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National Corruption Report 2007
May 2007 – May 2008

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This report was supported by the Open Society Foundation Romania (OSF) through its OSF Fellows Programme, which offered financial support for Andreea Năstase's contribution.

EXECUTIVE SUMMARY

I. Legislative Amendments

A. Prevention

In the sphere of legislative changes relevant to the anti-corruption movement, the *National Corruption Report 2008* primarily analyzes the areas of access to public information and recent amendments to the processes of enhancing public policy and legislative technique procedures.

We begin by discussing Law no. 188/2007, which first introduces the obligation for public institutions and authorities to make **privatization contracts** entered into force after December 2001, available to those interested. Transparency International Romania finds that this change is more of a formality, since currently the privatization process is nearly completed, and the large-scale contracts have already been distributed. Furthermore, there are currently no legal provisions which can be exercised in time, in order to challenge the majority of the contracts that are already signed.

The year 2007 brought about new regulations regarding the **re-use of public sector information** (Law no.109/2007), Romania thus succeeding in harmonizing its internal regulations with the ones outlined by Directive no. 2003/98/CE. Unfortunately, the new law contains certain provisions which raise a series of problems. Among these, one may emphasize the diminishing applicability sphere of the law, through the exclusion of those public entities which perform commercial activities – more specifically, the autonomous administrations, state-owned companies and commercial companies that are under the control of a public authority or are financed through public funds. In the same direction, it is worth mentioning the discriminatory system instituted through the establishment of two modalities of re-using public sector information – respectively for noncommercial and for commercial purposes - the latter requiring the approval of the institution holding the information.

Through the amendments introduced to Law no. 182/2002 regarding **the protection of classified information**, five categories of public offices, namely the President of Romania, the Prime Minister, the Ministers, the senators and the members of the Chamber of Deputies – gain direct access to classified information, without being required to comply with the otherwise generally applicable verification procedure prior to use. Transparency International Romania considers that the importance of the public offices previously listed, does not justify the excessively easy process for access to confidential information for them. Speaking of eminently elective positions, with no requirement of professional orders, a minimum *a priori* control is deemed necessary.

The recent modifications to the Regulation regarding **the elaboration procedures**, **monitoring and evaluation of public policy** at a central level are generally welcomed. An improvement occurred through the consolidation of procedures for the normative acts proposals and the public policy documents, which is justified by the close connection existing between the two. It is a well known fact that the adoption of a public policy is realized most often by means of a normative act. On the other hand, the application of a public policy can entail the adoption of normative acts. Another positive aspect is the establishment of a monitoring mechanism for the duties assigned to public authorities by the Government. This mechanism is intended to simulate an increased sense of accountability among the authorities, regarding the fulfillment in time of the assumed duties, and when this is not objectively possible, it can allow for the reformulation of the implementation plan in a realistic way.

Law no. 24/2000 regarding the **legislative technique provisions** was modified throughout 2007, in order to include the obligation to conduct a study regarding the future effects of a normative act proposal. A new requirement which was introduced refers to the enactment of the implementation guidelines for a normative act in a period of maximum 30 days from the moment it has entered into force. The new provisions are welcomed, in the context of the existing "inflationary" legislation, and should serve in building a correct basis for legislative proposals, as regards the real needs of society and the costs that the application of the new norms imply. On the other hand, the urgency for enacting such norms, may also resolve the issues of discretionary and non-cohesive implementation of the law, or, even worse, the lack of implementations.

B. Combating

Among the legislative developments which have marked the anti-corruption sector, the *National Corruption Report 2008* analyzes a series of regulations relevant to the public sphere, modifications to the Law on administrative litigation no. 554/2004, as well as the new regulations regarding the establishment of a legal aid system.

Throughout the reporting period, a series of negative changes of the regulations in the sphere of public office, have been noticed. We call to mind the Emergency Ordinance no. 48/2007, which modifies the *Statute of Public Servants*, thus allowing leading public officials to hold public offices, with the suspension of their employment relationship during the mandate exercise. This approach compromises the efforts for political neutrality of the public administration, since it allows for some public officials to freely exercise various public mandates –which by definition have a political character, and civil servant, which is supposed to be apolitical.

Along the same lines are the series of modifications to Law no. 7/2006 regarding the statute of the parliamentary civil servant, which **removes the political neutrality requirement** for parliamentary civil servants who conduct their activities in the President's Chancellery, in the cabinets of the members of the permanent Bureau, in the cabinets of the leaders of parliamentary groups, and in the parliamentary groups. Thus there is a manifested discrimination among these categories of personnel, which work closely with deputies and senators, and the rest of the parliamentary civil servants, discrimination which has no motivation other than the desire to use the Parliament's personnel for party purposes and interests.

