MEANS, PROCEDURES THAT STRENGTHEN THE FIGHT AGAINST CORRUPTION OR WEAKEN IT

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Abstract

The present paper proposes an analysis of the phenomenon of corruption within the public administration, viewed from the perspective of the anti-corruption fight as it can be perceived from the activity of the criminal investigation bodies and the jurisprudence of the courts. In Romania's attempt to meet European anti-corruption standards, standards established under the Cooperation and Verification Mechanism (MCV), the Romanian legislation has undergone numerous transformations. However, the experience of recent years highlights the fact that the adaptation of the legislation is not efficient in the conditions in which there are no effective preventive and repressive means against this scourge. Although there have been many progresses in the anti-corruption fight, recognized at European level, administrative reform in Romania is still stagnating. Due to this aspect, corruption was also considered a threat to national security, motivated by the vulnerability of the Romanian State, damaging the economy and creating imbalances in society. In this context, in the attempt to combat the phenomenon through updated legal and technical means, the Prosecutor's Office attached to the High Court of Cassation and Justice signed two cooperation protocols with the Romanian Intelligence Service in 2009 and 2016. Apparently, this cooperation was fruitful, being finalized with a series of criminal cases that involved or involves important political people. Due to the clandestine nature of these protocols and due to the lack of any form of control over the cooperation between the criminal investigation bodies and the secret services, a proper framework for abuses was created, which implicitly led to the violation of the rights of the Romanian citizens on a large scale. The present study aims to highlight the main effects of the cooperation between the National Anticorruption Directorate and the Romanian Intelligence Service, both from the perspective of the recent jurisprudence of the Constitutional Court and from the perspective of the judicial practice of the national courts. The academic and practical interest of this paper lies in the fact that its addressability is not limited, being addressed to law practitioners (judges, prosecutors, lawyers, etc.) as well to justice seekers who have recently faced the phenomenon of corruption.

Keywords: *anti-corruption, civil servant, public administration, protocol.*

JEL Classification: K14, K40

1. Corruption as a social phenomenon

In the process of adapting the global social system to competitive market conditions, risk factors have multiplied, and corruption has become a structured, specialized and professional phenomenon which, through informal networks of organizations and individuals, can influence decision-makers in the sphere of politics, administration or justice and, implicitly, national security.

The presence of corruption has become a constant issue today due to press campaigns, multiple communication opportunities that have transformed it into a topic of greatest interest to the public, enhancing the efforts of the international community to find more effective fighting solutions.

The Romanian struggle against this scourge represents at the moment the main objective of the internal policy, which is also reflected in the legislative framework, thus a series of normative acts being adopted to encourage the development of a safer social environment.

In the broad sense, corruption is the abuse of public powers in order to obtain for oneself or for others undue benefits[2].

The various surveys carried out in recent years show that the perception of corruption in Romania remains high. According to the 2014 edition of Corruption Perceptions Index published by Transparency International[3], with a score of 43 points (0 corresponding to the highest level of

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[2] A. Petre, V. Trif, *Constatarea infractiunilor de coruptie,* Ed. C.H. Beck, Bucharest, 2016, p. 1.

[3] Corruption Perceptions Index 2014: Results, the document is available online at: http://www.transparency.org/cpi2014/results, consulted on 1.05.2019.

corruption and 100 lowest), Romania's place is 69 out of 175 at international level. This situation has been stable over the last 6 years.

According to the latest Eurobarometer survey on corruption published in February 2014 on the 27 EU Member States[4], 93% of Romanian respondents believe that corruption is (still) spread in their country and more than half of them are considered personally affected by corruption in daily life, a proportion reported as decreasing compared to the similar survey conducted in 2011.

