Romania

Corruption Perceptions Index 2007: 3.7 (69th out of 180 countries)

Conventions
Council of Europe Civil Law Convention on Corruption (signed November 1999; ratified April 2002)
Council of Europe Criminal Law Convention on Corruption (signed January 1999; ratified July 2002)
UN Convention against Corruption (signed December 2003; ratified November 2004)
UN Convention against Transnational Organized Crime (signed December 2000; ratified December 2002)

Legal and institutional changes

- In 2006 there were two important **modifications to the Law on Free Access to Information of Public Interest**[1]. The law's application has been extended beyond the authorities that administer public finances to include companies under government ownership, or in which the government holds a majority stake. Other modifications exempt information about commercial and financial activities that could damage fair competition or endanger intellectual property[2]. Changes to the law also make access to information more explicit[3], stating that contracting agents must provide public procurement contracts to interested parties, rolling back the practice of adding confidentiality clauses to such contracts.

- In July **2006 Parliament modified the Penal Code so as to criminalize conflicts of interest** (see below)[4]. This raises serious problems of application, especially in providing evidence of intent (as formulated, the legal text requires prosecutors to prove that the person under investigation knew he or she was in a conflict of interest and actively participated in making a decision that brought him or her benefits). The text also differs from administrative law[5], which defines conflicts of interest more narrowly. The new penal law does not automatically annul decisions performed in a conflict of interest. Confusingly, both administrative and penal regulations are simultaneously applicable, so a civil servant could be sanctioned for a conflict of interest under criminal law, but the victim of an administrative decision issued under conflict of interest would be forced to file a civil suit to obtain relief.

- The Penal Code modifications[6] **also introduced provisions allowing for the penal responsibility of legal persons**.

[1] Law no. 544/2001
[2] Law no. 371/2006, modifies article 12, paragraph (1), sect. c. of Law no. 544/2001
[3] Law no. 380/2006
[4] Law no. 278/2006
[5] Law no. 161/2003
[6] Law no. 278/2006

With the exception of the state, public authorities and public institutions in domains outside private sector activity, the new law provides that all legal entities, such as companies, trade unions and foundations, are considered criminally responsible. This provision applies only to the corruption infractions of bribe-giving and trafficking in influence; all other offences require a physical person to play an active role in criminal transactions. The adoption of the measure falls within a series of steps taken towards transposing into internal legislation the Council of Europe's Criminal Law Convention on Corruption and was particularly requested in the Group of States against Corruption Second Evaluation Report on Romania, issued in October 20057.

- The new Law on Political Party and Campaign Financing, adopted in July 20068, **enlarges political parties' obligations to declare income and expenses**, stipulating that contributions from members and other sources must be published in the official gazette. The format for reporting expenses will also be more strict, owing to a new definition of 'propaganda materials' that includes the cost of written, video or audio materials. Another positive development is a clearer system for donations, inheritances and campaign contributions. Limits are unchanged, but it is more difficult to exceed them and price deductions on goods or services are now considered as donations. More troubling was the government's decision to delay the law's application. In January 2007 the government postponed several of the provisions until July 20079.

- **The work of the General Anti-Corruption Department (DGA)**, an investigation unit in the Ministry of Administration and Internal Affairs, **was undermined in March 2007 when its director resigned in response to an unlawful performance review by a ministerial body**. Legislation governing the DGA requires an independent performance review at the minister's request. The DGA director is a magistrate, however, meaning that reviews belong in the jurisdiction of the Superior Council of the Magistracy (CSM). The ministry instead subjected the director to its own standing review committee, including some representatives actually under investigation by the DGA, constituting a clear conflict of interest.

- Despite the Anti-Corruption Department's (DNA's) intensive activity, **the justice system has not yet produced convictions in cases of high-level corruption**. More worryingly, recent practice has been to grant a large number of suspended sentences (i.e. with no prison time) in grand corruption trials, diluting the sanction to a simple mention on the individual's criminal record. In the absence of decisive action by the judiciary, grand corruption cases are dealt with in the press rather than the court of law10.

The fight over the National Integrity Agency

May 2007 finally saw the passage of a long-sought law to establish an independent anti-corruption agency. The National Integrity Agency (ANI) is designed to remedy shortcomings in the monitoring of conflicts of interest and public officials' assets. The

[7] Greco, 'Second Evaluation Round: Evaluation Report on Romania', adopted at the twenty-fifth Plenary Meeting, Strasbourg, October 2005
[8] Law no. 334/2006
[9] Emergency Ordinance, 1/2007

[10] TI Romania National Corruption Report 2007, Romania' (Bucharest: TI Romania, 2007).

law establishing the agency[11] followed a series of drafts: one was written by TI Romania in 2004; a second by the minister of justice in June 2006; and a third was a heavily amended version of the second. The fourth and final version was adopted by the Senate in May 2007. All four envisioned an institution that would verify asset declarations, and monitor unexplained wealth and possible conflicts of interest[12].