The year 2007 also brought along the modification of the provisions related to the **organization and function of disciplinary commissions** within public institutions and authorities, by adopting Government Decision no. 1344/2007. On a positive note, the new normative act brings added clarity and systemization with regard to the work processes of the disciplinary commissions. The disadvantages of the new regulation are however, more numerous. In this way, the possibility that the civil servant is unsatisfied with the applied sanction and formulates a complaint to the director of the public institution/authority and alerts the National Agency of Public Servants, is consequently removed, the only remaining means of "attack" being to appeal to administrative litigation, which is completely insufficient. Perhaps the biggest loss created by the changing of legislation regarding the disciplinary commissions is the elimination of the public nature of the reunions of the latter. While, according to the former Government Decision no. 1210/2003, the meetings were public, with the exception of cases where the civil servant being investigated or the president requested the otherwise for well justified reasons, Government Decision no. 1344/2007 provides the sessions be public *only at the request or with the written assent of the person under investigation,* from where we can deduct that, for the majority of the time, they are confidential. This significant step backwards in the field of transparency might diminish the degree of public

accountability for disciplinary forums, favor abuse, and may result, overall, in the deepening of the already chronic inefficiency of the institutional mechanisms with disciplinary responsibilities.

The year 2007 was also marked by an essential stage in the evolution of the way Law 554/2004 was rendered into practice. Notwithstanding the net improvements brought to Law 554/2004 related to the administrative litigation, as compared to the 1990 alternative, the modifications constituted the object of various decisions of unconstitutionality and legislative modifications.

Thereafter, the Court declared as unconstitutional the solving of the petitions through administrative litigation, without the participation of the Public Ministry representative; in this case the legislative solution, was translated in the Public Ministry's task to decide whether the participation of a representative of its own, proves necessary and opportune.

In the same category of unconstitutional acts, is to be found the conditionality in complying with the mandatory prerequisite procedure of formulating the prerequisite petition by the victim - other than the recipient of the act – in a six month term, starting the enactment of the document. The Court decided to eliminate this disposition, stating that it practically blocked the victim's access to the court.

As concerns the definition of the „victim", it now encompasses an extended interpretation, and thereafter includes both the natural and the judicial person, as well as groups of natural persons without judicial personality. In addition, social organisms are recognized the active attribute of being litigant, not only in cases when a public legitimate interest exists, but also when defending the legitimate private interests of certain natural persons. At the same time, it was assimilated to the unjustified refusal of solving a petition and the absence of enforcement of the administrative act, enacted as a consequence to a favourable solution to a petition or prerequisite complaint.

Through the Emergency Ordinance no. 51/2008 Romania harmonized its internal legislation regarding the **legal aid system,** with the requirements of the Directive of the European Union Council 2003/8/CE. Compared to the previous legislative equivoque, and the dispersal of provisions regarding a legal aid system in many normative acts, using a vast range of terms for referring to the same concept, the new regulation has the obvious advantage of unifying civil law provisions under the same roof. The introduction of a clear financial criterion for awarding legal aid (i.e.: the net income of the requestor) and the extension of the domain of application with regards to the pay of the expert, the translator, the interpreter, the honorary judicial executor, proved beneficial. Despite all its merits, the EO no. 51/2008 ignores the introduction of quality standards regarding the performance of those who provide legal aid, and of any control mechanism in this direction, which opens up the possibility of giving purely formal assistance for those who request legal aid.

C. Sanctioning

The most significant legislative developments related to the sanctioning of corruption, the current Report dwells with, are the modifications brought to the Criminal Code and to the Criminal Procedure Code, as well as a series of amendments introduced to Law no. 115/1999 related to the ministerial accountability, either through normative acts or decisions of the Constitutional Court.

Among the amendments brought to the **Criminal Code** in force, some are relevant for the fight against corruption. We recall, first of all, the Decision of the Constitutional Court 62/2007, which declares unconstitutional any laws through which abolish the incrimination of insult and defamation. Based on the inability of the national legislative forums to adopt a regulation which sets

the Penal Code in agreement with this decision, **insult and defamation are again punishable as criminal acts,** with evidently negative effects for freedom of speech.

The *Report* also analyzes the amendments to the Criminal Code introduced by Law no. 58/2008, which provides that, for acts of abuse of office against the interests of the person involved, the abuse of office through limiting certain rights and abusive behavior committed by civil servants, **the initiation of criminal proceedings is made at the precursory complaint of the victim.** The provision presents both advantages and disadvantages. By introducing the complaint, it is possible for the victims to use their right by means of the criminal proceeding and to remove the situation where the Public Ministry detaches itself from the realization of the criminal prosecution, the prosecutor being the only one who may require the criminal pursuit. On the other hand, the process of the complaint constitutes a limitation of the role of the State in sanctioning any form of corruption, as long as the Public Ministry may no longer have the initiative, and may respectively no longer automatically act when such infractions are committed.