The study also shows that Romania is one of the two countries where the respondents (28% of them) are by far the most likely to be asked to pay a bribe or expect this behavior on their part. Romania is also characterized by one of the two maximum proportions of respondents who are incapable of expressing an opinion on the acceptability of offering a gift in exchange for something from public administration or public services (8% of the EU average of 1%). 76% of respondents also believe that the links between money and politics are too close, which is below the EU average (81%). Romania is also mentioned as the country where the evolution of the proportion of respondents who believe that the efforts of the prosecutor's offices have improved is the highest (+ 11%), although more than 70% of them (close to the EU average) believe that high-corruption cases are not effectively treated.

Eurobarometer surveys published in 2013[5], which also referred to other variables, showed that Romania is by far the country where respondents expect parliament and government to do more to fight corruption. Also, the level of perception of corruption in the political institutions and judicial service was often among the highest in the 27 evaluated states. The functioning of the main institutions in Romania and the implementation of their anticorruption policies and mechanisms remain in the continuous attention of the European Commission under the so-called Mechanism of Cooperation and Verification - MCV[6]. Successive reports have in particular called for a more efficient criminal justice system and prosecution of corruption, including those of elected officials[7].

In the administrative system, this phenomenon is becoming increasingly important due to the current economic framework and political instability. Activities of public interest, as well as other activities regulated by law, are carried out through officials. It is therefore necessary for officials to perform their duties properly and conscientiously, not to exercise them abusively or negligently, nor to make the exercise of these duties a source of undue income.

The political changes in Romania, as well as the recent economic difficulties, have resulted in severe constraints on activity in the entire public sector and, last but not least, on the central administrative system.

From this perspective, the creation of a modern and efficient public administration system continues to be a priority for the Romanian Government. Despite the fact that until now the resources needed to create an appropriate legislative and institutional framework have not been mobilized and, in particular, for the effective implementation of reform measures, social and economic considerations determine a major need for reform in all areas, even more so in the field of civil service.

2. Corruption in public administration - current legislative framework

The study of the evolution of the concept of criminal liability presupposes the inseparable approach of the historical evolution of the state and of the public administration, with indissoluble

[4] Special Eurobarometer 397, Corruption Report, Conducted by TNS Opinion & Social at the request of the European Commission, Directorate-General for Home Affairs, the document is available online at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf, consulted on 1.05.2019.

[5] Special Eurobarometer 374, Corruption, Conducted by TNS Opinion & Social at the request of Directorate-General Home Affairs, the document is available online at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf, consulted on 1.05.2019.

[6] Report from the Commission to the European Parliament and the Council on progress made by Romania under the Cooperation and Verification Mechanism {SWD (2018) 551 final, the document is available online at: https://ec.europa.eu/info/sites/info/files/progress-report-romania-2018-com-2018-com-2018-851_ro.pdf, consulted on 1.05.2019.

[7] Fourth round evaluation Preventing corruption on MPs, judges and prosecutors, *Assessment Report - Romania* adopted by GRECO at the 70th Plenary Session (Strasbourg, 30 November-4 December 2015) the document is available online at: https://rm.coe.int/runda-a-patra-de-evaluare-prevenirea-coruptiei-cu-privire-la-membrii-p/168077e15b, consulted on 1.05.2019.

inclination towards the phenomenon of corruption, viewed as a scourge, which disrupts the normal functioning of the central and local administrative apparatus.

Principles of the National Anti-Corruption Strategy 2016-2020[8]:

Each measure is subsumed under the following principles, the observance of which is essential for the achievement of a modern and efficient public administration:

- the principle of the rule of law, on the basis of which the supremacy of the law is enshrined, all citizens being equal in front of it. It is based on respect for human rights and involves the separation of powers in the state;

- the principle of accountability according to which the state authorities are responsible for the fulfillment of their attributions, respectively for the implementation and effectiveness of the strategies;

- the principle of responsible management of the risks of non-integrity behaviors as an integral part of the managerial process conducted by each organization;

- the principle of proportionality in the design and implementation of anti-corruption procedures: Public institutions must develop, implement and maintain robust procedures that are proportionate to institutional risks and vulnerabilities and dimensioned according to the resources and complexity of the organization;

