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NATIONAL CORRUPTION REPORT 2004

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PART A: FACTUAL INFORMATION

During the last few years, Romania witnessed a flurry of anti-corruption initiatives meant to settle the thorny issue of widespread corruption. This report makes an outline of these developments through an arch in time, which spans the most important institutional evolutions in the country, starting with the Specialised Anticorruption and Anti-Organised Crime Section in early 2000 and ending with the latest developments in the field (early 2004).

Transparency International is the only international non-governmental organisation devoted to combating corruption through bringing civil society, business, and governments together in a powerful global coalition. TI, through its International Secretariat and more than 85 independent national chapters around the world, works at both the national and international level to curb both the supply and demand of corruption. In the international arena, TI raises awareness about the damaging effects of corruption, advocates policy reform, works towards the implementation of multilateral conventions and subsequently monitors compliance by governments, corporations and banks. At the national level, chapters work to increase levels of accountability and transparency, monitoring the performance of key institutions and pressing for necessary reforms in a non-party political manner.

Transparency International-Romania (TI-Ro) is a non-governmental organisation founded in 1999 as ART (Romanian Association for Transparency-ART¹) by a group of citizens and organisations concerned about the grave condition of corruption in Romania. Later on that year, TI-Ro was certified as an official chapter of Transparency International. TI-Ro's mission is to fight corruption in Romania through a systemic approach, which aims both at reforming the public sector to be able to develop an adequate response to the corruption within, and at breeding a strong and pro-active civil and business sector capable of spreading the message of integrity.

Starting February 1st TI-Ro initiated the **Advocacy and Legal Adviser Centre (ALAC)**. The aim of ALAC is to assist victims of corruption to fight for their rights by means of a partnership with the state's institutions. ALAC offers procedural counselling to victims of corruption, submits cases of corruption to the qualified institutions, monitors their solution, and reports to the media on the special situations encountered.

¹ ART is the Romanian abbreviation for Romanian Association for Transparency. All abbreviations will be provided

1. International conventions and organisations:

- Council of Europe² *Convention on Extradition*³ (ratified December 1998);
- Council of Europe *Convention on Mutual Assistance in Criminal Matters*(ratified December 1998 by Law 236/1998);
- Council of Europe's Group of States against Corruption, or GRECO⁴ (joined May 1999);
- Stability Pact Anticorruption Initiative or SPAI⁵ (joined February 2002)
- Council of Europe Civil Law Convention on Corruption⁶ (ratified April 2002 through Law 147/2002);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified May 2002 through Law 263/2002);
- Council of Europe Criminal Law Convention on Corruption⁷ (ratified through Law 27/2002)
- The United Nations Convention against Transnational Organised Crime and its Protocols (ratified December 2002).

2. Legislation

2000

May 2000: Law 78 on the prevention, detection and punishment of corruption acts codifies for the first time the crimes characterised as the legal definition of 'corruption'. It starts with the classical crimes stipulated in the Penal Code (bribe offering, bribe taking, influence peddling, and receiving of undue benefits) and adds several new crimes related to the emerging domains of transition: privatisation process, financial and political activities. It also

with the Romanian version so that the reader can grasp their meaning when reading other texts.

² The Council of Europe was founded in 1949 to advance human rights, parliamentary democracy and the rule of law, to standardise member countries' social and legal practices, and to promote awareness of a European identity based on shared values and cutting across different cultures. Available on the w.w.w. at: <http://www.coe.int>

³ The Convention establishes the conditions under which a member country may or may not surrender persons, against whom criminal proceedings have been started, to another member country.

⁴ GRECO was founded in 1999 as an intergovernmental organization with the aim of helping states fight corruption across Europe and beyond. Available on the w.w.w. at: <http://www.greco.coe.int>

⁵ SPAI is an anticorruption initiative adopted by the Stability Pact with the aim of combating corruption in South Eastern Europe. SPAI currently covers Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Montenegro, Moldova, Serbia and Romania. Available on the w.w.w. at: <http://www1.oecd.org/daf/spaicom/index.htm>

⁶ The Civil Law Convention on Corruption regulates the conditions under which a victim of corruption should be able to defend its civil rights and be compensated for the incurred damages. Available on the w.w.w. at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/174.htm>.

⁷ The Criminal Law Convention on Corruption provides the regulatory framework for the incrimination and

expands the range of perpetrators to employees of private companies and of political parties, NGOs, and unions. The law establishes a Specialised Anticorruption and Anti-Organised Crime Section (SACCO⁸) at the Prosecution Office of the High Court of Justice and Cassation (CSJC), which would prosecute crimes of corruption.

2001

April 2001: Law 215 on the local public administration provides incompatibility rules for local councillors, mayors, deputy mayors, and prefects. They are forbidden from holding any other public positions or administrative/managerial posts at companies set up by the local administrative bodies.

April 2001: Emergency Ordinance 60 on public procurement regulates the process of public tendering, the contract of public tenders, and the institutions that organise them.

July 2001: Governmental Decision 763 on the establishment, organisation and functioning of the National Committee for the Prevention of Crime (CNPC). Its role is to devise, correlate, round up and monitor the governmental policy with regards to crime prevention. The Committee consists of representatives of most ministries and can also invite representatives of NGOs and other institutions to attend its sessions.

October 2001: Governmental Decision 1065 enacts the National Program for the Prevention of Corruption and The National Action Plan against Corruption. The National Committee for Crime Prevention is the co-ordinating body for both the National Program and the National Action Plan. The Program asserts the prerequisites of any anticorruption initiatives: political will, transparency, access to information and co-operation with the civil society. It defines the notion of corruption as "the abuse of public power for personal unwarranted benefits", and its active and passive modalities. It draws an outline of the sectors prone to corruption, of the institutions with a stake in the fight against it, and of the activities that have the potential of diminishing it. The Program sets as a goal the co-operation with the civil society and the education of the public on corruption. The National Action Plan sets up several objectives to be attained such as: the regulation of declarations of assets, immunities, conflict of interests, lobby, political party finance and campaign, access to classified information, witness protection, protection of personal information, the strengthening of the specialised anti-corruption bodies, reform of the judiciary and the public administration etc.

prosecution of corruption acts, as well as national and international cooperation among various bodies/institutions.

⁸ Acronyms are provided in Romanian only, so that the reader can identify them in the Romanian texts.

October 2001: Romania approves its first piece of freedom of information legislation, the Law 544/2001 on the Free Access to Information of Public Interest. Under the act, authorities must respond to information requests within 10 days, while verbal requests submitted by the media for public information are to be satisfied immediately or within 24 hours. Any other person can make oral or written requests for public information; these are to be serviced by the public institution in 10 or 30 days. The act states that, “[I]nformation which favours or conceals law-breaking by a public authority or institution cannot be considered classified information, it rather shall be information of public interest”. This clause provides the media with explicit legal protection when exposing corruption cases.

November 2001: Law 677 on the protection of personal data processing regulates the right to private life and the limits of institutional use of private information.

December 2001: Law 704 on international criminal assistance, which regulates the procedures Romania should follow in case of foreign requests for criminal investigations. The act provides the methodology for the communication of the procedural documentation and the rogatory commissions to foreign institutions⁹.

2002

January 2002: Governmental Ordinance 20 on public procurement through electronic tenders establishes the rules for transparent on-line public procurement transactions. It establishes several basic principles for awarding the public contracts such as: free competition efficiency, transparency, equal treatment and confidentiality. Any natural or legal person can enter the process of public tenders, except for those under bankruptcy or liquidation, and persons who have not been cleared of all dues to the state.

February 2002: Emergency Ordinance 5 introduces incompatibility provisions for officials in local authorities. Neither local government representatives nor their spouses or second-degree relatives, nor employees of local or county councils may conclude services, works or supply contracts with local authorities they are members thereof. The Ordinance was subsequently abrogated by Law 161/2003, as similar but more systematic provisions were introduced.