With regard to the evolution of the **Criminal Procedure Code,** we recall Law no. 79/2007, which stipulates a new competence of the Courts of Appeal, which in addition to judging the acts committed by judges and prosecutors from judges' offices and tribunals, respectively from prosecutors' offices near these, also those acts committed by lawyers, notaries and judicial executors. In this way, the context in which representatives of the liberal professions – with responsibilities related to the carrying out of justice - can be made responsible for acts they have committed occurs naturally.

On the other hand, a series of decisions of the Constitutional Court from 2007, open the way for abuses in the unfolding of criminal proceedings. Thus, through the Decision of the Constitutional Court 1058/2007, the letters a) – d) of the indentation 4^1 , within art. 209 of the Criminal Procedure Code were declared unconstitutional. These provisions refer to situations in which **prosecutors within the frame of hierarchically higher prosecutors offices may take over, for the purposes of criminal pursuit, cases from the competence of the hierarchically inferior offices.** The purpose of this provision was to limit the possibilities of cases to be taken over by the hierarchically superior prosecutors, in attempting to reduce potential abuses.

The Constitutional Court Decision no. 1086/2007 regarding article 172, alin. 1 and 173 alin. 1 from the Criminal Procedure Code was also criticized, because it **permitted the defendant to take act to the criminal proceedings, being thus able to endanger the results of the unfolding inquiry**, by destroying or making it impossible to produce more proofs. The decision is unjustified as it regards the guarantees for the right of defense, seeing as these were already completed during the judiciary inquiry, when the defender has the chance to criticize and request for the cancellation or the removal of any proof from those that the Prosecutor's Office indictment is based upon.

Law 115/1999 regarding ministerial responsibility had a very sinuous trajectory in 2007, and until this moment, the aspects that it regulates were often speculated to be used as a political tool. The only concrete result obtained after this successive modification process is that of a disparate, heavy-handed, and virtually inapplicable set of regulations.

Through Decision 665/2007, the Court declared alin. 2 and 3 from Article 23 from Law number 115/1999, as unconstitutional. The provisions instituted the procedure for common law with regard to criminal pursuit and for the trials of former members of Government, for crimes committed during their time in office. Even though it is on a right basis, the Court's decision led to much dissatisfaction and critics, especially because it practically led to the return to the DNA of some very notorious large-scale corruption files, in order to restart the criminal prosecution.

The Decision of the Constitutional Court 1133/2007 notes the unconstitutionality of any extra-judiciary organism mandated to conduct check-ups and its own searches in order to emit the permit to begin criminal prosecution (as was the case for the so called „commission from

Cotroceni," established through Law 115/1999). This decision represented real progress, because the special commission brought an infringement to the principle of equality of citizens before the law and represented an extra filter during the activities of prosecutors, making the unfolding of criminal proceedings, much more difficult.

At the same time, however, Decision 1133/2007 created a void of regulations regarding the procedure to be followed and the institutional competences for allowing criminal pursuit in the case of former and current ministers. The problem was addressed through the Decision of the Constitutional Court number 270/2008, which decided that the President is to allow the criminal prosecution for ministers and former ministers, the Chamber of Deputies for ministers and former ministers which also have the role of deputies, and the Senate for ministers and former ministers which also have the role of senators. The system thus formed practically enlarges the sphere of parliamentary immunity beyond the limits of the constitutional text. The new procedure supposes that the Prosecutors Office will demand the notice for the beginning of the criminal prosecution from the Chamber in which the member or former member of Government is part of, as a member of parliament, and even when the inquiry does not take note of the votes or political opinions of the latter. Deficiencies in the way the Chambers of Parliament have understood to implement the new procedure have been exacerbated, these assuming the right of access to documents in the files and giving an opinion on the relevance of the indices for continuing the criminal procedures. Parliament has thus made itself into a real extraordinary judiciary, assuming for itself attributions reserves solely for institutions in the judiciary system.

The particular establishment of the legal framework regarding ministerial responsibility is proof of the fact that the true problem resides in the existence in itself of a certain protection awarded to public officials before procedural acts for launching criminal inquiries. The error within the system is in the constitutional provisions which create a double standard for citizens, in regards to their social role. These provisions are able to create a positive unjustified discrimination for the members of government, frustrating the battle against corruption at high levels.

II. Institutional Development

A. Prevention

In the section dedicated to the development of institutions with a key role in the prevention of corruption, the *National Corruption Report* draws attention to the performance of the **Superior Council of the Magistry,** which, in the course of the reported period, moved several times further away from its mission as grantor and protector of the independence of the judiciary, proving, overall, a conservative position in report to the reform of the judiciary and the fight against corruption.