- the principle of accountability at the highest level of commitment: Anti-bribery policies will not be effective unless there is a clear message given by the highest level of administration that bribes are not tolerated. The superior level of leadership on each level of the administration should initiate, supervise and lead, by example, the implementation of a policy of rejecting corruption, recognizing that the bribe is contrary to the fundamental values of integrity, transparency and accountability, and that this undermines organizational effectiveness;

- the principle of preventing corruption and integrity incidents, according to which early identification and timely removal of the prerequisites for the occurrence of corruption is an imperative priority. Both public and private institutions need to be diligent in evaluating partners, agents and contractors. Each entity should assess the risks of bribery associated with entering into a partnership or contracting agreements with other entities, and then be required to carry out periodic risk assessments. In concluding partnerships or contractual arrangements, they must verify that those organizations have policies and procedures that are in line with these principles and guidelines;

- the principle of effectiveness in combating corruption, which is based on the continuous evaluation of the activity of the institutions with attributions in the field, both in terms of the fullest fulfillment of the objectives assumed to produce the positive effects that society expects, as well as of the organizational management;

- the principle of cooperation and coherence, on the basis of which the institutions involved in the prevention and fight against corruption must cooperate closely, ensuring a unitary view of the objectives to be achieved and of the measures to be taken;

- the principle of public - private partnership, which recognizes the importance of co - opting civil society and the business environment in effective activities of implementing measures to prevent corruption;

- the principle of unhindered access to information of public interest and decision-making transparency.

By analyzing the corruption offenses, it is noticed that by their criminalization is intended the defense of the good functioning of the public authorities and the units of those referred to in art. 175 Criminal Code and, implicitly, the defense of the legal interests of persons.

Unlike the regulation of the Civil Servants' Statute, in the Romanian Criminal Code the notion of a civil servant has a much wider sense. Thus, the main active subject (author) of the

[8] Decision of the Romanian Government no. 583/2016 on the approval of the Anti-Corruption National Strategy for 2016-2020, the sets of performance indicators, the risks associated with the objectives and measures of the strategy and the sources of verification, the inventory of institutional transparency and corruption prevention measures, evaluation, as well as the standards for publishing the public interest information, published in the Official Gazette, Part I no. 644 of 23/08/2016

bribery offense is qualified as an official, as defined by art. 175 of the current Criminal Code. In considering the quality required to be an active subject of the offenses mentioned, they are included by the doctrine into the category of office crimes.

Being a civil servant involves the existence of a service assignment as a factual situation or is the consequence of concluding a contract of employment with one of the mentioned units, by virtue of which the subject actually exercises the attributions of a function. The assignment may be permanent or temporary, the only condition being that the person belongs to the work force of one of the units provided in art. 176 Criminal Code and to obey the rules of internal order regulating the organization and the discipline of labor. Also, the title of the assignment or the way of investing is not relevant, as it is sufficient for the active subject of the offense to exercise a mandate in the service of a public authority, public institution or other legal person of public interest.[9]

As regards the notion of "clerk" as defined by art. 175 par. 2 of the current regulation, it is appreciated that a person also meets this quality regardless of whether the assignment to a private legal person is permanent or temporary and that there is no need for a written employment contract for the person in question to be considered in the service of the legal person. The service report, however, presupposes the actual exercise of the attributes specific to a function within the legal person of private law, which gives the legal person a right of disposal and control over the activity of the natural person exercising that task, being a report of subordination. The opinion was expressed that this notion of "clerk" permits the criminalization and criminal sanction of the so-called "private corruption", as opposed to "public corruption", specific to public institutions and civil servants.[10]

On the other hand, offenses of bribery or trafficking of influence are considered to be offenses in connection with the service, even if the active subject can be any person, but the acts are committed in relation to the activity of a clerk.[11]

In the case of corruption offenses, the general passive subject is the state whose interests are being infringed by the facts. A special passive subject is always the public authority or unit in whose office the clerk is in office (in case of bribe taking or bribery) or about which one might suspect he is dishonest (in the case of influence traffic).