⁹ It comes after the scandal generated by a criminal inquiry into the electoral campaign of the winning party -Social Democrat. At the time, Ovidiu Budusan, a prosecutor of the SACCO, was dismissed on allegations of mishandling of the rogatory procedures. The prosecutor subsequently challenged in court the decision and was reinstated into the former position. For more details on the case, see Part B of the report.

April 2002: Law 182 on classified information establishes the categories of classified information, the institutions entitled to produce and administer it, and the procedures to protect it. The law also provides that any person can challenge in court the classification of certain information and that it is forbidden to classify information that is meant to inform the citizens of public or personal issues, or information that obstructs the law or the justice system.

April 2002: Ordinance 27/2002¹⁰ on the procedure for administrative petitions. It stipulates that any legal or natural person can address paper or electronic petitions to any public institution, authority or company, with the obligation for the latter to reply in a 30 days term, under disciplinary sanctions.

May 2002: Government Decision 523 on the designation of the Prime Minister's Control Office as the unique contact point with OLAF. The Control Office contains a special Direction for the Control of Contracts and Use of European Funds, which can undertake investigations either at OLAF's request, or by third party notice. The Office is bound to communicate its findings to OLAF, and to the enforcement institutions, in case of criminal acts.

July 2002: Emergency Ordinance¹¹ 43/2002 on the National Anticorruption Prosecution Office. It rules the setting up of the specialised anticorruption body—the National Anticorruption Prosecution, whose duty is to investigate and prosecute most crimes of corruption, which have been defined by Law 78/2000.

December 2002: Law 656 on prevention and punishing money-laundering activities establishes the procedures for the identification of money laundering operations and of the persons involved. Financial institutions have to report any operation in the amount of €10,000 or more to the Office for the Prevention and Control of Money Laundering.

December 2002: Law 682 on witness protection provides the first provisions on the protection of witnesses of crimes during and after criminal investigations. The law protects witnesses engaged in a criminal trial or are mere informers in criminal investigations. These persons and their close relatives are included into the witness protection program provided that their life, personal freedom or physical integrity is under threat. The law sets up the National Bureau for Witness Protection, whose function is to protect the personal data,

¹⁰ Approved by Law 233/2003.

physical integrity, declarations, and even to change the identity, residence or physiognomy of the witness. The act also provides professional and civil relief through programs of social reinsertion and professional requalification, through workplace change or protection, and by securing an income until the former witness secures a new job.

2003

January 2003 Law 43 on the financing of political parties¹².

January 2003: Law 52 on transparency of decision-making in the public administration regulates for the first time the 'sunshine' concept. The law establishes the following principles: 30-day prior communication of the public issues and regulatory initiatives of the central and local administration authorities, consultation with the citizens and organisations of the civil society on the process of regulation drafting, and the publicity and openness of the gathering sessions of all public bodies. The recommendations of the civil society or business sector representatives are not mandatory for the decisional body of the public institution, yet the latter must record all such demands and publish them online. The law also requires the online publicity of the voting options of all representatives in the public body.

April 2003: Law 161 on measures to ensure transparency among dignitaries, civil servants, and the business sector, and on prevention and punishing of corruption acts, otherwise known as the 'Anticorruption Legislative Package'. It consists of several sections regarding the transparency of budgetary dues, e-governance, conflict of interests and incompatibilities, domestic and European business cartels, and modification of previous legislation. For the first time, the law requires that all debts of public and private companies be publicised online in 30-day period since entering into force. It introduces the legal environment for the establishment and functioning of the e-government system, comprising public services such as: payment of dues to the public budgets by natural and legal persons, licensing and authorisation procedure, public procurement, company registration, procedures for personal identification and car registering etc. The law inaugurates explicitly the 'conflict of interest' concept in the Romanian legal system¹³, providing regulations of the kind for all dignitaries and civil servants save for the members of the Parliament. It also provides incompatibility provisions for the latter. The law expands the range of perpetrators of crimes of corruption

¹¹ Approved by Law 503/2002.

¹² See section 4, subsection b: 'Political Party Financing'.

¹³ Though not consistent with Council of Europe recommendation R 10/2000.

to executives, administrators and auditors of private companies, as well as to Romanian dignitaries operating with foreign institutions and foreign officials working in Romania. It introduces new crimes of corruption, safeguarding the financial interests of the European Union. The law demands the mandatory declaration of assets, interests, obligations, gifts and hospitality services for all dignitaries and civil servants and their publication online or in the Official Gazette.

June 2003: Law 281 on the amendment of the Penal Procedure Code and other criminal laws introduced several significant provisions regarding investigations of crimes of corruption. Audio and video techniques can only be undertaken under the court's special authorisation and for a period up to 4 months. The law also provides the regulations for undercover operations required for special crimes, including crimes of corruption. They can only be used when there are "well-grounded indicia" of a crime/crimes to be committed.

June 2003: Government Emergency Ordinance 64 on measures to reorganise the structure of the Government, ministries, and other bodies of the central administration establishes the National Control Authority (ANC). The new body concentrates and co-ordinates all control bodies within the executive branch, such as: the Government Control Office (CCG-emerged from the former Prime Minister's Control Office), Financial Guard, Customs, Authority for the Retrieval of Bank Overdues etc. The law stipulates the initiation of a 'Stimulating Fund', which is supposed to be an incentive for all public servants within the ANC to perform and achieve good results in their control activities.

July 2003: Government Decision 766 on the organisation and functioning of the Government Control Office (CCG) establishes several abilities in the field of the fight against corruption. For example, CCG exerts the internal administrative control on legal compliance issues for all central and local governmental institutions, investigates complaints on conflict of interest legislation, co-ordinates the anti-fraud activities and protects the financial interests of the EU in Romania.

October 2003: Law 429/2003 on the revision of the **Romanian Constitution** introduced a set of provisions, which enforce the ability of some institutions to fight corruption. For example, the immunity of MPs has been limited only to political opinions¹⁴, the administrative and disciplinary autonomy of magistrates has been confined to the Council of

¹⁴ Whereas prior to the modification of the Constitution, the MP's enjoyed total immunity, which impeded their criminal investigation and encouraged corruption among them

the Magistracy¹⁵, whose independence has been strengthened¹⁶, the administrative litigation has been guaranteed for any administrative act¹⁷, the special budgetary funds are to be used only according to their prescribed destination¹⁸, and the judicial powers of the Court of Accounts have been transferred to courts in order to put it into agreement with the European counterpart institutions¹⁹.

2004

January 2004: National Committee on Transparency

February 2004: Code of Ethics for Internal Auditors

3.Changes to governmental institutions

May 2000: The Specialised Anticorruption and Anti-Organised Crime Section (SACCO) at the Prosecution Office of the High Court of Justice and Cassation is created. Its function is to investigate and prosecute crimes of corruption and organised crime.

April 2001: The Government Control and Anti-corruption Department is transformed into the Prime Minister's Control Office (BCPM), under Law 78/2000. The BCPM has around 50 staff and may undertake inspections of any form of legal violation in governmental structures, ministries or other specialised bodies subordinate to the government or ministers, and also, since May 2001, in financial and banking operations that are related to acts of public officials.²⁰ Evidence of criminal activity is passed onto the prosecution offices and may be used as evidence.

¹⁵ Whereas in the past, the Ministry of Justice had a strong leeway on the nomination and sanctioning of judges, thus reducing their independence.