The means of managing suspicions of fraud in the course of the contest for appointing judges and prosecutors to leading functions, contest which took place at the end of last year, is just an example. Despite the initiation of an inquiry by the DNA into these aspects, CSM decided the validation of the results, ignoring the fact that the unfolding criminal inquiries were a definite indication that the whole contest is compromised. Another example is the shocking public declarations of the president of CSM, whose nature may constitute concrete intrusions into the activities of the magistrates and may take much credibility from anti-corruption efforts. We recall here only the controversial opinion expressed in May 2008[1], according to which there are no

[1] Declaraţia a fost făcută pe 12 mai 2008, cu ocazia conferinţei „Rolul jurnalismului de investigaţie în lupta împotriva corupţiei", organizată de Ministerul Justiţiei. Vezi şi http://www.evz.ro/articole/detalii-articol/803256/Moartea-anticoruptiei/.

alarming numbers in regards to corruption, the subject being rather a part of political fights and exacerbated by the press. According to the data from the *Study regarding the perception of magistrates of the judiciary system 2007,* completed by Transparency International Romania, the trust of magistrates for CSM has increased by approximately 4%, which is nevertheless explained by the absence, or the very limited number of applied sanctions. We consider that the improvement of perception due to the lack of disciplinary activities has no value.

B. Combating

With regards to the **National Agency for Integrity**, the current report underlines the extreme delays in the process of making the institution functional, as well as the problematic aspects which characterized the few progresses that have been realized until now. The contest for the selection of a president for the Agency had to be re-run twice before the office was filled. Even though ANI has currently 33 integrity inspectors, the process of recruiting kicked off inexplicably before the creation and putting into practice of a normative act to regulate the special statute of these employees, in regards to rights, duties, and guarantees retarding their integrity and independence.

Moving on to a new topic, we address the marked tendency of legislative instability throughout the previous year, and the risk of politics playing a role in of ANI that some of these modifications prove. Thus, through Emergency Ordinance no. 49/2007 (approved with modifications by Law 94/2008), a CNI commission is mandated to check on the wealth, incompatibilities, and conflicts of interest for the personnel of the Agency. CNI thus extends beyond its representation mandate, being given the possibility to interfere in the operational activity o the Agency, and of hurting the latter's independence by disciplinary control exercised over its employees. The same Emergency Ordinance no. 49/2007 eliminates the necessity of the external independent audit as part of the procedure for demitting the president of ANI, thus exposing the Agency to political influences from CNI and the Senate, and practically eliminating guarantees, however insufficient, for the independence and objectivity of the institution.

Regarding the **General Anti-Corruption Department (DGA)** in the frame of the Ministry of Interior and Administrative Reform, the *Report* addresses the significant deterioration of the relationship between DGA and the civil society, through the modification of the *Regulations regarding the organization, function, and attributes of the Strategic Committee* towards the weakening of its competences and the limitation of the freedom of expression among its members. In regards to the performance of DGA throughout the last year, we note punctual improvements in its activities of combating and sanctioning (increasing the number of works and penal files sent on to the prosecutors' office for the beginning of criminal pursuit, of the number of files built up on basis of DGA work, where criminal pursuit has been already started by the prosecutor's office). Nevertheless, the absence of data regarding the means of resolving in court the files started by the institutions and taken over by the prosecutor's office, we cannot truly appreciate the efficiency of DGA activities.

In what concerns the **Ministry of Justice,** the *Report* underlines the increasing institutional instability which characterized the institution during the time the report was being made. From April 2007 until now, no less than three different people have played the part of Minister of Justice, which led to the successive reorganization of the technical teams, and resulted in a drop in institutional performance and in the ability to support legislative initiatives in Parliament. The changes of ministers are doubtless a proof of the high political stakes that the justice portfolio has. The irreconcilable disagreements between the Government and the Presidency about the proposal of Mrs. Norica Nicolai for this office, confirms the previous conclusion. The fact that the institutional blockade could only be resolved by a decision of the Constitutional Court shows a novice tendency

to distort the role of this institution from the „supreme constitutional grant" (Article 12 from the Constitution) to a referee for institutions finding themselves in a political conflict.

With regard to the **Court of Accounts** evolution during 2007, the Report dwells with a newly adopted Law by the Parliament[2] which determined an adaptation of the institution to the constitutional changes which happened during 2003. Most of the amendments are closely connected to the restructuring of the Court of Accounts according to the supreme audit institutions paradigm; nevertheless one can emphasize the regulating deficiencies with regard to the revaluation of audit findings. On one hand, the normative proposal which has been enacted does not provide the necessary regulations for revaluing the respective performance audit findings and in this case the real utility value of this activity can be seriously doubted. On the other hand, the revaluing procedures are themselves inappropriate, taken into consideration that the entity which is audited has the task to establish the value of prejudice and recovery measures.

