

## FIGHT AGAINST CORRUPTION AT THE NATIONAL AND EUROPEAN LEVEL

Nelu-Dorinel POPA\*

**ABSTRACT:** *Corruption is seen as the biggest enemy of democracy. The European Union envisages implementation and consolidation of a common policy for all institutions in order to prevent and fight corruption, not only in the case of public institutions and officers, but also in private entrepreneurship field. In Romania anti-corruption measures have been taken both legal and administrative wise. It is highly necessary that these measures should continue to be adjusted to the community's realities and regulations and meanwhile cope with the trend in this crime's evolution. Prevention measures are worth mentioning also- they are developed through activities of information, awareness, education and professional training organized by public and private institutions where vulnerability has been found in terms of corruption.*

**KEYWORDS:** *corruption; public institutions; public officers; private entrepreneurship; corruption crimes.*

**JEL CODE:** *K 40*

### 1. CORRUPTION IS DEEMED TO BE THE FIRST ENEMY OF DEMOCRACY.

However, on the other hand, in the interdependence relation of these two concepts (*corruption-democracy*), it was also appreciated that *democracy brought to light a pre-existing corruption*. (Robert, 1996)

It is *democracy* that represents only the framework in which the principles of the rule of law may become reality. In this context, *democracy in a state subject to the rule of law* must not only be a reality in itself, but it must have a clear purpose: *efficiency*. (Niță, 2012)

One of the causes of democracy inefficiency is *corruption* (closely related to the term *integrity*), a term that was introduced and promoted by the *UN Convention Against Corruption of 2003*, ratified by Romania by Law no. 365 of 15.09.2004, published in Official Gazette no. 903 of 5 October 2004.

*Thus, art. 5 of the Convention states that: Each member state shall draw up and apply, or take into account, in accordance with the fundamental principles of its legal system, effective and coordinated corruption prevention policies that promote the participation of*

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\* Associate Professor, University of Medicine, Pharmacy, Science and Technology of Targu-Mureș, ROMANIA.

society and reflect the principles of the rule of law, good management of political issues and public goods, integrity, transparency and accountability.

Also, according to art. 8 of the same Convention: *To fight against corruption, each member state shall encourage especially the integrity, honesty and accountability of public agents, in accordance with the fundamental principles of its legal system. In particular, each member state shall endeavor, within its own institutional and legal systems, to apply codes or codes of conduct for the proper, honorable and appropriate exercise of public positions.*

2. On these coordinates, we will present a few considerations regarding the current situation of the *corruption phenomenon* in Romania, and on the other hand, of the judicial system and the concept of *integrity*<sup>1</sup>(Council, 2018), from the perspective of „*The last Report of the European Commission to the European Parliament and the Council of Europe on the progresses made by Romania within MCV*”<sup>2</sup>(Council, 2018), enacted in Strasbourg on 13 November 2018, which took into account the previous Report of November 2017 of the same Commission on the evolution of Romania in the period 2007-2017, as well as the recommendations made by the European authorities in this latest report.

The Report of 2017 established a number of 12 Commission recommendations on Romania, grouped on 4 reference objectives, as follows:

- a) „-judicial independence  
- judicial reform
- b) - integrity framework and the National Integrity Agency
- c) - tackling high-level corruption
- d) - tackling corruption at all levels“

To remedy the situation the following measures are recommended:

- for Justice laws ”<sup>3</sup>:

- „Suspend immediately the implementation of the Justice laws and subsequent Emergency Ordinances. • Revise the Justice laws taking fully into account the recommendations under the CVM and issued by the Venice Commission” and GRECO.

- for Appointments/dismissals within judiciary:

- Suspend immediately all ongoing appointments and dismissal procedures for senior prosecutors.

- Relaunch a process to appoint a Chief prosecutor of the DNA with proven experience in the prosecution of corruption crimes and with a clear mandate for the DNA to continue to conduct professional, independent and non-partisan investigations of corruption.