¹⁶ The members of the Council (14) are to be elected by the general assembly of judges, as opposed to the former procedure of election by the Parliament. Their mandate has been extended from 4 to 6 years, which increases the security of their positions. Two reputed members of the civil society are to stand on the general gatherings of the Council. However, the president of the Council is to be elected among the 14 members for only one year, which may reduce the potential for independent leadership. A new important constitutional provision is that the decisions of the Council are to be taken by secret vote.

¹⁷ With the exception of those that regulate the relationship with the Parliament and the commandment decisions of the military.

¹⁸ This will prevent previous situations when money from the special state budgets for pensions or health have been misappropriated for other purposes.

¹⁹ Prior to this, the Court of Accounts gathered both executive and judicial powers.

²⁰ The PMCD is divided in five units: the Direction for control of privatisation, post-privatisation and the application of free market mechanisms; Direction for control of actions of corruption and organised crime; Direction for control of the contracting and utilisation of funds and international credits granted to Romania; Direction for control of ministries and other institutions subordinated to the Government; Direction for control of institutions and persons

July 2001: The government established the National Committee for Crime Prevention (CNPC), led by the Prime Minister and co-ordinated by the Minister of Justice. Under the authority of the CNPC, a Central Group for Analysis and Co-ordination of Corruption Prevention Activities (GCACAPC, or GCCA in short form) is formed, co-ordinated by the Prime Minister's Control Office. The CGAC includes representatives of NGOs²¹, while international organisations such as the EC Delegation and the World Bank have permanent observer status.

March 2002: The government approves an emergency ordinance transforming Romania's Specialised Anticorruption and Anti-Organised Crime Section (SACCO) into a National Anti-corruption Prosecution (PNA), which begins operating in September 2002 (see below, Part B).

May 2002: The Government designates the Prime Minister's Control Office (BCPM) as the sole contact body with OLAF (Office Européen de lutte antifraude-European Antifraud Office). The BCPM's role is to "equally co-ordinate the protection of the financial interests of both the European Union and Romania"²² A special institution – the Department for the Control of the Contracts and Use of the European Funds – shall be directly involved in the activity of protection of the European funds in Romania. The Department receives notifications of fraud from OLAF, investigates them and sends a report on the findings back to OLAF. Moreover, the latter acquires the sovereign right of participating at investigations along with BCPM. It has also the right to access any documentation and evidence, which form the base of BCPM's reports.

December 2002: Law 682 rules the set up of the National Bureau for Witness Protection. Its role is to integrate witnesses under the witness protection program, take all legal measures to ensure the physical and social integrity of the witnesses, secure the confidentiality of the administered data and manage the financial resources.

April 2003: Law 161 ("Anticorruption Legal Package") enacts the establishment of the National Electronic System, a public digital framework with the role of providing public information and services of all kind to the benefit of all natural and legal entities. The same system will form the basis for the e-governance and e-administration alternative interaction

with special jurisdictional regime.

²¹ Only 5 were invited: Transparency International Romania, Media Monitoring Agency, Association Pro Democracy, Center for Legal Resources, EURISC foundation.

models between the Government and the rest of the society. 'e-governance' will facilitate the access to public information and the communication among various governmental bodies, and 'e-administration' will ease and expedite the access to services and procedures for all citizens and legal entities. The program envisages that all institutions and procedures acquire and use the electronic platform as an alternative means to the classic governance.

June 2003: National Control Authority (NCA) comes into being with the mandate to coordinate all control agencies under Governmental supervision (see above). The NCA's role is to integrate, enforce and generate anti-fraud policies. The former Prime Minister's Control Office (BCPM) becomes the Government Control Office (BCG).

July 2003: Government Control Office (CCG) acquires control and investigative powers regarding the observance of incompatibilities and conflict of interest regulations among ministerial and central and local administration positions.

December 2003: The new Constitution changes the High Court of Justice (CSJ) into the High Court of Justice and Cassation (ICJC), whose role is to unify the practice of the courts. The Council of the Magistracy is to become the utmost body to disciplinary supervise the magistrates.

4. Recent developments in political corruption

a. Scandals

Costea scandal: French businessman Adrian Costea claimed to have provided the Party of Social Democracy in Romania (PSDR) with hundreds of tons of posters for Ion Iliescu's 1996 presidential campaign.²³ On 8 November 2001, a high court in Paris dismissed his complaint that Iliescu and the PSDR allegedly failed to pay more than \$1.3 million for the company's services. Yet a former Secretary-General of the Alliance for Romania Party (APR) also claimed that Costea had financed the PSDR electoral campaign and later the political activities of the APR.²⁴ Costea allegedly received special favours for bankrolling the PSDR's election campaign.

²² As per Art. 1 of the Government Decision 521/2002.

²³ Interview with Adrian Costea, *Evenimentul Zilei*, May 18, 2000.

²⁴ *Evenimentul Zilei*, 10 May 2000.

The scandal later triggered an investigation in Romania. The prosecutors discovered that some 10 transports of electoral posters belonging to the former PSDR (Social-Democrat Party) were smuggled into the country. The court ruled that the complaint was launched four years after the alleged misconduct took place, and that the statute of limitations applied. It also said that the plaintiff failed to submit any documentation attesting to a contract between the company and either Iliescu personally or the PSDR.²⁵ Yet prosecutors have since indicted at least two former officials and have received permission from Parliament to pursue PSDR associates suspected of money laundering.

The chief of Romania's Anti-Corruption Section, Ovidiu Budusan, who had provided the French authorities with documents relating to the Costea case in 2000, was sacked without official justification in March 2001. The dismissal came after he had moved to investigate elements of the corruption scandal that allegedly involved illegal party financing, money laundering and smuggling of fuel to Serbia during the Yugoslav embargo. Budusan finally cleared his name through a Supreme Court Decision and was reinstated by mid-2003; he resigned the next day, and he later joined Media Monitoring Agency as legal adviser.

City Council scandal: An inspection by the Prime Minister's Control Office into conflict of interest in Bucharest carried out in late 2001 concluded that 38 out of 65 city councillors were involved in firms that gained contracts from the city. The inspection resulted in the City Council being dissolved.²⁶ The councillors appealed in court and the trial postponed the imminent early elections indefinitely. At this point, a court decision confirming the dissolution of the council could not be enforced as the scheduled elections are set for spring.

Vantu scandal: In late 2001, a report in the daily *Romania Libera* accused Senate Chairman and former premier Nicolae Vacaroiu of accepting a bribe of US \$708,000 from businessman Sorin Ovidiu Vantu for services provided to obtain a license for Vantu's Bank of Investment and Development. Vacaroiu admitted that he signed a contract with Vantu to facilitate the bank's launch, but he added that at his own request the contract was cancelled.²⁷

Sarbu scandal: In June 2002, former minister Radu Sarbu, who had been in charge of privatisation, was indicted on charges of fraud, abuse of position and falsifying data that cost the state more than 133 billion lei (\$US 4 million) in losses.²⁸ The trial is pending.

²⁵ RFE/RL Newline, 9 November 2001.

²⁶ As of June 2002 the PMCD's findings were being contested in court by several city councilors, and no elections to the City Council had been scheduled.

²⁷ RFE/RL Newline, 27 November 2001.

²⁸ Associated Press, 15 June 2002.

Pavalache scandal: In October 2002, the former cabinet counsellor-Fanel Pavalache-was arrested in a case of corruption (influence peddling and active bribery) involving the bankrupt International Bank of Religions (BIR), which formerly had been considered to be a complex Ponzi scheme. PNA prosecuted Pavalache for the aforementioned crimes and the trial is still on-going.

Dan Jiga scandal: In November 2002, PNA arrested Dan Jiga, at the time Director of the Economic Department within the Ministry of Agriculture, under the charges of influence peddling, bribe taking and abuse. The prosecutors found that he demanded and received \$ 120,000 to fake the public auction for Jimtim company, one of the largest farms in the country.

