

# The Anticorruption Strategy – component of the protection of the Human Rights

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## ABSTRACT

On a national and international level, the need to comply with the human rights and the transparency that must describe the activity of the public servants regarding the corruption acts, have determined initiatives, concerns and reactions.

The article is putting in the same sentence two terms of great importance in our society: human rights and corruption. Each of the human rights are – more or less affected – by the biggest problem of the society, corruption.

**KEYWORDS:** *law, human rights, corruption, anti-corruption strategy*

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## 1. Introduction

The Romanian law Professor Tudor Drăganu discussing about law, human rights and freedoms wrote that: *“for a constitutional state to exist it is not sufficient to create a law mechanism that guarantees an exact compliance of the law, but it is just as important for the law to be given a certain substance, inspired by the idea of promoting the human rights and freedoms in the most authentic liberal and democratic spirit”*.

Ashjrn Eide discussing about human rights in an organised society, noted: *“the term of human rights is meaningless unless there is an organized society, with an organized power that acts in the benefit of the relationship between the individual and the state, with the freedoms that each individual should have, with his right to a justice system governed by the law, with his right to take part in the public affairs and with his rights and duties towards the state, as a right to a sufficient living and fulfillment of his fundamental needs”*.

The human rights can be commonly defined as those rights that are attached to our human nature, which we cannot live without as human beings. The fundamental human rights and freedoms allow us to develop and fully use our human qualities such as our intelligence, our talent and our conscience and to satisfy our spiritual needs.

They are based on the human desire to live in a world in which the dignity and well-being of each individual is respected and protected.

On a national and international level, the need to comply with the human rights and the transparency that must describe the activity of the public servants regarding the corruption acts, have determined initiatives, concerns and reactions.

Every individual has the right to live in an international social order in which his rights mentioned in the Universal Declaration can be fully accomplished.

Each of the human rights are, more or less, affected by the biggest problem of the society, corruption.

## **2. Corruption**

But what does corruption mean? And how does it affect our society? If we search the term in the dictionary, we can observe that it is explained through a series of synonyms that emphasize on immorality. Despite all of this, in our perception, corruption is only seen as a method to illegally enhance our wealth. It is the major reason that attracts individuals in this storm, the idea of earning more money rapidly through a forbidden action. It is in the human nature from the very beginning of our genesis to aspire towards forbidden things.

The 1810 French Penal Code, also known as the “Napoleonian Code”, introduced for the first time very serious sanctions for corruption, regarding the fulfillment of professional duties as well as acting against them.

The corruption displays are usually influenced by the political regime in each country.

Thus, a regime that is more permissive, tolerant and lacks authority usually encourages such displays due to a very low capacity of sanctioning them.

Some authors consider that the corruption phenomenon is closely related to the political and administrative regime, whether permissive or totalitarian, while others believe that this is a phenomenon specifically tied to under-developed countries that lack a powerful administration.

Corruption is a globally spread phenomenon, that can be found in every social level and in every field of activity. Although, it does have a relative character from a social point of view: what in a certain society can be classified as a corruption act, in another society it can be accepted and allowed. This is the reason why corruption acts are not universally applicable and can differ from a society to another. Regardless, in the past years, this phenomenon became more and more alarming and harder to control, constantly developing and permanently specializing itself. We have come to a point in which there is almost no field of activity that hasn't been affected by corruption, even if we are speaking about a smaller level or a generalized level of corruption.

Corruption represents one of the biggest threats to any constitutional state in the contemporary society, undermining the institutions and democratic values, jeopardizing the social order and threatening the state's capacity to ensure equal

rights and freedoms for its citizens. In other words, corruption affects us all and demeans the respect for the law. This is exactly why a common effort for preventing corruption and fighting against corrupt practices is essential.

The array of definitions for corruption is a very clear indicator regarding the importance of this phenomenon.

Here are a few examples:

- a) Definition according to *Transparency International (TI)*: “corruption is the abuse of entrusted power for private gain. It includes not only financial gains, but any other type of advantages as well”.
- b) Definition according to the *United Nations (UN)* mentioned in the Code of Conduct for Law Enforcement Officials: “the commission or omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted”.
- c) In the *Global Programme against corruption* UN declares that “the essence of the corruption phenomenon consists of the abuse of power in order to obtain a personal gain, directly or indirectly, for himself or for another, in the public or private sector”.
- d) The *UN Convention against corruption* stipulates as crimes the following: “corruption, trading in influence, abuse of functions, illicit enrichment (including in the private sector), laundering of proceeds of crime, concealment, obstruction of justice”.
- e) *United Nations Development Programme (UNPD)* in the *Fighting Corruption to Improve Governance (1998)* strategy defines corruption as “the abuse of public power, office or authority for a private gain – through bribery, blackmail, trading in influence, money-laundering or embezzlement”.
- f) *The International Monetary Fund (IMF)* defines corruption as “the abuse of public power or trust, for a personal gain”.
- g) *The group of corruptions experts at INTERPOL* defines corruption as “any course of action or failure to act by individuals or organizations, public or private, in violation of law or trust for profit or gain”.
- h) *The Council of Europe* in the *Civil Law Convention on Corruption* considers that corruption is “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof”.
- i) *The European Union* in the *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – On a comprehensive EU policy against corruption (2003)* uses the same definition for corruption as UN’s *Global Programme against corruption*: “abuse of power for a personal gain”.