- The Superior Council of Magistracy to appoint immediately an interim team for the management of the Judicial Inspection and within three months to appoint through a competition a new management team in the Inspection.

<sup>1</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Romania under the Cooperation and Verification Mechanism, dated 13.11.2018, available on Internet at the following address <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-851-F1-EN-MAIN-PART-1.PDF>.

<sup>2</sup> Ibidem.

<sup>3</sup> Ibidem

• *Respect negative opinions from the Superior Council on appointments or dismissals of prosecutors at managerial posts, until such time as a new legislative framework is in place in accordance with recommendation 1 from January 2017.*"

- for Criminal Codes and Criminal Procedure Code:

• *„Freeze the entry into force of the changes to the Criminal Code and Criminal Procedure Code. • Reopen the revision of the Criminal Code and Criminal Procedure Code taking fully into account the need for compatibility with EU law and international anti-corruption instruments, as well as the recommendations under the CVM and the Venice Commission opinion.*"<sup>4</sup>(Council, 2018)

3. As related to the anti-corruption measures in our country, the question now arises as to what measures should be enacted in order to harmonize the *acquis communautaire* so that Romania should implement in this sector, with minimal costs, the *body* of rules and laws governing the European Union and above all, to improve the fight against corruption.

The doctrine expressed the view that there are the following modalities of integrating the Community law into the law of the Member States:

- a) substitution of the national law with the community law;
- b) harmonization;
- c) coordination of the national law with the community law;
- d) co-existence of the national law with the community law. (Vonica, 2000)

It is true that harmonization requires organization measures to be taken for the national provisions which make national rules compatible with Community rules and objectives; starting with the assumption that the national authorities have legislative competence, but rules must be adopted in relation to Community objectives, standards with some degree of harmonization within the Member States have to be enacted. Community bodies give guidance and make recommendations for closeness to European Community legislation, but the normative decision belongs to the national bodies.

We also consider a different view for the effort to harmonize the Romanian legislation with the European one and the fact that it benefits this way of the assistance of the European Union and the member states, emphasizing in this regard that, *„obviously there is no universal model, no experience may be repeated, as such, transplanted or imitated. But the existence of successful experiences and of the mature strategies developed by the European Union make shadows fall apart"*. (Postolache, 1995)

4. Corruption, in our contemporary world - reached the stage of post-modernism and globalization - as one of the oldest, most widespread, more resistant and most feared phenomena, be it small or high level, needs, in the opinion of an author (Brezeanu, 2009), a *new frame of interpretation* if more severe or less severe interventions are desired, but in a clearer vision.

Perhaps under the influence of community documents, many of these with no significant news content, year by year, we have come to believe that we are in an analysis area suffocated by programmes, hard to maintain that generates too much discussion, too much time consumed with their drawing up and then with the necessary explanation. Not to mention participation in various international events or exchanges of experience that are not always useful.

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<sup>4</sup>*Ibidem*

This does not mean, by far, that we are against the application and such strategies to act against corruption. But the time has come to make a stop to verify what has been achieved so far; what are the actual results. It would be interesting and at the same time necessary to study the activity of all institutional and informal factors involved in anti-corruption measures and on this basis, in collaboration, to determine which is the appropriate technique in the actions taken.

Useful information could provide specially designed structures (DNA, ANI, etc.), not to mention the others that have been replaced, transformed, modified etc. (Brezeanu, 2009)

Within such a programme, in order to achieve a goal that concerns the entire Romanian society, nothing should be ignored from what could at least lead to the perception of the phenomenon in its real sizes and to a greater awareness of the social forces that may contribute to diminishing his.

Thus, we undertake the reflection that, in the process of fighting against and preventing corruption, at central or local level, and especially when it comes to state institutions, one should seek more diplomatic intervention solutions that bend over the tactics of those who corrupt and those who are corrupt, allowing actions within structures, at their base.