Muresan scandal:President Ion Iliescu asked the National Anti-corruption Prosecution to launch a formal investigation into activities of former agriculture minister Ioan Muresan, who was accused of selling 5,000 tonnes of sunflower oil from the state's reserves to a private company before he left office.²⁹Recently (December 2003), he has been indicted with the charge of embezzling \$1,5 million from a USAID project during his tenure. So far, he is the only minister sent to court for corruption. The trial is pending.

Recently (October 2003) two ministers have been dismissed as a result of corruption-related charges. One of them, the minister in charge with the General Secretary of the Government (Serban Mihailescu) was accused of corruption by the media and several of his subordinates were proved to had been involved in embezzling public money (Pavalache scandal). The other minister (Hildegard Puwak) was running the Portfolio of European Integration and was accused of entering into a conflict of interest situation when her spouse and son managed to secure Euro 150,000 from Phare money in order to provide educational services. She was cleared of law breaching according to OLAF's standards, yet the minister was in breach of the Romanian conflict of interest legislation in one of the contracts. No further legal actions were taken against the minister.

b. Political financing legislation

In January 2003 the Parliament passed the Law on the finance of the political party activities and electoral campaigns (Law 43/2003), the first law of the kind in post-communist Romania. The law provides the legal sources for political finance: membership fees,

²⁹ AFP, 12 June 2001

donations, legacies, revenues from own activities, and subsidies from the state budget. The amount of membership fees donated by a single member may not rise to more than 100 minimum monthly gross salaries. Donations made to a political party may not top 0.025% of the entire state revenues per annum and 0.05% during an electoral year. Donations from a natural person cannot exceed 200 minimum monthly gross salaries, and donations from a legal person must not surpass 500 thereof. Legal persons are required to have paid all due taxes to the state budgets when making donations to political parties. All donations must be registered in the accounting books of the political parties, and those that exceed 10 minimum monthly gross salaries are to be published in the Official Gazette, Part 3, along with the identification data of the donors. Donations or free services from any public or majority publicly owned company, including donations from unions, are forbidden. Political parties may not receive donations from foreign entities, either natural or legal, except for those that target the political activity of the party and are not meant for propaganda purposes.

Political parties may carry out a narrow range of lucrative activities such as: editing, publishing and selling of political documents and books, cultural, recreational and entertaining events, property renting, bank deposits interest, selling of property provided it has been continuously owned for 5 years. The law sets limits for electoral campaign spending for all parties, which may not exceed the added maximal amounts for each candidate. For example, the top expenditure for a Member of the Parliament is 150 minimum monthly gross wages.

The Court of Accounts is the only public authority in charge with the control of political party revenue and expenditure. The Court carries annual controls, and special *ex post* checks on the electoral campaign funding and spending. In case of breaches of law with regards to the legal limits, the validated candidature will not be annulled, yet he or she must return the state subsidy³⁰³¹.

c. Disclosure and conflicts of interest

Law 161/2003 requires that all public officials and civil servants deliver statements of assets at the beginning and closure of their tenure, and yearly, in case of annual acquisition. The statement of assets must include real estate, goods, vehicles of any kind (including water-

³⁰ As per Art. 26 (2) of Law 43/2003 on political party financing.

³¹ According to a study by Association ProDemocracy (September 8,. 2003, on the w.w.w. at: <http://www.apd.ro/files/8septembrie2003.pdf>) the Court of Accounts did not fulfill its obligation of controlling the finances of political parties and candidates involved in the partial early local elections of spring 2003.

based ones), bank accounts in the total value of over €10,000, debt, bonds and stocks, gifts and services over €300. Yet, the law doesn't provide any modality of control over these statements, and official investigations begin only upon third party notification. As yet, there is little data on how disclosure provisions are being implemented³², except for the fact that some deputies and even ministers took them into derision by means of either not submitting them or by outright mockery declarations.

There are provisions for conflict of interest situations for all dignitaries and functionaries, save for MPs, which produces an unwarranted discriminatory situation. Basically, the conflict of interest legislation requires every dignitary, elected or appointed representative or civil servant not to pass an administrative act, sign a contract or participate at taking decisions, which may yield material benefits for themselves, their spouses or first degree relatives. The Romanian definition has been strongly criticised for not following entirely the Council of Europe recommendation R10/2000 on codes of conduct. The Romanian definition is restrictive both in terms of the range of persons (e.g. second degree relatives, friends, business associates do not fall in the range of the law) who would benefit from a conflict of interest situation, and in terms of the nature of benefits one would acquire (only the material benefits are specified by the law). There is little record as to how the conflict of interest legislation has been implemented so far³³.

d. Vote buying³⁴

Since January 1999, no survey has been carried out on the extent of the buying of votes from the public in general elections. Nevertheless, other forms of vote buying have been studied.

Both the BEEPS 1999 Survey and the World Bank's 2000 Diagnostic Survey measure, among other things, the percentage of firms reporting that they are affected by "state capture" in various spheres. The sale of parliamentary votes figures high in both surveys.³⁵ World Bank research indicates that the capture of parliamentary votes by private interests is a major

³² A study by Public Policy Institute (IPP) revealed serious deficiencies in the enforcement of the disclosure of property and interests by the local elected politicians (*Law 161/2003-first few months since its adoption*, IPP, 2003, on the w.w.w. at: <http://www.ipp.ro/altmateriale/Raport%20IPP%20161%20APL.pdf>).

³³ Ibidem.

³⁴ There is no legal provision on vote-buying yet, albeit the draft Penal Code provides the crime of 'corruption of voters' as promising, offering or giving of goods or other benefits in order to determine the elector to vote or not to vote a certain list of candidates or a candidate, to vote or not to vote in a referendum.

³⁵ The Business Environment and Enterprise Performance Survey (BEEPS), developed jointly by the World Bank and the European Bank for Reconstruction and Development, is a survey of over 4,000 firms in 22 transition countries conducted in 1999–2000 that examines a wide range of interactions between firms and the state.

problem for almost half of Romanian firms.³⁶

One respected investigative journalist estimates that almost half of all current members of parliament paid to gain places on party candidate election lists.³⁷

A recent relevant case for the political environment in Romania and the meaning of corruption is the referendum for the adoption of the new Constitution. The event caused rows of criticism from the civil society and opposition parties for situations of 'vote stimuli'³⁸. However, the PSD (party in power) rejected such actions as being illegal or damaging to the process, arguing that the goal was good nevertheless.

e. Immunity

Please see the discussion on immunity ("Inaction on immunity") in Section B.

f. Recovery / repatriation of assets

No attempts have been made to recover state assets stolen by politicians and deposited in foreign accounts. Nor has there ever been an official discussion on the existence of such accounts abroad, except for Ceausescu's accounts, which were not recovered either.

5.CORRUPTION – RELATED PUBLICATIONS

▪ *Concrete Measures Against Corruption, 2004 (Upcoming)*

³⁶ Forty-two per cent of Romanian firms think they are significantly affected by the capture of parliamentary votes. See World Bank, *Diagnostic Surveys of Corruption in Romania (2000)*.

³⁷ Interview with Nicoleta Savin, journalist. A businessman from Hunedoara confessed to having paid €10,833 to the Democratic Convention in order to be given the first place on the county list for the Chamber of Deputies before the 2000 elections. Despite making the payment, he was not placed on the list. In: *Evenimentul Zilei*, 27 June 2001.

³⁸ Media Monitoring Agency and ProDemocracy Association reported several law breaches such as (cited from the press release issued on the 21st of October 2003):

- "National Administration of Forests decided to grant free firewood for the villages with the highest participation in the referendum;
- Bacau City Council passed a bill on the organization of a raffle for those who were to vote within the referendum, granting 73 TV sets as prizes; moreover, the boxes for the raffle were placed in the voting sections;
- Another raffle was organized in Polodeni village (Neamt County); the participants were to receive as prizes furniture to the sum of ROL 10,000,000;
- People who showed the identity card proving they voted were granted free access to the football game Otelul Galati - Ceahlalul Piatra Neamt (whereas the other spectators had to buy tickets)."