C. Sanctioning

In the section dedicated to the evolution of institutions who play a key role in reprimanding corruption, *The National Corruption Report 2008* deals with the judiciary inspection over the National Anticorruption Directorate, Division II, which occurred last fall as a consequence of the revocation of the prosecutor Doru Ţuluş, the head of the Division II, which was put forward by the former Minister of Justice, Tudor Chiuariu. This type of analysis – a first for the Romanian anticorruption specialized prosecutorial office – could have fundamentally contributed to devising proposals for the improvement of the instruments and the speeding up of the investigation within the substantial corruption files while also assisting to identify the reasons behind the failure to report final results as opposed to inquiries only. Unfortunately, the occasions were not taken advantage of fully, as the evaluation process had been prejudiced through the radicalization of the public discourse and the institutions' cross-accusations. The circumstances were worsen through the "leakage" of important parts of the judiciary inspection to the media, before being discussed by the Superior Council of Magistracy.

III. Evolution Of Public Policies

This section opens with a general analysis of the evolution of corruption and the anticorruption policies in Romania after joining the EU. Upon the examination of the state of the reforms regarding each of the four benchmarks in the Cooperation and verification mechanism set up by the European Commission, the conclusion arising points to the fact that the modification of the monitoring and pressure mechanism resulted into a tendency to lessen the reform rhythm and the loss of credibility within the overall anticorruption discourse.

[2] Pl-x 185/02.04.2007, registered at the Chamber of Deputies. The proposal of normative act is currently being sent by the president to be promulgated. For more information, please visit: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=8248.

A. Prevention

The public administration is a crucial pillar in the context of the public policies for the prevention of corruption. *The Report* deals with three essential facets: access to information and decisional transparency, the protection of the whistleblower and the regulation regarding the public office.

The public administration sector keeps on counting significant deficiencies in the ensuring of the optimal standards with regard to **access to information of public interest and the transparency of the decisional process**. The problems are already known: the (sporadic) lack of responses to the requests of information submitted according to the Law no.544/2001; the incomplete answers; occasionally exceeding the time limits for such responses; the lack of training and overloading the public servants with attributions on the application of the laws no. 544/2001 and 52/2003; the existence of a large number of draft laws which are adopted without previously being publicly announced, the low level of public participation in the decisional process within the public institutions.

Just like the past years, the application of the legal provisions regarding **the protection of the whistleblowers** shows serious deficiencies. The law no. 571/2004 is not known by its potential beneficiaries, which furthermore implies the almost complete lack of whistle blowing or the lack of the intention of using the relevant legal provisions, as well as a twisted insight of the whistle blowing action by the personnel employed in the public sector.

With regard to the **public office**, *the Report* points out that this area continues to show an increased vulnerability to corruption. The National Agency of Public Servants still fails to properly exercise their legislative monitoring attribution with regard to the public office, which influences the capacity of the institution to manage and appropriately tailor the public policies in the field. Given these, we would like to underline the opportunities arising from the introduction of the ethics counselor position by the Law no. 50/2007. If correctly used, this position can become the central point in the management of the anticorruption policies at institutional level and can substantially improve the exercise of the monitoring function of the Agency.

The main changes which affected the legal framework regarding the **community public utility services** during 2007 brought no significant improvement in which the transparency and public participation to the decisional process are concerned. The modifications have regard to updating the legislation, either because of internal changes or of the necessity to establish regulations for the access to community funds. A beneficial change occurred within the **public services issuing documents** through the Government Memorandum of May 2007, which provides for a series of measures to simplify the bureaucratic procedures favoring the "small" corruption.

In the **public health area**, it can be noticed that at least at legislation-writing level, bold initiatives to increase the performance of the health system are ticked off the list; formally, it is admitted that there are setbacks. Nevertheless, the Government sets out frail measures for the intervention in the health system, without indicating any significant improvement in the delivery of the health services and without being effective in bringing endemic corruption practices, such as informal payments, to an end.

As for the **education**, the concerns for bringing the system round are incessantly visible as statements in all strategic and public policy related documents. From the point of view of the legislation, both the inflation of provisions and the defective legislative technique can be seen. The Law no. 128/1997 regarding the Statute of the educational personnel as modified three times the same day; conversely six months later the new laws of educations enter the public debate arena.

As a first for the anticorruption efforts at governmental level, the public health and the education were included in a dedicated strategic document, *The National Anticorruption Strategy for the vulnerable sectors and the local public administration (2008 – 10)*. The measures provided in this document

are to prove their utility and adequacy as they are implemented; nonetheless, it is worthy to note that such measures were provided for without a previous diagnosis to profile the corrupt practices and the vulnerabilities of the systems and thus correctly guiding the intervention.