It is at everyone's hand to conclude that in most anti-corruption campaigns, which are usually overly advertised, sometimes there is a background pollution (a noise) that can also guard the most inadvertently corrupted person, even though he would be in the country. The observation does not exempt those representatives of the International Authorities who, through the excessive warning of our country, warn their own corrupted people. Thus, there is a risk that for the anti-corruption measures even those involved would be a part, shaping them in the end, depending on their own interests. That is why the strategies for the prevention and fight against corruption should be at least as subtle as activities in networks that promote, maintain and develop the phenomenon.

One of the most effective measures would be to act based on legislation, i.e. through clearer regulations, which would not leave room for different interpretations, in order to block the corruption activities from the start.

It would be beneficial, if we were to ensure a balance of power between decision-makers in a system, while simplifying administrative procedures (reducing bureaucracy) and transparency of all the steps taken and their results.

A legitimate encouragement of denouncing corruption and raising public awareness in this regard could potentially increase the effectiveness of prevention activities on the phenomenon.

As it is known, a society is not exempt from crime and therefore from corruption (as part of the global criminal phenomenon), in which it is highlighted by its major impact the great corruption. By its very nature, it could be suspected as representing the base of multiplying modern and / or post-modern forms of action and at the same time resisting any intervention against corruption. Besides, the third millennium brings in this regard everything that real and virtual corrupted only dreamed of at the beginning of the last century and even halfway through it.

In our opinion, corruption is not a new type of offense, but rather new forms of reflection of the phenomenon, new ways of committing, including traditional corruption

offenses specific to the age we are living, and also new and improved possibilities to be hidden, including through politics or even under the law.<sup>5</sup>

Ultimately, however we would like to believe the contrary, the corruption is politicized, nor can it be otherwise if we consider competition in anti-corruption measures plan. Therefore, it occurs sometimes small or at high level, sometimes in an area of economic and social interest, sometimes in another and especially in various situations in proportions and forms as ambiguous especially in electoral speeches. (Brezeanu, 2009)

A question could be asked in this context. If an electoral campaign is possible without the mute support of corruption. If so, it is the case (time has come) to depoliticize corruption and as a first step to prohibit by law any kind of sponsorship. In this perspective, society would be assigned the task of supporting electoral campaigns in favor of preventing corruption, which would take place in such a context in more reasonable material forms. (Brezeanu, 2009)

It is frequently spoken - and on many occasions it is argued - that corruption in Romania is generalized. This finding raises two questions waiting for an answer.

First, if generalized corruption assumes admitting corrupt status, a situation where it would not make sense to fight the phenomenon because it would mean to fight against us.

The second question, which completes the first one, is who wins and who loses from being tempted by scientific formulas or better said, through scientific indifference, to isolate us in a corrupt space from where one can hardly dare to have a position towards some reprehensible attitudes manifested abroad towards our country (as is the case with Italy).

The above-mentioned situation is also due to the fact that at present - with no clear definition of the concept - almost everything that means violation of law or even unincriminated rules is called *corruption*.

It is no less true that the great corrupts could test their abilities in the ambiguous area of corruption already assimilated into common language as a natural state in a social organism that was painfully overwhelmed by the ambitions and the failures of all sorts of frustrated people who managed to get in front of all by corruption. That is why it is appropriate to give more interest to small (and medium) corruption, whose climate has already created habit - even addiction - like drugs.

The danger of not being easily eradicated is also related to the fact that this type of corruption is systematically fed by a large number of citizens who think no one else is listening to them. Unfortunately, even if the civil servant is not corrupt, he leaves this impression when he has an arrogant, indifferent attitude towards the people who ask for his services. (Brezeanu, 2009)

5. In conclusion, with the aforementioned statements, we advocate for taking into consideration the arguments put forward by the European authorities also for the harmonization of the Romanian law with the European Community law in the fight against corruption, a unique and exclusive option.

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<sup>5</sup>*Ibidem*, p. 28

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