- *Anticorruption Guide*, 2004 (Upcoming)

- *Monitoring Asset Declarations*, Public Policy Institute (IPP), 2003: <http://www.ipp.ro/>

- *Nations in Transit*, 2003, published by the Freedom House Institute: <http://www.freedomhouse.org/research/nitransit/2003/romania2003.pdf>

- *Early Warning Reports*, 1, 2003, edited by the Romanian Academic Society: <http://www.sar.org.ro/ewrpdf/ewr1en2003.pdf>

- *Transparency of Decision-Making in Public Administration*, 2003: http://www.transparency.org.ro/right/publicatii/ghid_transparenta_eng.pdf

- *Inventory of Corrupt Practices*, 2002: <http://www.transparency.org.ro/right/publicatii/inventory.pdf>

- *Judicial Reform Index for Romania*, 2002, published by ABA-CEELI: http://www.abanet.org/ceeli/publications/jri/jri_romania.pdf

- *Corruption and Anti-corruption Policy in Romania* (Open Society Institute, 2002), complete title: *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*; <http://www.eumap.org/reports/2002/content/50>

- *The Political Economy of Corruption in transition and the Pressures of Globalisation*, 2002, Adrian Savin, fellow of the Nathanson Centre for the Study of Organised Crime and Corruption, York University, Toronto, Canada: <http://www.transparency.org.ro/middle/.middle/publicatii/paper%20polsci.pdf%20target>

- *The Influence of Political Party Financing Legislation on the Development of Corruption and of the Party System*, Steven D. Roper, 2002 <http://www.transparency.org.ro/middle/middle/publicatii/steve%20finance&corruption.pdf>

- *Last Year of Obscurity, First Year of Transparency?* Romanian Academic Society, 2002: http://www.sar.org.ro/files_h/docs/advocacy_foia/2_monitoreng.ppt

- *The Role of the People's Advocate in Protecting Free Access to Information of Public*

Interest: http://www.transparency.org.ro/right/publicatii/avp_eng.pdf

- *Access to Information of Public Interest in Romania, 2001:*
http://www.transparency.org.ro/right/publicatii/accesinfo_eng.pdf

- *Monitoring the EU Accession Process: Judicial Independence*, by Open Society Institute, Romania section (Budapest: Central European University Press, 2001), especially pp. 349–94.

- *Diagnostic Surveys of Corruption in Romania* (World Bank, 29 March 2001):
<http://www1.worldbank.org/publicsector/anticorrupt/RomEnglish.pdf>

- *Red Tape Analysis: Regulation and Bureaucracy in Romania*, The Center for Institutional Reform and the Informal Sector (IRIS), 2000:
http://www.iriscenter.ro/english/red_tape/Red_Tape_comments.pdf

- *TI Sourcebook*, 2000, Romanian version:
http://www.transparency.org.ro/right/publicatii/sourcebook_ro.pdf

- Freedom House Reports on Romania:
<http://www.freedomhouse.org/research/nattransit.htm>

- Account books of TI Romania on 2001, 2002, and 2003:
<http://www.transparency.org.ro/>

- The BEEPS Interactive Dataset on governance issues:
<http://info.worldbank.org/governance/beeps/>

- APADOR-CH annual reports on human rights (includes reports on freedom of information and transparency): <http://www.apador.org/ranuale.htm>

Part B: Narrative discussion on key topics

1. The National Anti-corruption Prosecution and the issue of judicial independence

Despite the flurry of government activity in the area of anticorruption policy, the political establishment has refrained so far from carrying out reforms that would allow prosecution of corruption at the highest level. In particular, no steps have been taken to establish the independence of prosecutors.

The development of the National Anti-corruption Prosecution is a case in point. It began as the Special Anti-corruption Section at the Prosecution Office of the former Supreme Court of Justice, in October 2000. The section's structural inclusion into the larger Prosecution System (which is formally part of the Executive³⁹) was chosen despite the preference of the EU for a body that would enjoy independence from the executive.⁴⁰ The section was immediately subject to Executive interference, inadequate resources and lack of political will to grant it sufficient independence to pursue important corruption cases. As of early 2002, it still did not have enough staff to engage in a twinning project and at the same time fulfil its functions. According to the EU *2001 Regular Report*, the section only had 17 prosecutors instead of 38 as planned.⁴¹

In March 2002, the government approved an emergency ordinance transforming the Special Anti-corruption Section into the National Anti-corruption Prosecution (PNA). The Lower House of Parliament approved the decree with a 75 per cent vote in favour, but all opposition representatives voted against it. One opposition deputy argued that judicial institutions should be established by organic or constitutional law, not government decree. In a country beleaguered with routine bribery, the impartiality of the new body was immediately called into question, as clearly indicated by the opposition's unanimous 'no' vote.

Nevertheless, the office began operating in September with the mandate to investigate

³⁹ See Constitution, art. 131: the Prosecution function is organized as a distinct ministry office within the Cabinet.

⁴⁰ This preference has been stated in successive *Regular Reports*, and formulated clearly by twinning partners from the Spanish *Fiscalia Anticorrupcion*. Delegation of the European Commission in Romania, Briefing Note for OSI Roundtable Discussion, 28 March 2002.

⁴¹ "Corruption and Anti-corruption Policy in Romania" (Open Society Institute, 2002), Monitoring the EU Accession

corruption cases involving sums of at least €100,000 committed by any person or for any amount, if the perpetrator is a high official. The local PNA's take on cases of corruption involving at least €10,000 and whenever the perpetrators hold an important public position. The ordinance solves some independence-related problems that had plagued the Special Anti-corruption Section, in part by establishing a six-year term of office for prosecutors in the office. The office chief, whose mandate can be extended only once, must have at least 10 years' related experience.

Yet the ordinance did not address a key issue – the independence of the office chief. The NAPO is headed by a prosecutor-general who is appointed by the president of Romania up on recommendation from the minister of justice, to whom the office reports (and who may order a reorganisation of the office at will). The government has not made any specific commitment to changing the system of appointing the prosecutor-general, which continues to be a fundamental obstacle to effective prosecution of important corruption cases. Indeed, the government has remained passive although the EU and especially the Council of Europe have highlighted the issue of the prosecutor-general's independence as a key problem⁴².

The Romanian media also responded sceptically to the PNA's structure and investigative powers, arguing that the ruling party would control the prosecutor-general. One of the country's largest daily, the Bucharest-based *Adevarul*, suggested that the government would use PNA 'to punish political opponents' and convince international donors that the authorities are fighting corruption, given that corruption is an important item on the NATO and EU accession agendas.⁴³

Romania's prosecution system is strongly hierarchical: the prosecutor-general can order any subordinate prosecutor to drop a case, although formally only on the grounds that the subordinate had proceeded illegally. The minister of justice can give written instructions directly to prosecutors or through the prosecutor-general's office to initiate criminal proceedings. Moreover, criminal investigation of a magistrate, Member of Parliament or minister requires the approval of the minister of justice, which effectively makes prosecution of politicians dependent on political will.

The process by which the PNA was established, as well as other recent developments are

Process: Corruption and Anti-corruption Policy; PDF available on <http://www.eumap.org/reports/2002/content/50>.