All four provided for a three-tiered structure with a representative council, a management body and a body of inspectors to perform controls. All concurred that the submission of a false declaration of wealth or making false statements would be considered an act of forgery. Another point of convergence was that penalties for illicit enrichment, conflict of interest and incompatibilities were beyond the new agency's competence, so files would be forwarded to the Prosecutor's Office, disciplinary commissions or fiscal authorities. The ANI can impose fines only for failure to submit documents or for overstepping deadlines for submitting declarations.

The system previously in place was seriously fragmented, assigning wealth and conflict of interest control to separate institutions with little capacity for collaboration. This fragmentation prevented any unitary legal approach to corruption prevention. Further inefficiencies derived from the wealth control commission's lack of diligence and the absence of mechanisms to certify that declarations had been submitted. In addition, because conflict of interest complaints were assigned to authorities within the public institutions, there were no guarantees of impartiality or insulation from undue influence. The law establishing ANI was adopted in a context of mounting pressure both at home and internationally. In 2004 a draft law by TI Romania was sent to parliament and passed the lower house, although the Senate delayed discussion for over a year. With the Second National Anti-Corruption Strategy (2005–7) the deficiencies in corruption prevention were clearly visible, and a proposal was put forth for the creation of 'a single independent body tasked with verifying asset and interest declarations, as well as incompatibility situations'[13]. These domestic efforts were mirrored in pressure from the European Commission.

The adoption of the law establishing the ANI was no easy task. What particularly inflamed public debate were the radical modifications brought to the Ministry of Justice's draft by the Chamber of Deputies. Between 14 August and 11 October 2006 the chamber's legal commission returned with more than ninety-two separate modifications, which effectively left the ANI a highly dependent body with fewer powers. These modifications outraged the ministry and domestic NGOs, and increased the vigor of the debate. In response, TI Romania submitted a second document, 'Basic Principles for an Anti-corruption Public Policy Dedicated to the National Integrity Agency', which won support from civil society organizations. The principles became the object of intense advocacy. TI Romania had proposed enlarging and improving the legal definition of conflict of interests, achieving a unitary regulatory framework for incompatibilities, and focusing wealth control on assets obtained during the occupation of public office only. It recommended that the ANI have operational independence, access to all public databases, a mandatory character for its decisions (which can, however, be appealed) and the power of dismissal of

[11] Law no. 144/2007 on the establishment, organisation and function of the National Integrity Agency, or Agenţia Naţională de Integritate in Romanian.

[12] Except for the version that resulted from debates within the Chamber of Deputies, which eliminated most of the agency's powers of investigation.

[13] Annex 1 to the government decision 231/2005 on the approval of the National Anti-Corruption Strategy for 2005–7.

those in conflict of interest or incompatibility situations.

Applying the current legislation may be problematic. Having administrative jurisdiction, the institution may consider only conflicts of interests as defined by administrative law, which refers to benefits for oneself and immediate relatives solely of a material nature. This ignores non-material benefits and intermediaries. Criminal law contains a much wider definition, meaning that the ANI can effectively do little to combat conflicts of interest despite its mission. Rather, it will be forced to forward findings to the Prosecutor's Office.

The risk of insufficient human or financial resources may also be a problem. The law provides for a maximum of 200 employees and a central office in Bucharest. These employees face the enormous task of checking the wealth and interest declarations of virtually all persons occupying positions in the public sector. Procedures for overcoming capacity constraints are lengthy and beyond the control of the ANI's management.

Anti-corruption agencies can easily become political weapons in the hands of those in power if not sufficiently insulated from pressure. Senate oversight may still allow influence over appointments and dismissals of agency management, which is unsettling because of the political class's inconsistent attitude towards the ANI. It is important to remember that the agency's belated creation was intimately connected to EU pressure, so the degree of genuine political support is difficult to ascertain. The instability of Romania's anti-corruption legislation and inconsistencies in its legal texts will negatively impact the ANI's performance.

Parliamentary disregard for standards of legislative technique make anti-corruption measures vulnerable to abusive interpretation. The law establishing the ANI seems no exception to this: on 30 May 2007, less than one month after its adoption, the government passed an emergency ordinance lowering the financial threshold for wealth control procedures[14]. Although positive in itself, it would have been preferable to have included it in the original defining text for legal clarity.

