechanism (en. CVM, ro. MCV) meant to ensure the monitoring of these 2 key areas. The CVM therefore has two sections dedicated to judicial reform and the fight against corruption. (The Romanian Anticorruption Strategy, 2012, p.11)

Corruption represents thus one of the main fields of reform in the Romanian society after de communist regime, due to the fact that all eastern European countries have experienced high difficulties in handling the greed of public officers, especially the ones that are given the highest power attributes. (Andrei, 2008, p.14)

3. Research methodology

The present article begins with the presentation of the first efforts of the Romanian authorities in their quest in fighting corruption. Thus, the research question that can be made was: “*How has the Romanian fight against corruption process developed under de guidance of the European Commission and what are the strengths and the liabilities of the current Romanian Public System?*”

Starting from the research question stated above, the present article will define the state of the public administration reform in Romania, identifying the key areas of reform in the field of both legislative and executive branches. Using legislative document analysis the article will underline the main areas where Romanian authorities have and need to strengthen their administrative capacities in their quest to fight corruption. Finally, the system of anti-corruption policies (present or future) will be evaluated with the help of a S.W.O.T. analysis.

4. Defining the state of public administration reform in Romania

I. In the field of judicial reform at the time of May 2013 were the results grouped into 5 categories:

1) Human resources management in the judiciary- in the field of human resources in the judiciary, the main problem is the undersized and out-of-date staffing schemes in line with the real needs related to the work volume, a problem doubled by the incomplete occupation of existing positions in the system. Consequently, the high degree of work load directly affects the duration of the settlement of cases. The modification of the legal framework by the entry into force of all 4 criminal and civil codes is accompanied by a significant pressure applied to human resources in the judicial system, which amplifies the deficiencies already registered from this point of view.

2) Liability in the judiciary system - the increase of the reputation of the judicial system in front of the Romanian citizens is strictly related to the promotion of the assumption of judicial responsibility, corroborated with the development of precise fast and proactive investigations regarding the disciplinary violations as well as the application of clear and consistent sanctions.

3) Judicial unification and consistency of justice – a defect of the Romanian judicial system is constituted by the non-unitary judicial practice generated by an inconsistent interpretation and application of the legislation. The new procedural codes had the objective of eliminating this shortcoming. A mechanism has been introduced that allows appealing to the High Court of Cassation and Justice for a preliminary ruling as well as a judicial reform provision to support legal practice unification. However, the high number of cases is one of the reasons why the High Court of Cassation and Justice (ICCJ) hasn't proven its new role yet.

4) Human resource management in penitentiaries – There was a huge lack of personnel in the Romanian prison system, especially due to the fact that the prisons are overpopulated.

5) Human resource management in the probation system- with the prisons being overpopulated, there was a need to extend the probation system, having the need of more than a thousand probation counselors.

II. In the field of fighting corruption at that time, until 2013, The National Anticorruption Directorate (from Romania) had some significant results in the indictment of over 4,700 people for corrupt activities and other activities related to corruption. With a successful indictment rate leading to convictions of over 90%, The National Anticorruption Directorate has proven efficiency, with more than a third of its cases being brought to its attention by the National Integrity Agency (ANI). However, the number of corruption cases has seen an increase rate of over 30% between 2011 and 2012, and is since then continuing to grow each year. (The Romanian Anticorruption Strategy, 2012, p.21)

5. Identifying the priorities for strengthening the administrative capacity in Romania

With regards to the field of judicial reform (1) Romania has to:

- create conditions so that High Court of Cassation and Justice can assert its role into promoting the judicial practice unification;
- increase the capacity of the National Magistrate Institute (CSM) into implement an effective process which will help sanction the irregularities of judges and prosecutors and also help deal with the managerial decisions needed to supply the judicial system with the much-needed work force.
- developing vocational training programs oriented mainly to those fields in which the lack of specialized expertise has left its biggest marks;
- developing guides for good practices amongst judicial institutions;

With regards to the fight against corruption (II) Romania has to:

- Develop and disseminate guidelines for the establishment of administrative penalties for cases of corruption, before any criminal case is indicted;
- Help promote ethics and integrity in the public and private sector;
- Develop training programs addressed to the authorities with control attributions in the field of public procurement, with emphasis on those authorities with competences regarding the EU funds (managing authorities and intermediate bodies).