⁴²This observation remains valid until the current justice reform process reaches its final point (the projected date is end of June 2004). The new draft laws in this regard seem to seriously limit the power of the Executive on the judiciary system, as a whole.

symptomatic of the fact that the independence of prosecutors is not guaranteed in practice. The current government removed the prosecutor-general, chief of the military prosecutor's office and the chief prosecutor of the Anticorruption Section – all of whom had investigated important cases involving senior politicians or officials.⁴⁴ In March 2001, the Minister of Justice issued a letter to all Appellate Courts in the country, advising judges to favour the rights of tenants over landlords in restitution cases.⁴⁵ In April of the same year, the Government wrote to the Cluj Local Court requesting that bankruptcy procedures against a specific bank be suspended until the Government took a decision “favourable to the interests of the Romanian economy”.⁴⁶

Although the Government subsequently admitted to the European Commission that the decision was a mistake,⁴⁷ media reports suggest that, “Since the November 2000 elections, interference of the executive in the judiciary has reached unprecedented levels”.⁴⁸ In April 2001, EU Commissioner for Enlargement Günter Verheugen singled out judicial independence in Romania as an important accession issue and asked the Romanian government to explain recent personnel changes in the judiciary.⁴⁹ The most recent EU Regular Report 2003 emphasises that the independence of the judiciary must be urgently addressed⁵⁰.

The new Constitution makes an important change with regards to the appointment of judges, which will only stay within the powers of an independent body – the Superior Council of the Magistracy. However, the Ministry of Justice still retains disciplinary powers over judges, which diminishes their effective independence.

However, PNA appears to have secured its independence, at least in what regards public perception. A fair number of cases that involve ruling party appointees have been investigated and the suspects indicted⁵¹. How long will it take the court to convict the

⁴³ RFE/RL, 7 February 2002.

⁴⁴ When leaving office in 1998, Sorin Moisescu, a former General Prosecutor, made a significant declaration. He said he had received “hundreds of interventions from politicians for the appointment or dismissal of prosecutors”. In: *Evenimentul Zilei*, 22 June 1998.

⁴⁵ *Evenimentul Zilei*, 3 April 2001.

⁴⁶ *Evenimentul Zilei*, 30 April 2001.

⁴⁷ Comments from OSI Roundtable Discussion, 28 March 2002.

⁴⁸ Interview with Liviu Mihaiu, deputy editor of *Academia Catavencu*, 11 April 2001.

⁴⁹ *Adevarul*, 27 April 2001.

⁵⁰ 2003 Regular Report on 's progress towards accession, p 121, on the w.w.w at: http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_ro_final.pdf

⁵¹ A recent report of the National Committee for the Prevention of Crime (convened on February 10, 2004, <http://www.just.ro/bin/Intrunirea%20Comitetului%20National%20de%20Prevenire%20a%20Criminalitatii/MonitorizareMJ%20final.htm>) shows that the number of high officials investigated and prosecuted in 2003 increased substantially compared to the previous years, including an ex-minister, 2 governmental counselors, a mayor, 2

perpetrators, if proven guilty, is a matter related to the larger issue of judiciary reform.

Currently (e.g., as of January 2004), the Ministry of Justice is proposing a set of legal initiatives aiming at reforming the justice system and putting it in line with the recommendations from the European Commission. It consists of a new draft-law on the Superior Council of Magistracy, judiciary organisation and a special draft-law on the status of magistrates. Their declared main target is the thorny issue of judicial independence and efficiency. According to these two projects, the powers of the Ministry of Justice over the Judiciary in general will be substantially diminished, and, consequently, the authority of the Superior Council of the Magistracy (CSM) will be increased. Judges and prosecutors will lie in the jurisdiction of the CSM, which is to become an independent body formed of magistrates elected by the general assemblies of judges and prosecutors. The CSM will conduct the appointment, promotion, delegation, transfer and disciplinary assessment of all magistrates. Furthermore, the CSM will elaborate the budget of the judiciary and uphold it in parliament. Finally, the courts are to be technologically improved, which has the potential of producing a better management of files and a random distribution of cases among magistrates. The Ministry of Justice is expected to lose its powers of giving orders to prosecute certain cases, which means that the only influence that the Ministry can engendered is one of an informal kind. However, all these seem to be the result of the strong EU voices that firmly demanded change.

2. Progress in public procurement

In the period under review, Romania made significant progress with the passing of a new piece of public procurement legislation. The importance of these improvements comes into sharp relief when compared to the country's record in this regard.

Even though media tended to cover scandals in central government procurement, corruption in public procurement remains a problem for Romania, both at central and local levels. Factors leading to corruption range from the lack of qualified staff running tenders and ineffectual legislation to the strong clientelistic networks binding officials to business interests.

Local businessmen and even public officials "take it for granted" that small contracts should

magistrates, a lawyer, 20 officers from the Defense Ministry, 136 policemen and gendarmes, 43 directors and inspectors, 10 customs officers etc.

be fixed by means of an agreement among local bidders. In one case, a businessman (and local councillor) from Olt county explained that he had to obtain "bids" from two other firms for a contract to provide bread to a local military unit. These offers were drawn up so that he could win the contract. In return he does the same for other firms in other tenders. According to the Court of Accounts officials from three different counties, 99 per cent of all public tenders in Romania are "arranged" or "fixed". Officials from the Prime Minister's Control Office identify the preparation of tender documents in order to favour a particular contractor as one of the most important forms of corruption in procurement.⁵²

Another widespread corrupt practice is the *commission* usually estimated as at least 10 per cent of the contract value. The *commission* is a kickback that is taken for granted before negotiations on procurement even begin.⁵³ Furthermore, a large proportion of firms winning public contracts are those with important officials from the local government among their shareholders. Many public officials do not even hide the fact that they work, at the same time, as private managers or consultants of local companies doing business with the municipality.

Entrance into local markets for public procurement (especially construction work) is invariably controlled by a group of firms that are protected by corrupt local officials and/or politicians. The relationships between businessmen and politicians are not transitory, but embedded in powerful networks of reciprocity and solidarity. The extent of corruption in procurement is so severe that it has resulted in a number of Sicilian-style public contracts that will never be completed.

Given these endemic problems, the European Commission's response to Romania's new procurement law⁵⁴ as an exception to the country's poor progress in the fight against

⁵² OSI Roundtable Discussion, 28 March 2002.

⁵³ Public officials sometimes raise the amount demanded as commission: in this case, firms will either adapt to the new bribe/kickback thresholds or be forced to withdraw. The latter option is most common for small firms, which usually survive by subcontracting. The owner of a small firm doing road maintenance explained how he prepared for a tender organised by the County Directorate for Roads and Bridges with the 10 per cent "commission" in mind; however, the officials running the tender asked for 20 per cent, forcing him to withdraw as the revenue remaining would not cover the cost of participation in the contract.

⁵⁴ Under current legislation, public authorities must submit contracts to open tender if they exceed €40.000 in value for a goods or services contract and €100.000 for a public works contract. Contracts may be allocated by sole sourcing:

□if only a single contractor is capable of fulfilling the contract;

□to supplement or replace products already purchased from the supplier (for up to three years after the original contract) or which for unforeseeable reasons have become necessary and can only be purchased from the same supplier;

□if the authority decides to purchase new services or works similar to the subject of a previous contract, which was originally awarded according to an open or restricted tender and which mentioned the possibility of such sole sourcing, provided that the services or works observe the original terms of reference, are valued as they were in

corruption is noteworthy. In acknowledging the improvement in legislation in 2001, the Commission expressed the opinion that “effective implementation of new legislation on public procurement should play an important role in the fight against corruption”.⁵⁵

A comprehensive new governmental ordinance, drafted with the support of the European Commission, had been passed in 1999 to amend the shortcomings of the previous public procurement regulations.⁵⁶ In 2001, the Romanian government changed the law again through an emergency ordinance, largely as a result of EU pressure.⁵⁷ (There is widespread agreement on the belief that that the government’s main goal in postponing the 2001 ordinance was to allow officials to raise funds for the coming electoral campaign and to award many contracts in exchange for the generosity of private firms that had contributed to the electoral campaign of 2000.⁵⁸) In January 2002 the government also passed an Emergency Ordinance on Public Procurement by means of Electronic Devices, providing a legal framework for e-procurement and facilitating use of the Public Procurement Electronic System.⁵⁹

Under the new legislation, bidders may appeal procurement decisions first to the contracting entity and then to an administrative court. There are no official statistics concerning the number of administrative or judicial appeals made in public procurement in the last three years. Indeed, there is no official data even on the number of contracts, their size or the winners. Unofficial estimates are that as many as 50 per cent of procurement decisions are

the original contract and are purchased within three years of the award of the initial contract;

^awhen contractors that operate in the utilities sectors purchase goods that are quoted and transacted on the stock exchange, or have an extremely profitable short-term opportunity to purchase goods at a price considerably lower than market price;

^bin situations of *force majeure* (for example natural disaster).