Sometimes a natural person may also be a special passive subject (for example, the person who gave the bribe if he was compelled by the corrupt official; the officer whose fairness is questioned by the trafficker of influence, if he contributed with nothing to committing the deed by the author). This particular passive subject is, however, a secondary or adjacent subject, because the main subject remains in this case the state.

3. Anti-corruption fight from the perspective of judicial practice

In its attempt to fight corruption in Romania, the Prosecutor's Office attached to the High Court of Cassation and Justice signed in 2009 and 2016 cooperation protocols with the Romanian Intelligence Service, which had as objectives:

a. Effective capitalization of the specific capacities held by the two institutions in order to find, prevent and counteract the vulnerabilities and the external and internal growth factors to the national security, which may generate or favor the commission of the crimes stipulated in art. 2[12];

b. providing relevant and useful information for the fulfillment of the party's specific tasks, as well as ensuring their protection;

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[9] Olivia Mastacan, *Raspunderea penala a functionarului public*, 2nd ed., Ed. Hamangiu, Bucharest, 2008, p. 27-28.

[10] Matei Basarab, Viorel Pasca, Gheorghita Mateut, Constantin Butiuc, *Codul penal comentat*, Vol. I, The general part, Ed. Hamangiu, Bucharest, 2007, p. 697

[11] Tudorel Toader, *Drept penal. Parte speciala*, Ed. All Beck, Bucharest, 2002, p. 158

[12] Crimes against national security, acts of terrorism, crimes that have correspondence in threats to national security and other serious crimes, according to the law.

c. taking the steps provided for by the law in a timely manner to request and obtain, by the Secret Service, the mandate to authorize the measures for carrying out some activities for the purpose of collecting information;

d. organizing and carrying out the tasks of the parties according to art. 85 from O.U.G. 194/2002 regarding the foreigns regime in Romania, republished with the subsequent modifications and completions and art. 27 from O.U.G. no. 102/2005 on the free movement on the territory of Romania of the citizens of the Member States of the European Union and of the European Economic Area, with the subsequent modifications and completions, in order to prevent, combat and remove activities that could endanger the national security, which the foreign citizens on the territory of Romania has carried out, carried them out or about which there are good indications that it intends to develop;

e. to ensure the fulfillment of the attributions of the Prosecutor's Office for the implementation of the authorization documents issued according to the provisions of art. 91^1 - 91^5 and art. 98 of the Criminal Procedure Code (the previous Criminal Procedure Code);

f. the correlation of the activities for identifying, obtaining, capitalizing, preserving and analyzing the information related to the offenses stipulated in art. 2;

g. the establishment of joint operational teams to act on the basis of action plans for the exercise of the specific competences of the parties, in order to document the facts provided by art. 2;

h. the provision of free of charge assistance by the Service to the protection of classified information held and used by the Prosecutor's Office to prevent the leakage of data and information of this nature, the collection, transport and distribution of official correspondence in the country;

i. the elaboration and development by the parties, in complementary areas, of common strategies, actions and programs;

j. the provision by the experts of the Service, under the law, of the specialized technical assistance to the prosecutors performing the criminal prosecution, for the application of the provisions of art. 91^1 - 91^5 and art. 98 (previous) Criminal Procedure Code;

k. the granting by the Service, in accordance with the law and the Protocol, of specialized technical assistance to prosecutors in the cases provided by art. 2, where the administration of the means of proof requires specific technical knowledge or equipment or in the cases where persons with a protected identity are listened;

l. creation of informational mechanisms to ensure the operative communication, in special situations, of the data and information necessary to fulfill the attributions of each party;

m. participating in joint training, specialization, training or professional training programs.

In the corruption cases where the National Anti-Corruption Directorate and Prosecutor's Offices performed criminal prosecution and indictments, they actively cooperated with officers within the Romanian Intelligence Service, especially in the field of making interceptions and drafting notes.