B. Combating

Regarding the **conflict of interests and incompatibilities**, the public policies are subject to fundamental deficiencies which have not been mended during the reporting period. With respect to the conflict of interests, the confusion arises from the double definition assigned to the concept in the administrative law (Law no. 161/2003) and the criminal law (Article 253^1 of the Criminal Code) – uneven definitions and yet simultaneously applicable. Transparency International Romania regards the incrimination of the conflict of interests as a serious legislative error, and recommends the abrogation of the Article 253^1 of the Criminal Code and the subsequent extension of the definition in the administrative law. The current legal regime of the incompatibilities appears to be imbalanced, if not discriminatory, when comparing the range of decisional attributions specific to every public office to the potential benefits and vulnerabilities.

The Report undertakes the significant lost ground recorded by the **public policy regarding the control of the financing of the political parties** on the verge of the local elections campaign of the current year. By eliminating the obligation of the donors to enclose a series of key documents to the donation file the transparency standards were severely infringed, and the control activity seriously aggravated. Subsequent to the modifications, it has become practically impossible to verify the existence of the situations where individuals or companies provided by the law as incapable to donate to the political parties, such as companies who owe to the state, do make such contributions.

Concerning the **public internal audit**, *the Report* puts on view the existence of severe deficiencies relating to the institutional capacity, especially at local level, where the majority of institutions did not establish public internal audit departments or, if the did, they only have one employee for this task. Another issue that ought to be observed is the generally low impact of the public internal audit; although the recommendations for audit are accept by the management of the institutions, it often happens that the correction measures are delayed. Finally, it should be noticed that the direct and exclusive subordination of the public internal audit department to the head of the institution raises doubts in relation to its independence and impartiality, particularly in the cases where the department employs only one person.

In the area of the **money laundering**, the year 2007 brought important modifications, both from the perspective of bringing the legislation up to date with regard to the EU standards (the coordination with the Directive 60/2005/EC through the Government Ordinance no. 53/2008), and of the strengthening of the legal and institutional development in the field. The new regulations provide for special overseeing in the case of the transactions involving the so called "politically exposed persons" – people holding or who used to hold important public offices, direct relatives, as well as the persons publicly known as associates or close acquaintances of the former.

C. Sanctioning

This year as well, Romania holds the record for the number of Criminal Codes: one in force, one published, but not in force, and two drafts. Terminologically speaking, the **new Criminal Code draft proposal** modifies the notions of "public" (which concept was trimmed down), "public servant" (also trimmed down and slightly varied), and "servant" with direct application to corruption crimes.

From the perspective of the implications the new draft can have on the legal steps towards fighting corruption, including adjacent instruments, we note that it does not bring any significant modification to the legislation currently in force. This category comprises the classic corruption crimes, to which the buying of influence is added. However, it loses ground by not providing with regard to the abuse in office with benefits for oneself or for others, while maintaining the crime of conflict of interests. It also includes the conditioning of the commencement of the criminal procedures in the case of the "abuse in office against the interests of persons" to the existence of a prior complaint from the victim.

As for the provision of mal praxis, the Criminal Code draft includes only one such crime – the assistance or disloyal representation – with reference to the lawyer or a person's representative. The new Code lacks provisions for other mal praxis offences, although such regulations are obviously necessary, particularly in the cases of mal praxis which have severe effects.

After long criticism of the lack of a corresponding Criminal Procedure Code to accompany the Criminal Code, half way through 2008 the Ministry of Justice put forward the **Criminal Procedure Code draft proposal**.

Among the new institutions proposed by the new procedure code there are *the judge of rights and liberties, the judge of preliminary chamber, the procedure of the preliminary chamber, the agreement of guilt admission, the incompatibilities for lawyers, the simulation of a corruption crime and of agreeing over a convention*, as a special technique of overseeing or investigation, and *house arrest*.

A series of provisions from the current draft were brought from the regulation currently in force, without minding the fact that those were declared unconstitutional. Among them, the rights of the lawyers of the victim, of the civil party and of the civilly liable party, compared to those of the lawyers of the suspect and of the defendant, as well as the provisions regarding the taking up of certain cases from other prosecutorial offices. Considering the constitutional context, the defectiveness of the new texts is likely to spawn serious problems with regard to the application of the new code and to generate arguments as to the validity of the acts completed according to such provisions.

The new Criminal Procedure Code also introduces a new cause for the revision of a definitive court decision, if the legal provision the decision had been based on was declared unconstitutional. The reasons behind and the actual content of such provision are, however, arguable.