Contracting authorities must publish a notice of intent to procure in the *Official Gazette* for all contracts exceeding €750.000. Invitations to bid must be published similarly for all contracts to be allocated by tender. Tender documentation must be prepared containing standard tender information including general and specific contract conditions and the criteria used for assessing bids. The results of tender procedures must be published in the *Official Gazette* within 30 days of the award of the contract.

The following persons may not be members of an assessment commission or jury deciding a tender: spouses or relatives (to the third degree) of one of the bidders or candidates; persons who have in the last three years been members of the statutory, management or administrative organ of a bidder, or had any commercial contract with a bidder. There is no code of ethics or behavioural guidelines for public procurement officials or provisions to monitor the assets of members of commissions assessing bids, with the exception of the (entirely ineffective) provisions applying to all public officials since 1996.

Bidders may be excluded from a tender if they are in bankruptcy or liquidation, have tax arrears, provide false information, or did not fulfil obligations under another public contract. Bidders who can be proven to have been involved in corrupt or fraudulent practices related to the procedure for the contract in question must be excluded.

⁵⁵ European Commission, *2001 Regular Report*, p. 101.

⁵⁶ Government Ordinance no. 118/ 1999, regarding Public Procurement, *Official Journal*, no. 431, 31 August 1999.

⁵⁷ The ordinance was published in the *Official Gazette*; see also, European Commission, *2000 Regular Report*, p. 39.

⁵⁸ See e.g. *Capital*, no. 39, 28 September 2000.

⁵⁹ The National System of Electronic Public Procurement became operational on 4 March 2002 and can be accessed at www.e-licitatie.ro.

challenged.⁶⁰ The widespread practice of collusion between bidders, however, may make this proportion much lower.

The Ministry of Finance and the Ministry of Public Works are responsible for enforcing the public procurement legislation, while a new Directorate for Public Procurement Regulation at the Ministry of Finance is responsible for producing an annual report on the operation of the public procurement system and building a database of public contracts awarded. GRECO recommended in its March 2002 evaluation report that the service be strengthened, and preferably that an independent Public Procurement Office be created.⁶¹ The Court of Accounts is responsible for *post hoc* audit of public contracts.

In March 2003, under the Phare Project "Improving the competitive, transparent working procedures for awarding the Public Procurement Contract ", a draft code of ethics for public procurement officers was produced, which was finalised in September, the same year⁶². Yet, the Romanian authorities did not follow up with its adoption. The current law on the conduct of civil servants has been criticised by TI-Ro for poor wording and unclear procedures⁶³.

Last year's European Union Regular Report on Romania acknowledged the progress that the country achieved in the field of public procurement, where it is well aligned with the *acquis*. However, efforts are required with regards to the administrative bodies enforcing public procurement regulations, in particular referring to the Unit of Public Procurement, Regulation and Monitoring within the Ministry of Finance⁶⁴. However, things seem to be improving as far as the implementation of the electronic system of public procurement is concerned. The 2003 Report⁶⁵ of the Ministry of Communication and IT shows that the introduction of this system generated an increase of the average savings of 22.6 % and a reduction of €67 ml in public spending.

3. Inaction on immunity

The issue of political immunity has been a very serious one during transition, for reasons of

⁶⁰ Interview with Simona Nanescu, European Commission Delegation, 19 April 2001.

⁶¹ *Evaluation Report on Romania*, p. 26

⁶² *Proposed Framework: Code of Ethics for Public Procurement Officers*, proceeds of the conference " Improving the competitive, transparent working procedures for awarding the Public Procurement Contract", Bucharest, March 2003.

⁶³ *Ibidem*, p 11.

⁶⁴ *2003 Regular Report on Romania's Progress towards Accession*, p 50, on the w.w.w. at: http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_ro_final.pdf.

⁶⁵ The report is available on the w.w.w. at: <http://www.mcti.ro/mcti1.html?page=1672>

effective obstruction of the judiciary by MPs who committed crimes⁶⁶. The virtually total immunity of Members of Parliament from criminal prosecution fuelled suspicion that Parliament was an attractive and purchasable "safe haven" for individuals who might otherwise have to face prosecution. The Minister of Justice must submit an application for removal of immunity and the Parliament authorises prosecution by a two-thirds majority in the Chamber of Deputies and a simple majority in the Senate. The case is then heard by the Supreme Court of Justice and Cassation.⁶⁷ Immunity is automatically restored if a Member of Parliament is re-elected.

Another fundamental legal issue has been the immunity from investigation or prosecution enjoyed by both current and former members of the government, against whom criminal proceedings may only be initiated by the Chamber of Deputies, Senate or President, a highly politicised procedure.

Senator Vadim Tudor was stripped of immunity in 1996, in connection with a case of defamation. After being re-elected before the final court judgement, he was stripped of his immunity again in 1999 for participating in the 'miners march on Bucharest', only to be re-elected again in 2000.

Immunity may also have become a significant source of corruption as persons needing legal protection pay their way onto party election lists in order to enter Parliament. However, this situation may be partially modified, as the political parties plan to change the current election system from a list-based one to a mixed version of nominal votes for senators and the current closed party list votes for deputies (Lower Chamber).

The new Constitution restricts the MPs immunity only to political opinions, which opens the way for prosecuting them for any transgression of the law. Still, they cannot be seized, arrested or searched without the permission of their Chamber. In case of *flagrante delicto*, MPs can be seized and searched without authorisation from the Chamber thereof. The mixed voting system and the current political immunity situation may help prevent the potential election of at least corrupt senators in search of a "safe heaven" against prosecution.

⁶⁶ See GRECO's, *Evaluation Report on Romania*, p 24-5.

⁶⁷ In cases of *flagrante delicto* (capture in the act of committing the offense), a deputy or senator may be detained and searched but not prosecuted. The respective chamber must be promptly informed and may order the

4. Journalistic corner

The Romanian media has been one of the most outspoken institutions against corruption at all levels. Despite many impediments (among which the economic dependency from interest groups remains the most important and difficult to tackle), the media has had important successes in mounting public opinion and forcing the Government to take painful decisions⁶⁸.

In the next paragraphs, we will present two journalistic viewpoints on corruption in Romania, mainly focusing on its political implications. The first article takes a panoramic view of the phenomenon over the entire transitional period, while the second eyes critically the recent reactions of the current power at the last Report on Romania of the European Parliament.