6. Analysis of opportunities to strengthen administrative capacity in Romania

In the last 10 years the Romanian Government (regardless of its political composition) has made serious efforts in the justice field such as:

1) Establishing public policies in the field of justice based on the principles of independence and professionalism;

2) The program of rehabilitation of the legislation that requires the analysis of the entire legislation in Romania, its correlation with the European legislation, the republishing of normative acts and the restriction of the number of normative acts, programs that were realized together with the Government, Parliament and Legislative Council;

3) Implementation of the national anti-corruption strategy.

4) Computerization of the judicial system by applying the computerization strategy adopted jointly by the Ministry of Justice together with the CSM, the ICCJ and the Public Ministry.

At the same time, the Government of Romania identified two types of measures through which it aims to consolidate in the reform of justice, namely:

i) measures in the legislative field:

- Elaboration of a legislation conforming to the European principles regarding the restitution of the properties abusively confiscated by the communist regime.

- Clarification of the status of prosecutors and the role of the Public Ministry in relation to the constitutional provisions.

- Strengthening the rule of law, including by strengthening the institution of the People's Advocate and depoliticizing the Constitutional Court.

- Improving the legislative framework in order to help recover civil damages resulted from criminal activities.

- Implementation of European legislation on extended confiscation, but also of other directives adopted by the EU Council.

- Establishment of a mechanism for appointment into office that ensures a better management of positions within the Public Ministry, a process that is transparent and based on criteria of professionalism and integrity.

- Amendment of national legislation in accordance with the European Convention on Human Rights.

- Implementation of the new civil and criminal Codes as a fundamental objective, as well as the correlation of specific legislation, especially in criminal matters, regarding the execution of imprisonment sentences and criminal administrative sentences (fines).

- Transforming the ICCJ into a cassation court with a main role in standardizing the jurisprudence and creating judicial mechanisms for unifying judicial practice.

ii) measures regarding institutional reorganization:

- increasing logistic support for the Public Ministry (Public Prosecutions Service);

- promoting and developing the free legal assistance system, with most of the Romanians not being aware of their right to free legal assistance;

- increasing transparency regarding the judicial system, especially when it comes to the publication of the data regarding public trials on the internet data base of the courts;

- help developing the CSM and its role into verifying the activity of both prosecutors and judges through the Judicial Inspection Agency.

The Romanian Government has repeatedly stated that “Progress within the CVM” is an essential priority for the European path of Romanian justice.

An important source of corruption has been identified by both the European Commission and ANI in public procurement, with a special focus on EU-funded procurement. The particular significance of the shortcomings in the field is proved by the serious consequences of which even culminated in the suspension of EU funding. From that in this case, it is necessary to implement a comprehensive action plan designed to protect public procurement of conflicts of interest. (Nicolae, 2010, p.47)

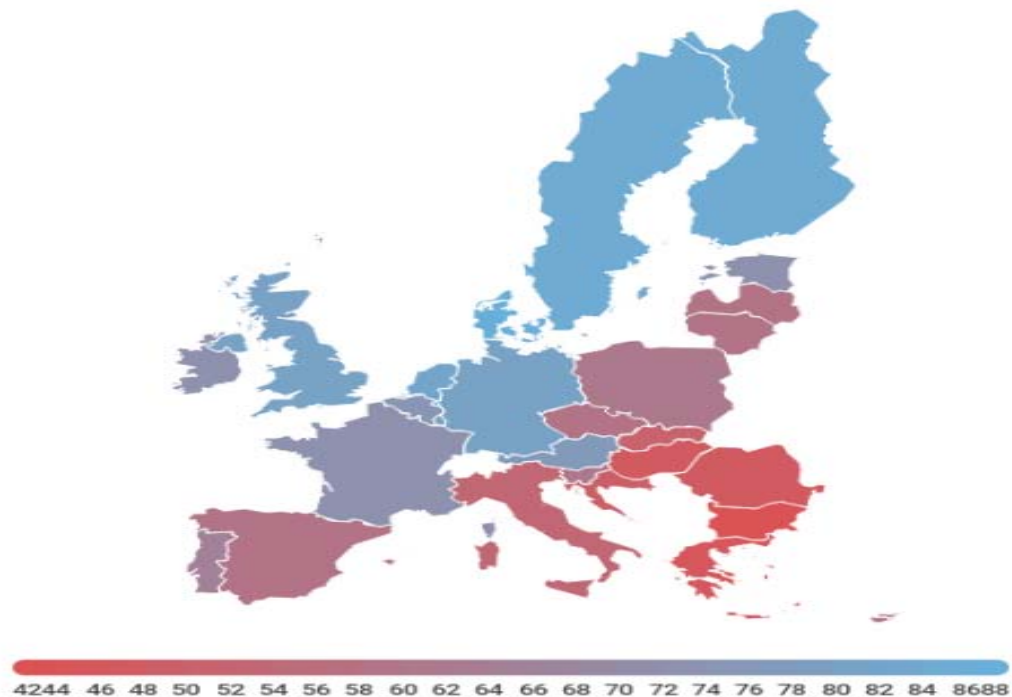
A study according to which over 90% of Romanian politicians would agree to get in touch with a lobbyist knowing his interests, can be compared to over 50% of European politicians who would refuse this from the beginning. From this fact we can draw two conclusions, namely either that Romanian politicians are a special case compared to the rest of Europe and are the most "malleable" when it comes to changing their preferences regarding some policies they support, or we have to deal with a total lack of interest in regulating this area by the Romanian public authorities (namely the Romanian Parliament). (The Romanian Anticorruption Strategy, 2016, p.31)