The Constitutional Court of Romania, by Decision no. 26 of 16 January 2019 on the request for settlement of the legal conflict of a constitutional nature between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice, the Parliament of Romania, the High Court of Cassation and Justice and the other courts, published in the Official Gazette no. 193 from 12.03.2019, with a majority of votes decided:

"1. Grants the notification and establishes the existence of a legal conflict of a constitutional nature between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Parliament, on the one hand, and the High Court of Cassation and Justice and the other courts, on the other hand, arising from the conclusion between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service of the Protocol No. 00750 of February 4, 2009, as well as the inappropriate exercise of parliamentary control over the activity of the Romanian Intelligence Service.

2. Grants the notification and establishes the existence of a legal conflict of a constitutional nature between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Parliament, on the one hand, and the High Court of Cassation and Justice and the other courts, on the other part, generated by the conclusion between the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service of the Protocol no. 09472 of December 8, 2016, only with respect to the provisions of Art. 6 par. (1), art. 7 par. (1) and art. 9, as well as the inappropriate exercise of parliamentary control over the activity of the Romanian Intelligence Service".

In order to dispose of this solution, the Constitutional Court held that:

"Art.3 lit. g) of the Protocol states that "The objectives of the cooperation are: [...] g) the establishment of joint operational teams acting on the basis of action plans for the exercise of the specific competences of the parties in order to document the facts provided for in art. 2". According to art. 201 paragraph 1 of the Criminal Procedure Code of 1968, in force at the date of conclusion of the Protocol, the prosecution is carried out by the prosecutors and by the criminal investigating bodies, and, according to paragraph 2, letter b) of the same text, special investigating officers are criminal investigation organs.

However, according to art. 13 of the Law no. 14/1992, "the bodies of the Romanian Intelligence Service can not carry out criminal investigation", and, according to art. 12 par. 2 of the same law, "at the request of the competent judicial bodies, designated officers from the Romanian Intelligence Service may provide support for carrying out criminal investigation activities for national security offenses."

It follows from the above that, at the conclusion of the cooperation protocol under review, the Romanian Intelligence Service did not have criminal investigations abilities (see also Decision no.51 of February 16, 2016, published in the Official Gazette of Romania, Part I, No 190 of 14 March 2016, paragraph 37) and therefore did not have the status of criminal investigation body, its activity being limited to providing technical support "to carry out criminal investigation activities for national security offenses" (see also mutatis mutandis Decision No.734 of 23 November 2017, published in the Official Gazette of Romania, Part I, no. 352 of 23 April 2018, paragraphs 17-18). As a consequence, technical support can not be equated with a criminal investigation activity specific to the criminal prosecution bodies.

Therefore, regardless of the fact that the technical support granted under Law no. 14/1992 concerned the period of activity of the 1968 Code of Criminal Procedure or the new Code of Criminal Procedure, the Court notes that this support could not be valued as a criminal investigation activity.

From the formulation of the analyzed text it is meant that the prosecution is carried out jointly by the prosecutors and the representatives of the secret service, not respecting the separation of competences between the two structures and the constitutional and legal role of each one. The Court observes that, after the entry into force of the new Code of Criminal Procedure, Article 142 (1) thereof provided for the possibility of enforcement of the mandate of technical supervision by "other specialized bodies of the state", but this phrase was found to be unconstitutional by Decision no. 51 of February 16, 2016. As a matter of principle, the process/procedure during the criminal prosecution is carried out by the criminal investigation bodies and not by other bodies outside them. However, the text as it is drafted has a wide-ranging normative content that allows the secret service to take over the prosecutor's own powers and to affect the prosecutor's sphere of competence in relation to any criminal act deemed "serious".