The law establishing the ANI is one of the most important pieces of anti-corruption policy in Romania – and one of the most thoroughly debated. In the one to two years after the adoption of the law the ANI must demonstrate important successes if it is to make an impact. The chances of such success should be increased by connecting the institution to other preventive instruments, such as public awareness campaigns, anti-corruption education and whistleblower protection, eventually leading to more coherent corruption prevention.

The Superior Council of the Magistracy's enduring deficiencies

Reform of the judiciary has been a priority since 1990 (see *Global Corruption Report 2005* and *Global Corruption Report 2007*). The prolonged negotiations for accession to the European Union were a powerful impetus for reform and stressed the independence of the judiciary as a central theme. In 2004 an overhaul of the judiciary was initiated through a package of three laws[15] that empowered the Superior Council of the Magistracy as the official representative of the judiciary in its relations with other state authorities and the guarantor of its independence. The CSM consists of nine

[14] The ordinance came after TI Romania expressed criticism regarding the excessively high 'obvious difference' between actual and declared wealth, which can justify the commencement of control procedures.

[15] Law no. 303/2004 on the status of judges and prosecutors; Law no. 304/2004 on the organisation of the judiciary; and Law no. 317/2004 on the organisation and functioning of the Superior Council of the Magistracy.

judges and five prosecutors, elected by their peers, and by law includes the minister of justice, the Supreme Court president, the general prosecutor and two civil society representatives. A number of sensitive issues, such as the appointment of magistrates, career development and disciplinary action, are placed exclusively in the CSM's competence. Three years after passing the threepackage law, the CSM continues to be the target of criticism over its efficiency, credibility and integrity. It is illustrative that, of the four benchmarks instituted by the European Commission in September 2006, one explicitly targets the CSM: 'Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of the Magistracy'[16].

The CSM made some progress towards implementing key measures within the official reform strategy for the judiciary during the period under review[17]. It increased its administrative capacity, completed and ran new procedures for the promotion, relocation and transfer of magistrates and set up mechanisms to ensure uniform jurisprudence throughout the court system (i.e. a mechanism of periodic consultation among judges and the so-called 'appeal in the interest of law')[18].

Outstanding problems persist regarding CSM's performance as a disciplinary body, however. This is particularly problematic as the judiciary continues to be perceived as one of Romania's most corrupt institutions[19]. In the course of 2006 the Disciplinary Commission received 231 complaints, mostly from litigants, of which 193 were dismissed[20]. In the absence of decisive action by the CSM, the press and civil society have assumed a key role in monitoring the state of the justice system and the performance of magistrates. In response, judges and prosecutors perceive the press as the major factor of pressure on the judiciary[21].

The CSM also has serious flaws in its integrity standards. The legal framework requires CSM members to be suspended from positions in courts or prosecutors' offices. At the end of 2006 five of fourteen elected members faced potential conflicts of interest as inspectors, since they also held leading positions (albeit suspended) in the judicial system. This not only raised serious ethical issues, it created a capacity deficit.

These conspicuous flaws, coupled with the limited impact of reforms on the judiciary, have further weakened the credibility of the magistracy. According to a TI Romania report, in 2006 only 43 per cent of magistrates thought that the CSM had the ability to guarantee their independence, compared to the 60 per cent who responded the same in 2005. The satisfaction of magistrates with the CSM has also decreased, with only 51 per cent saying that they were

[16] European Commission, 'Monitoring Report on the State of Preparedness for EU membership of Bulgaria and Romania', Communication from the Commission (Brussels: European Commission, 2006).

[17] Government decision no. 232/2005 for the approval of the reform strategy for the judiciary for 2005–7 and the action plan for the implementation of the reform strategy for the judiciary for 2005–7.

[18] A mechanism by which courts of appeal or the general prosecutor can introduce certain cases to the Supreme Court, whose decisions then become obligatory for all courts and can be modified only by law.

[19] Data from the Global Corruption Barometer show that the justice system has been ranked as the second most corrupt institution in Romania since 2003, surpassed only by political parties, customs or, alternatively, parliament.

[20] According to a report on the activity of the CSM in 2006, published 19 March 2007; for further details, see www.csm1909.ro/csm/linkuri/19_03_2007__9024_ro.doc.

[21] According to the 2006 'Study Regarding the Perception of Magistrates on the Independence of the Judiciary', produced by TI Romania at the CSM's request, 50.6 per cent of magistrates consider the press the most important factor for change, compared to 7.6 per cent for the executive and 7.0 per cent for the legislature.

satisfied with the institution, compared to 61 per cent a year earlier[22].

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Further reading

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TI Romania: www.transparency.ro.

[22] Ibid