Although in all western countries lobbying is only a part of the advocacy process and has nothing in common with the phenomenon of corruption, in other words they can even be seen in the mirror, Romania still has serious shortcomings in terms of distinguishing between the two, moreover, the excessive zeal of some prosecutors could even find an indictment (and they have done it more than once) under the form of influence peddling (a legal form of corruption in Romania).

However, despite of the legislative shortcomings of the Romanian Criminal Code, the fight against corruption in Romania has seen more and more public officials being held accountable for their actions.

One of the biggest problems regarding corruption in Romania remains the perception regarding the phenomenon in the public institutions. At the beginning of 2019 a Transparency International report has underlined the fact that Romania still remains one of the most problematic countries in the EU through the eyes of its own citizens. (Transparency International Corruption Index Report, 2018)

Figure no. 1. Corruption perception index in the EU, 2018



Source: (Transparency International Report, 2018)

Thus, the Romanian Government in its latest 2016-2020 National Anticorruption Strategy decided to implement public policies to help:

- reduce with at least 50% the rate of the cases of fraud and corruption in public procurement procedures and integrity incidents in the identified vulnerable institutions;
- raise awareness regarding the fight against corruption and change mentalities of the Romanian citizens in the way they view and are aware of the corruption in the public system;
- implement prevention measures in over 80% of the public institutions and public entities, as part of an integrity developed plan based on risk analysis and internal managerial control standards;
- put into practice the recommendation of both CVM and other international judicial institutions;
- Romania's accession to the OECD Anti-Bribery Convention (the procedures have been started in this matter in 2019)

7. Findings. Evaluating the evolution of anticorruption policies in Romania

A SWOT analysis could be the best simple tool into evaluating the strengths and weaknesses of the Romanian fight against corruption in the past years:

Table no. 1. SWOT analysis regarding the evolution of anticorruption policies in Romania

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|---|--|
| <p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> - the increase of the reputation of the Romanian public judicial institutions fighting corruption; - the increase of results that show the efficiency of anti-corruption institutions such as DNA and ANI; - the coordinated efforts between the Romanian Government and the judicial system; | <p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> - high work volume in the judicial system (too many cases/judge or cases/prosecutor) - over-population of prisons; - the laws are subjects to interpretation, thus there is not a unitary justice practice; the justice act is inconsistent; the jurisprudence is almost but useless. |
| <p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> - correlating the national legislative efforts in the fight against corruption and strengthening the administrative capacities in Romania; - increasing the speed of the justice process and reducing its cost, including through modern methods of pre-trial dispute resolution; - implementing anti-corruption preventive measures in public institutions and public enterprises. | <p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> - lack of personnel in the judicial system, but also in the; - corruption perception within Romanians; - lack of legislation regarding the lobbying process; - high rate of the cases of fraud and corruption in public procurement procedures and integrity incidents; |

Source: Self-processing of data

8. Conclusions

After 30 years of post-communist transition, Romania still finds itself in a place where it needs international guidance when it comes to specific means of fighting corruption. This includes:

- public administration reform oversee and guidance;
- identifying the priorities for strengthening the administrative capacity;
- analysis regarding opportunities to strengthen administrative capacity;
- evaluating the evolution of anticorruption policies.

Yet despite all of the efforts of public authorities in their fight against corruption, the Romanian public remains a pessimistic barometer of the harsh reality.

9. References

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