The Court notes that the phrase "joint operative teams" in Article 3 (g) of the Protocol denotes the fact that representatives of state bodies could actively and directly participate in criminal prosecution without having had the capacity of criminal investigation bodies special. The Court notes that, under Article 3 (g) of the Protocol, joint operational teams were to "act on action plans to exercise the specific competencies of the parties in order to document the facts set out in Article 2". The action plans on the basis of which the joint operational teams act, as they result from their name, imply a concerted and decisional position of the entities that have concluded the

protocol, which means that the Public Ministry has ceded its exclusive jurisdiction over the judicial activity.

The Protocol regulated the competence of the Romanian Intelligence Service to enforce the technical supervision mandate in the criminal proceeding without being a criminal prosecution body. Thus, although the Code of Criminal Procedure did not confer this competence on the secret service, the Public Ministry, on its own initiative, transfers it to the prosecutor. In practice, this protocol indirectly operates an addition to the provisions of the Code of Criminal Procedure.

The legal security of the person, as provided for in Article 1 (5) of the Constitution, has been violated, since its legitimate confidence in the values of the Constitution has not been respected.

Although the National Anticorruption Directorate has sued major political people in Romania and public administration peaks, doctors, magistrates, police officers, in many cases, abuses committed by prosecutors or judicial police officers have been reported.

Two popular movements were born in opposition, some of the public opinion supporting the judiciary, while the other party condemned them for the way they understood to carry out the criminal prosecution.

In fact, the Constitutional Court also placed on the side of those who consider that some of the prosecutors acted in the investigations they conducted, not respecting the lawfulness and mainly the loyalty of the evidence.

Besides the Constitutional Court, there are courts that severely sanctioned how some prosecutors conceived the case by adopting solutions to return the case back to the prosecutor or to exclude unlawful evidence from the evidence material.

Thus, in the case of some important Romanian politicians targeted by the prosecutors within the National Anticorruption Directorate, the judges in the different courts gave the following solutions:

1. High Court of Cassation and Justice, in case file no. 1692/1/2017/a1, by Decision of 22.01.2018 decide:

"Notes the irregularity of the indictment of case no. 146/D/P/2010 of 31 May 2017 of the Prosecutor's Office attached to the High Court of Cassation and Justice - Directorate for the Investigation of Organized Crime and Terrorism, Central Structure, Organized Crime, regarding the description of the facts retained by the act of indicating the court in charge of NI, VA, MM, sa, as well as the indication and analysis of the evidence.

Notes the nulity of the interceptions and recordings of the following telephone conversations: - telephone conversations of 24 January 2012, time 13:08:21, between P.M. and V.A.; - telephone conversations of 26 January 2012, time 15:29:27, betweeen N.I. and T.N.; - telephone conversations of 27 January 2012, time 14:25:14, between N.I. and T.N. - telephone conversations of 20 December 2011, time 12:43:38, between P.M. and T.F.; (...)[13].Exclude from the evidential material the minutes of the aforementioned telephone conversations and communications as well as their recordings on optical supports.

Declares the nullity of the ruling of May 7, 2014, pronounced by the judge of rights and freedoms of the Bucharest Tribunal, Criminal Section I, file no. 15319/3/2014. Holds the nullity of the following ordinances issued by the prosecutor on the basis of this conclusion: - Ordinance no. 146/D/P/2010 of May 8, 2014, ordering SNGN RSA communication, in phisical and electronic form, for the period 2005 - present, of the data and documents indicated in the conclusion of May 7, 2014 of the Bucharest Tribunal, Section I criminal; - Ordinance no. 146/D/P/2010 of 8 May 2014 ordering the communication by S.C. I. S.A., in phisical and electronic form, for the period 2005 - present, of the data and documents indicated in the conclusion of May 7, 2014, the Bucharest Tribunal, the Criminal Section I;

As a result of this solution, through the final closing of the preliminary chamber no. 347/2018 dated 07.06.2018, the High Court of Cassation and Justice ordered the restitution of the

[13] In total, over 50 interceptions and recordings have been sanctioned with absolute nullity.

case to the Prosecutor's Office attached to the High Court of Cassation and Justice, the Directorate for the Investigation of Organized Crime and Terrorism, the Central Structure, organized crime.