### **3. Corruption in Romania**

In Romania, corruption is spread in every field of activity. Thus, we can talk about economical corruption (illicit actions of the economic agents or other individuals involved, consisting of: management fraud, fraudulent misrepresentations, abuse of power, forgery), professional corruption (immoral and illicit actions of public servants or other employees that fulfill in a preferential or conditional way their work duties) or political corruption (trading in influence and power by political parties for personal purposes). This is the main reason why there are more and more types and dimensions of corruption. In our present days, we can talk about the following dimensions of this phenomenon: the statistical dimension (registering the corruption acts in order to measure the spreading of the phenomenon), the legal dimension (the existent legislation regarding corruption), the sociological dimension (contains information about the causes of corruption and prevention methods), the psychological dimension (contains information regarding the psychological profile of individuals that take part in corruption acts), the economical dimension (consists of evaluating and estimating the social and economical costs of the corruption acts) and the prospective dimension (contains information about the evolution of the phenomenon).

The corruption and inequality maintain each other, creating a vicious circle between corruption, unequal distribution of power in the society as well as the unequal distribution of wealth. Just like the Panama Papers case proved, it still is very easy for the wealthy and powerful individuals to exploit the global financial system's opacity in order to get richer to the detriment of the public welfare.

The Anti-Corruption Report issued by the European Commission states that in Romania the petty corruption as well as the political one, remain a systemic problem. Even though there were a number of anti-corruption reforms implemented, the final result turned out to be unstable and slightly reversible. Although some positive results have been observed regarding the legal prosecution of corruption acts on a higher level, the political will to stop corruption and to promote higher integrity standards has been inconsistent.

In this report, the European Commission suggests that Romania must ensure the fact that all the necessary guarantees exist in order to protect the independence and continuity of impartial investigations in the higher levels of corruption, including those regarding the public officials that are appointed or elected. The European Commission also suggests that Romania must develop ample codes of conduct for the elected officials and to ensure strong sanctions for the corruption acts.

It is also suggested the consolidation of the control and prevention mechanisms for the public contracts and purchases, including those in the state owned or controlled companies. Furthermore, the Commission suggests increasing the efficiency in preventing and tracking down the conflicts of interests for the public

officials, as well as enhancing the protection clauses when it comes to public funds and applying strategies to reduce the corruption in the healthcare system.

The United Nations General Assembly enacted the United Nations Convention against Corruption, through which, on 31<sup>st</sup> of October 2003, was established that 9<sup>th</sup> of December is the International Anti-corruption Day, starting with 2006.

The main purpose of the International Anti-corruption Day is promoting ethical principles, integrity, transparency and accountability for own actions in public affairs, as well as in the private ones. The UN member states celebrate on the 9<sup>th</sup> of December the International Anti-corruption Day in order to draw attention regarding the fact that this deadly virus is undermining the development of the countries and of each citizen's life.

The theme launched by the United Nations in 2017 was “United against corruption for development, peace and security”.

For the United Nations member states, Romania included, corruption is a phenomenon that affects, more or less, the wealthy as well as the poor societies, blocking the democratic institutions activities, thus another reason for each individual to fight against corruption, with all the methods available, such as refraining from bribery acts, reporting criminals to the authorities and voting against corrupted people.

Corruption has a devastating impact on societies, reduces any opportunity and condemns human lives to inequality and injustice. The corruption's victims do not belong to a certain generation. Criminal activities affect several generations and an impressive number of people.

Strangely, in Romania, a series of acts have been declared legal lately and some corruption offenses have been altered, thus losing the possibility to sanction them.

The change suffered by art. 301 from the Romanian Criminal Code through Law no. 193/2017 issued on 24.07.2017 is a very good example in order to observe the direction in which the anti-corruption battle in Romania is heading. The notion of **Conflicts of interest** crime disappeared by transforming it into “**Use of public office in order to favor certain individuals**”, being voided of its essence and as a consequence, numerous such offenses remain unpunished.

The national Anti-Corruption Strategy 2012-2015, in relation with the Cooperation and Verification Mechanism (MCV) and the sectoral integrity policies, produced for the first time in the public policies history, a substance change regarding the efficiency of the proposed measures. The anti-corruption measures, used by the National Anti-Corruption Directorate (DNA) and the National Integrity Agency (ANI), developed sustainability and predictability, having a high confirmation rate in front of the judicial courts. The results obtained through these anti-corruption measures put an important amount of pressure on the Government and the administrative structures to continue the efficiency of these measures. This meant, first, a necessity to rethink the strategic priorities implemented through the National Anti-Corruption Strategy, more emphasis on prevention, taking actions

on the profound causes not only on the easily identified effects, more education, especially judicial education and least but not least, the necessity to repair the damages caused through criminal offenses.

#### **4. Conclusions**

The international evaluations constantly highlighted the importance and necessity of the anti-corruption strategic document. The latest report regarding Romania's progress during the Cooperation and Verification Mechanism has shown that *"the National Anti-Corruption Strategy is the core instrument of corruption prevention by public administration at national and local level. The practical measures for the prevention of corruption implemented in the ministries, some financed through European funds and non-governmental organizations, shall continue to add value to the fight against corruption in the administration"*.

The national Anti-Corruption Strategy for 2016-2020 continues the same approach as the previous strategy regarding the implementation of the integrity plans on an administrative and public institutions level. Thus, besides the measures with a national reach mentioned in the strategic document, each institution that adheres to the National Anti-Corruption Strategy will implement its own integrity plan. The National Anti-Corruption Strategy Technical Secretariat shall continue to provide with the needed expertise, guidance and support for these approaches.

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