"Colour of Corruption", by Iosif Boda⁶⁹

"At the end of May 2003 acting president Ion Iliescu was giving one of the most bitter discourses on corruption in his entire career. Upon losing the 1996 general and presidential elections, Mr. Iliescu was conditioning his candidacy at the next elections on the moral absolution of the PDSR⁷⁰, on the exclusion of corrupt elements, as the president himself was putting it. He demanded and obtained the right to veto the candidates list of the PSDR. Nevertheless, by now infamous figures such as Gabriel Bivolaru still made it to the Parliament. Yet, one must acknowledge that Mr. Iliescu was not among that massive group of PSDR MPs who walked shoulder by shoulder and guarded their 'innocent' colleague Bivolaru to the General Prosecution as a sign of solidarity. At the same time, one must as well admit that Gabriel Bivolaru has not taken his legal punishment despite the fact that he was accused and proved to have embezzled several tens of million of dollars.

After conquering the presidential fortification in 2000, and having by law to relinquish the party he had run for four years in opposition, the President pointed again at the temptations and pitfalls of power by warning on the perils of corruption. The President knew what he was talking about. He also knew that some of his party's militants barely waited to see him again at Cotroceni⁷¹ so that they would be able to unrestrainedly restart their illegalities. During the first two years of his last mandate, Mr. Iliescu hasn't failed to publicly incriminate the

cancellation of the detainment.

⁶⁸E.g. The dismissal of three ministers in November 2003 on charges of corruption.

⁶⁹"Evenimentul Zilei", No 3650, February 21, 2004, p 11.

⁷⁰ PDSR is the Romanian abbreviation from the Romanian Party of Social-Democracy, currently under the name of the Social-Democrat Party (PSD).

nouveau-riches and corruption inside the governing party at general reunions, TV shows and Parliamentary speeches. Moreover, he would urge us, citizens, to seize the corrupt ones and slam them against the public institutions that should deal with them. [...]

Yet, throughout the last year or so the President has grown more nuanced, prudent and careful when he set upon the hydra of corruption. When it came to top politicians, close to his position, he urged that Justice should decide. Yet, poor Justice – which everybody pushes and pulls from all sides – has grown into derision. When it comes near a case whereby a top politician or crook is suspect of criminal deeds, our Justice needs as much time to 'solve' it as the law provides for the prescription of the crime/crimes.[...]

A great deal of people waited feverishly the return of the President from his visit in India and Indonesia. The reason was that the situation at home was getting hotter. This was so not only because

the Government had broken the moratorium on international child adoption. It was also because the lack of reform in domains like justice, public administration, public order, and the endemic corruption across the country have put rule of law under question. Still, Mr. Iliescu's reaction was amazingly fuzzy. He stayed strong against certain "parasitical mentalities and attitudes", and then unleashed himself against spoiled rich kids who live on big money in western universities as it happened 150 years ago with the sons of boyars who would go to study to Paris and Vienna. However, we should observe that some of the latter effected the 1848 Revolution, as well as Modern Romania! Yet, what are the offspring of the transitional *nouveau-riches* doing? The majority do not practice their profession, despite graduating from university. They rather consistently become 'businessmen'. They are indispensable to appropriate and dissimulate the assets owned by their parents holding public positions. One could say that corruption and abuse within the local administration are even more sinister than at the central government.

Yet, Mr. Iliescu's reaction was surprisingly incidental. Corruption remains an abstract entity, and the corrupt do not get to have a face. Neither Mr. Iliescu's competitors, nor his enemies have ever accused him of corruption. Nevertheless, the latter and even his supporters suspect him of protecting or mere tolerating the corrupt ones within the power system. What is he going to do when he returns to the head of PSD? Is it possible that he does not return?"

⁷¹The Presidential palace.

"You might as well try wear wigs" by Octavian Paler⁷²

"In my opinion, all that will follow from the hullabaloo of governmental 'restructuring' is a dust-cloud. What new things can it bring for example with regards to combating corruption? Shyly, the National Anti-corruption Prosecution dared to speak out in its 2003 Report on the corruption within the "high spheres". The PSD speaker declared that such declarations can only be made by those who do "belletristic", and not by those who make legal inquiries. Thus, we discovered that Bucharest came to be the capital of a contagious disease. That is, all foreigners who have some sort of official relationships with the current regime develop a sudden taste for literature. The American Ambassador who vainly said he saw no "top corrupt official" arrested contaminated the British Ambassador, too, who compared Romania with a car whereby some people push, whereas others (he did not spell 'the Government', but we got it) steal gasoline. At this moment I see the disease spreading to Brussels, as well. Touched by the 'literature' virus, Mr. Verheugen declares he too awaits to see the "big fish behind bars". Only the Victoria Palace⁷³ frowns at 'literature'.

Logically, I reckon. A corrupt regime to the level of the current regime is set to lie and feign. All that it affords to avoid suicide is pantomime, irrespective of how many warnings are coming from Brussels. I am ready to admit that at least some members of the PSD are willing to see the county integrating into the EU. Yet how should the Nastase Government start a genuine battle against corruption? It should declare war against itself. Certainly, on the banks of Dambovita⁷⁴ it is only the small fish who can be arrested, and not the big shots of the PSD or ministers. Romanians are to see those people who give speeches on corruption arrested for corruption provided that they slam the PSD oligarchy on the eve of the upcoming elections.

I cannot take seriously the promises regarding the 'independence of the justice system'. First of all, because the corrupt part of the judiciary is not at all willing to become 'independent'. On the contrary, it feels the need to be attached to a corrupt political regime for this is the only way to impart justice in a profitable manner.[...]

And, gush, I was really thinking the previous days that a smart Government could afford to allow the Justice system go independent without taking too many chances! Nothing would have happened anyway, I think! Nevertheless, it was a wasted chance, because Mrs. Stanoiu⁷⁵'s successor seems to be a dedicated sycophant of official platitudes, as far as his

⁷²"Cotidianul", March 12, 2004.

⁷³The Palace of the Government.

⁷⁴The main river crossing the capital city.

⁷⁵Former minister of justice.

first declarations unveil. Hence, the last hope stays within the range of simulation. Until Mr. Cristian Diaconescu⁷⁶ figures it out whether the independence of the justice system has already been fulfilled or not, because this is what he is bothered of right now, one could try another trick on those folks in Brussels. Have the Romanian magistrates wear wigs so that they look like their counterparts in the British courts!”

⁷⁶Current minister of justice.

FINAL OBSERVATIONS

The period under scrutiny can be assessed as one with substantial institutional building in fields relating to both to prevention and repel of corruption. Several preventive legal concepts and institutions have been introduced or reformed in relevant fields (e.g. codification of crimes of corruption-2000, freedom of information-2001, protection of private information-2001, classified information-2002, witness protection-2002, sunshine regulations-2003, conflict of interest-2003, monitoring and control of assets and interests-2003, protection of European financial interests in Romania-2003, limitation of MPs immunity only to opinions-2003). The investigative and punishing capacity has also been substantially increased: the Specialized Anti-corruption and Anti-Organized Crime Section (SACCO) at the Prosecution Office-2000, Prime Minister's Control Office (BCPM)-2001, the National Anti-corruption Prosecution (PNA)-2002, National Bureau for Witness Protection-2002, National Control Agency (NCA)-2003.

All these initiatives show that there is a strong momentum towards creating the institutional framework for fighting corruption in Romania. Yet, the same momentum has to be proved in practice, where many good institutional initiatives have almost indistinctly faltered. For example, a recent survey of the Romanian Academic Society⁷⁷(SAR) found that one year after the adoption of the Anti-corruption Omnibus Package two thirds of the Romanian population believes that the level of corruption actually increased.

Despite the fact that lately several media-reported cases of high corruption have been investigated and prosecuted, including officials pertaining to the current power, the drive remained only at the low and middle level of public officials. Therefore, one still has to wait and see if this is a sustainable and genuine trend, or just a momentous move in light of the strong EU accession demands and of the upcoming local and general elections. Nonetheless, the EU seems to have lost its patience as far as Romania's measures against corruption are concerned.

⁷⁷SAR is a Romanian think-tank: <http://www.sar.org.ro/>