2. Bucharest Court in file no. 22120/3/2018/a1, by the Conclusion dated 26 November 2018, endorsed the request made by S.S., to issue an address to the DNA requesting to specify whether in the criminal file no. 218/P/2017, evidence was obtained by means of evidence obtained with the aid of the Romanian Intelligence Service.

According to the minutes of the Bucharest Court's ruling, if the DNA will confirm the collaboration with SRI in the "Belina" file, it will still be obliged to "identify the evidence/means of evidence thus obtained, to detail the involvement of the Romanian Intelligence Service to mention whether in the amount of the judicial expenses incurred during the criminal prosecution assessed by indictment to the amount of 90,000 lei were included also those incurred by the collaboration between the two institutions". The request covers also the procedures or means of evidence administered in the criminal files 665/P/2017 and 986/P/2014 of the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate used to support the accusations brought to the defendants in criminal file no. 218/P/2017 of 25.05.2018 of the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate, the Section for Combating Corruption Related Offenses.

3. Mures Tribunal, file no. 1686/102/2018/a1, by the conclusion of the meeting of 10.12.2018, the court requested a series of explanations from the National Anticorruption Directorate - Territorial Service Tirgu Mures.

DNA Targu Mures, through Address no. 2322 / III-13/2018 dated 14.01.2019, answered the court's requests, acknowledging that the criminal investigation was carried out in cooperation with the Romanian Intelligence Service:

"- during the criminal prosecution, a joint operational team was established between the ST Targu Mures DNA and the Mures Information Directorate, which acted to document the deed, according to art. 3 lit. g of the Protocol; The Mures Information Directorate communicated to the ST Targu Mures DNA information obtained from the conduct of the operative activities that are relevant and can be used in the criminal case regarding the file no. 162/P/2015, according to art. 15 of the Protocol;

- the Mures County Directorate of Information has supported DNA ST Targu Mures to complete the information by conducting investigative and operational surveillance activities on the file no. 162/P/2015, according to art. 14 par. (1) and (2) of the Protocol;

- the Mures Information Directorate has provided DNA ST Targu Mures with data, information and documents that can support documenting the case at work according to art. 13 of the Protocol to file no. 162/P/2015;

- the criminal file no. 162/P/2015 was cataloged by DNA ST Targu Mures as a complex cause, within the meaning of art. 14, 22 and 49 of the Protocol, having regard to the extent of the criminal activity, the number of persons involved and the presumed amount of the damage caused;

- information was provided to DNA ST Targu Mures by the County Council of Information Mures during the investigation based on legal provisions, information contained in classified documents;

- the cooperation between the DNA of ST Targu Mures through the case prosecutor and the Mures County Directorate of Information has materialized through: informational support (provision of information) and technical (implementation of technical surveillance mandates) from SRI; the information about the identity of the secret service officer of the designated Mures County Directorate is classified;

- the County Department of Information Mures has provided technical support for the implementation of the technical surveillance mandates;

- the technical support provided by the Mures County Department of Information consisted in the implementation of the technical surveillance mandates;

- the information provided by the Mures County Directorate at the disposal of the National Anticorruption Directorate - Targu Mures Territorial Service were classified information;

- there was a written request from the DNA - Tergu Mures Territorial Service to the Mures County Directorate for Information Cooperation in order to document the facts, and the Mures County Directorate of Information provided information during the investigation;

- the Mures County Directorate of Information provided technical support for the registration and transcription of the communications, but the SRI's transcription did not materialize in evidence."

In relation to the current sanctioning regime, Romania is considering the provisions of certain international regulations, such as the 1999 Council of Europe Criminal Law Convention on Corruption, ratified by Law no. 27/2002[14], which stipulates in article 19 the obligation of the signatory states to establish effective, proportionate and dissuasive sanctions and measures for committing corruption offenses. At the same time, Article 30 (1) of the United Nations Convention Against Corruption of 2003, ratified by Romania through Law no. 365/2004, provides only the seriousness of corruption offenses, but not the practice of the courts, as a criterion for the determination of punishments.