Lastly, a new touch of novelty brought by the draft procedure code regards the regressive legal action for the recovery of the paid amount, which can be directed against the *institution insuring him/her* for compensation in case of prejudice occurring in the exercise of the profession. Thus, the proposal follows repeated recommendations to introduce the mandatory insurance for material accountability in case of judicial error, recommendations which were put forward in all the three *Studies regarding the perception of the magistrates on the independence of the judiciary system* conducted in 2005, 2006 and 2007.

CONCLUSION

The year 2007 and the beginning of 2008 showed both negative and positive trends for the strengthening of the National Integrity System in Romania. Progress is noticeable, particularly in the prevention area and with regard to the public information campaigns and legislative measures. The adoption of the Anticorruption Strategy for the public administration comes into view as a plus while, on the negative side, there is a tendency to overpass or restrict the principles which the access to information of public interest and decisional transparency are based upon.

With regard to the field of combating the corruption, after going a troublesome path, tinted in uncertainty in the previous years, the National Integrity Agency was set up and is finally operational. As a negative, we note the complete inefficacity of the disciplinary jurisdictions at public administration, public offices and magistrates' level, the cases involving actual sanctioning lacking almost entirely, while the obligation to issue recommendations and standards based on the analysis of the solved cases was completely neglected from the top to the bottom of the system.

In which the sanctioning is concerned, Romania's criminal judiciary practice concerning corruption crimes is still quantitatively insufficient and disproportionate when the leniency of the sanctions is compared to the severity of the corruption phenomenon in the Romanian society. Nevertheless, it cannot be distinguished if the prosecutorial offices should be held accountable for not being able to bring out case files solid enough to convince the courts, thus leading to an exemplary punishment, or if the courts, due to their means of appreciation, are responsible for drawing the penalties to the minimum provided by the law. As regards the corruption offenders, we take note of the incapacity of the judiciary system to punish the deeds of the high officials, just as much as we note the incapacity to punish the deeds of persons who do not retain high offices, but appeared in front of the court, which is a symptom of the situation where, as a matter of fact, any effort to reduce corruption is hindered.

The year 2007 flags an extremely dangerous institutional evolution with regard to the Constitutional Court, who produced incoherent practice when interpreting the same constitutional provisions (as per the decisions regarding the ministerial accountability or the vocation or lack thereof of the President of Romania to co-decide as to the composition of the Government).

For the same period of time, the inconsistent judiciary practice displayed serious public integrity problems in bringing in court decisions, whilst the action pattern of the Superior Court of Magistracy, of the courts of law, and the magistrate body implies a propensity towards the strengthening of their independence and the rejection of any form of accountability, which leads to discretionary power, the elimination of the balance principle and the mutual control of the public integrity pillars.

During the monitored period, due to the three elections held – the referendum in May 2007, the elections for the European Parliament and the local elections – the corruption and anticorruption themes were excessively used as political weapon by political foes, which led to their tempering in the public eye. The real danger lies in the lessening of the public awareness towards such an important subject in the development of the Romanian society, a trend which may continue as the theme is monopolised or used for political interest; and this can be easily observed if taking into account the fact that politicians undergoing investigation were elected or re-elected. We do not argue the presumption of innocence; however we do express our concern towards the decrease of the public alertness.

The National Anticorruption Directorate (DNA) maintained their institutional superstar status in the fight against corruption; however the accusations with regard to their political

involvement or to their lack of concrete results compared to their public image multiplied. Often, such criticism came from the persons investigated by the DNA, yet it was also consolidated by the controls from the Superior Council of Magistracy which revealed the irregularity of the procedures and the fact that information regarding politicians undergoing investigation, without being charged hitherto, was leaked to the press. We consider that such attack should come to an end, while the DNA should increase their efforts to provide guarantees of impartiality and efficacy in the fight against corruption at national level.

Based on the analyses in this Report and in view of the enhancement of the public integrity and the improvement of the efficiency of the anticorruption measures, TI Romania recommends the following:

- In the human resources field:
  (a) The continuance of the public servants' offices and the creation of a professional corps based on meritocracy;
  (b) The fight against corruption within recruitment procedures for the public servants, magistrates, professors and other categories of personnel in the public sector;
  (c) Ensuring the concrete mechanisms for the exercise of the disciplinary actions for the wrongdoing in their office;
  (d) The introduction of mechanisms to prevent the conflicts of interests and the incompatibilities in the exercise of the public office;
  (e) The broadening of the scope of the Law no. 571/2004 regarding whistleblowers to all categories of employees within the public sector and public services (regardless of their management form) and within the magistrates