Some international anti-corruption conventions (mainly the UN and the Council of Europe Convention) and some national legislations address distinct forms of corruption, depending on the sector of activity - whether public or private - in which acts that are not in compliance with the statutory prescription are incriminated. The criminalization of active and passive corruption in the private sector is usually limited to acts that engage in commercial activity. The current Penal Code does not introduce such a limitation. It operates certain differentiations in terms of sanctioning treatment and the conditions of criminalization depending on the quality of the active subject or the persons in connection with which the corruption offenses are committed, but these differentiations does not necessarily delineate the public corruption in the private sector[15].

4. Conclusions

Since 2009, normative prerequisites have been created for the Romanian Intelligence Service to carry out criminal investigation duties in any field. This fact leads to a violation of Article 1 paragraph (4) on the separation and balance of powers in the state and art.61 paragraph (1) of the Constitution regarding the role of Parliament as a single legislative authority of the country.

Even if some of the provisions of this protocol actually contain aspects of law enforcement, its essential provisions, on the one hand, disregard the competence of Parliament, diminish the role of the prosecutor in the criminal process and increase the role of the secret services within it, and, on the other hand it illegaly affects the fundamental rights and freedoms by diminishing the safeguards associated with them in the sense that the activity of obtaining evidence may be performed by an intelligence service which does not have the status of a special criminal investigation body. All these violations of the Constitution call for the sanction of placing the entire protocol out of constitutional order.

The analysis of the phenomenon of corruption through scientific research tools is an activity that necessarily completes any national anti-corruption policy and helps to build a better understanding of the broad concept of integrity in the exercise of a public function[16].

In Romania, corruption continues to be a widespread phenomenon and affects society in all its aspects. Although corruption control and prevention programs have been developed, most of the actions have resulted mainly in counter-punitive measures, the effect of which has not been far-fetched.[17]

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[14] Published in the Official Gazette, no. 65/30 January 2002.

[15] Anca Jurma, *Infracţiunile de corupţie în lumina noului cod penal şi a reglementărilor internaţionale*, „Teorie şi practică judiciară", no. 3-4/2014, pp. 143-153.

[16] Decision of the Romanian Government no. 583/2016 art. 1.3.2. Direct experience of corruption.

[17] Regular Report.ro. 2003, Strategy paper 2003, European Commission report on Romania.

Constantly, the relationship of corruption has two subjects: one who corrupts and one who is corrupt. A fair and balanced vision of corruption should avoid focusing on one or other of the two social actors, for no matter who owns the initiative, corruption is only achieved through the convergent actions of the two partners.

From a criminal point of view, there are two successive premises of corruption: the first is the intervention of private interest within the scope of attributions associated with the exercise of a public function, compulsory premises of any criminal act of corruption, and the second is the arbitrary exercise of the prerogatives of the function, legal, or deontological, generating criminal behaviors.[18]

The absence of a culture and practice of cooperation between control agencies from different parts of the administrative system has led to an excessive and almost exclusive pressure on the system of correction of irregularities by means of criminal law. This aspect requires extra attention. Control units are deficient in human resources, and strategic areas such as education, health, public enterprises or infrastructure are practically free of ex-ante controls based on indicators. At the same time, the absence of any standards of collecting and reporting hierarchically of indicators of administrative compliance and good governance affects the quality of managerial performance assessments[19].

Note that currently there are two trends in Romania. On the one hand, there are magistrates who support the fight against corruption, on the other hand there are magistrates who draw attention to the abuses that took place during the years 2007-2018 in Romania and on the fact that there were situations where the procedural rights of the defendant were infringed.

We believe it is important to continue the fight against corruption, but just as important is the observance of the criminal procedural principles and the defendant's right to a fair trial.

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[19] National Anticorruption Strategy 2016-2020, 6.5. General objective 5 - Strengthening the fight against corruption through criminal and administrative means.