- In the field of analysis, diagnosis, and forecast:
  (a) The completion of the integrity audits at public institution level in order to identify the vulnerable areas;
  (b) The correction of the procedures and quality standards within the public administration in order to reduce their exposure to corruption;
  (c) The diminishment of the bureaucracy and the simplifying of the administrative procedures;
  (d) Designing the Strategy to fight corruption 2008-2011, as a national framework that would integrate the anticorruption strategies in various fields;
  (e) The enhancement of the independence of the public internal auditors towards the management of the institutions where they work, by designing independent career development mechanisms;

- In the field of public resources:
  (a) The correspondence of the objectives in the development plans and in the technical specifications
  (b) The improvement of the transparency in the use of the public resources;
  (c) Introducing provisions in the Administrative Procedure Code that would require the public authorities and institutions to arrange for public debates with regard to concession and public-private partnerships

- With regard to the prevention of corruption:
  (a) The effective implementation of the *Regulations on the elaboration, monitoring and evaluation of public policies,* as well as the norms on legislative technique; increasing transparency regarding the application of the above procedures.
  (b) Extending the provisions of Law no. 52/2003 on the transparency of decision-making to cover all public entities.
  (c) The Superior Council of the Magistracy and the Ministry of Justice are required to elaborate a concrete plan of measures for the unification of judicial practice.

(d) Disseminating the legal provisions on the protection of whistleblowers to all public authorities and institutions.
(e) Transferring the best practice created in the registry and permit services to all public services provided by the state.
(f) Raising awareness among medical personnel regarding the risks engaging in bribe taking or receipt of undue advantages.
(g) Increasing the transparency of professional evaluation procedures in the education sector; increasing transparency regarding didactic norms and the career of university teaching staff.

- With regard to the combating of corruption:
  (a) Increasing the operation and efficiency of disciplinary commissions
  (b) Instituting the obligation of all disciplinary jurisdictions to issue recommendations on the basis of processed cases, applicable to the institutions in which they operate.
  (c) Strengthening the role of the Superior Council of the Magistracy as a disciplinary jurisdiction, which is quasi-inexistent at this moment. If the Council wishes to keep its disciplinary attributions, in order to guarantee the magistrates' independence, it should make all efforts to fulfill these attributions in a correct manner and in service of the public interest.
  (d) Providing legal aid in a real and effective manner by implementing Governmental Emergency Ordinance no. 51/2008 and ensuring the necessary funding and quality assurance mechanisms for the large-scale provision of this public service.
  (e) Creating an integrated database managed by the National Integrity Agency, which would include all data categories managed by other public institutions (i.e.: the financial administration, the labour chambers, the National Office of the Commerce Registry, the National Civil Service Agency etc.)
  (f) Extending the competence of the General Anticorruption Department to cover not only internal affairs – as it does currently – but also public administration, by ensuring necessary resources.
  (g) The adoption of a new law regarding the Court of Accounts and the appointment of new members to the Court Plenum. The obligation to identify damages and notify the empowered institutions to engage in their recovery should belong to the Court of Accounts.
  (h) Eliminating from the new Criminal Code project the criminalization of conflict of interest, together with strengthening the institutional capacity of the national Integrity Agency to control and punish cases of conflict of interest.
  (i) Re-introducing the obligation to present the donors' fiscal certificates upon receipt of any donations or contributions by political parties.
  (j) Introducing the obligation of political parties to publish monthly the list of donors and sponsors and the value of their respective contributions.
  (k) The allocation of supplementary resources to the National Office for the Prevention, Combating and Sanctioning of Money Laundering in order to properly carry out the tasks established by Governmental Emergency Ordinance no. 53/2008.

- With regard to the sanctioning of corruption:
  (a) Establishing an adequate sanctioning practice for corruption crimes in accordance to their degree of social danger and eliminating the possibility of issuing convictions for which the execution of the penalty is suspended.
  (b) Extending the statutes of limitations for criminal liability to corruption crimes.
  (c) Re-establishing a specialized institution for criminological research, which can support through its analyses the design of criminal policies, including anticorruption policies, and would also support the judiciary in identifying the most effective solutions in sanctioning this anti-social phenomenon.

(d) Dissolving the supplementary filters which prevent officials being held accountable for corruption crimes and other criminal offences.
(e) Maintaining the extended regulation for the notion of "public" in the Criminal Code.
(f) Performing an *apriori* constitutionality control for the two legal projects – the Criminal Code and the Code of Criminal Procedure – after their adoption, so that these norms will not be challenged and censored afterwards by the Constitutional Court.
(g) The proper criminalization of obstruction of justice.
(h) Instituting a sanctioning practice for abusive investigation.
(i) Changing the mechanism for appointment and dismissal of the management of the Public Ministry and the structures within the General Prosecution. Such a change would exclude the Minister of Justice from the procedure and would transfer the decision to the Superior Council of the Magistracy.