

CORRUPTION IN SERVICE PROVIDING COMPANIES, IN THE CONTEXT OF ROMANIA'S INTEGRATION IN THE EUROPEAN UNION

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Abstract

Corruption is a highly sensitive issue now, after Romania has adhered to the European Union. In the current context, a significant number of sectors pertaining to the Romanian social, economic and political life display certain vulnerability to corruption. According to the data resulting after the national anti-corruption and post-adhesion strategies, the service sector is among the sectors and activities which represent specific risk factors. This paper sets to present the phenomenon of corruption in Romania, since corruption may be seen as a complex social issue, perceived by honest social segments as a very serious and dangerous phenomenon that attacks the economic and political bases of society, endangers the stability of state institutions and affects the living standard of the population by unjustifiably increasing social costs. The purpose of this paper is to prevent and fight this phenomenon.

Key words: corruption, national security, threat to democracy, transition, control.

What is corruption?

Corruption is the abusive use of the public power for the purpose of obtaining, for oneself or for others, undeserved benefits. It may have various forms: power abuse in exerting professional tasks, use of illegal funds for financing political parties or electoral campaigns, fraud, favoritism, institution of an arbitrary mechanism to exert power in the field of privatization or public acquisitions, interest conflicts.

The Corruption Multidisciplinary Group (G.M.C.) set up in 1994 by the European Council Committee of Ministers has adopted the following interim definition: "Corruption G.M.C. deals with contains occult commissions and all the other activities which involve persons with public or private positions who have violated the obligations deriving from their quality of public servant, private employee, independent agent or from another similar relationship, with a view to obtaining illegal advantages, regardless of nature, for themselves or for others".

The penal convention of the European Council regarding corruption, signed by Romania on January 2, 1999, defines corruption as the two means of performing it:

- active corruption – "any person's intentional promise, offer granting, directly or indirectly, of any undeserved benefit, by a public servant, for him/herself or for another, with a view to performing or refraining from performing an act in the exert of his/her functions";
- passive corruption – "a public servant's intentional request or reception, directly or indirectly, of an undeserved benefit, for him/herself or for another, or accepting an offer or a promise of such a benefit, with a view to performing or refraining from performing an act in the exert of his/her functions".

During the last period, the opportunities provided by the transition phenomenon corroborated with the insufficiency and ineffectiveness of the state control have favored the development of corruption acts, especially economic criminality, oriented towards obtaining maximum profits.

Corruption may be seen as a complex social problem, perceived by honest social segments as a very serious and dangerous phenomenon that attacks the economic and political bases of society, endangers the stability of state institutions and affects the living standard of the population by unjustifiably increasing social costs.

The increasingly large array, the complexity and continuous diversification of the manifestation forms of this phenomenon, together with globalization tendencies, make corruption a real threat to democracy and to the principle of rightful state.

The governmental programs regarding the prevention and fight against corruption start from the idea that corruption is a system disfunctionality originating and affecting the regulatory framework, the institutional system and the inter-human relations specific to social institutions. Thus, normative excess, as well as the lack of legal regulations in certain fields, nurture corruption-related risk factors.

To these, one might add the lack or improper operation of specialized structures with attributions related to prevention and fight against corruption, as well as ineffective strategies of selection, recruitment, training and control of the human resources that are meant to ensure the operation under lawful circumstances of the institutional system components.

Levels and types of corruption

A. Levels of corruption

The strategy of corruption social prevention and control also takes into account the existence of “large-scale corruption” and “small corruption”, and measures are adopted according to each corruption level.

“Large-scale corruption” is associated with high level functions, major decision-making factors, serious fraud forms, fund embezzlement, going all the way up to organized crime, whereas “small corruption” has the strongest impact on the public perception.

While the social control of large-scale corruption is, first of all, a repressive-preventive one, “small corruption” represents the target of preventive actions which attack the foundation of the phenomenon pyramid and limits its being spread.

In the anticorruption legislation in our country, the distinction between the two levels of corruption is based on a complex system of factors consisting in the quality of the envisaged person, the value of the sum or of the asset which is the corruption object and the amount of the material damages caused by the said crime.

B. Types of corruption in countries in transition

The classification has in view the influence of legal acts during their draw up or enforcement, as follows:

- “State Capture” – represents the actions of certain groups, persons or companies in the public or private sector, carried out with the goal of influencing, to the own interest, the content of certain laws, regulations or other types of governmental acts, by granting personal advantages to public persons, illegally or through other nontransparent mechanisms;
- Administrative corruption – intentional distortion of the enforcement of existing laws, norms and regulations in order to create advantages for certain public or private actors, by granting personal gains to officials, illegally or through other nontransparent mechanisms.

Generally speaking, the “state capture” phenomenon is associated with “large-scale corruption”, and during the last period there has been registered an increased number of cases when certain normative acts, especially government decisions, have been drafted and adopted in order to create benefits for certain persons or groups of persons, going all the way up to falsifying the content of normative acts, through illegal deletion or addition of texts.

Current corruption forms at the European level

Corruption affects more or less all European countries, but developing countries in transition towards a functional market economy are most vulnerable when faced with corruption-related risks.

Due to modern communication means and a greater opening of European frontiers, the manifestations of organized crime have acquired a transnational nature, being carried out most of the times by corrupting public servants with financial or legal attributions or customs officers or other officers ensuring border security.

In European countries, such fields in which criminal activities take place on the background of corruption acts are as follows:

- enterprise activity – many times, companies come to be controlled by the criminal organizations which see them indispensable due to their object of activity, geographic positioning, outlet markets etc.; in this process, besides intimidating actions, bribery is used in order to “conquer” the said company by influencing the decision-making factors and, on the other hand, after acquiring the control over the said company, the profits obtained are used to commit new corruption acts;
- Smuggling with cigarettes manufactured abroad;
- Tax evasion – by suing ghost companies;
- Money laundry – including by reintroducing into circulation, under the form of bribery, illegally acquired funds;
- Illegal alcohol trade;
- Credit card forgery;
- Illegal money transfers through electronic means (including the Internet);
- The traffic of waste and crimes on the environment– they represent a trans-regional phenomenon, linked to both urban and industrial waste collection and disposal; because of the chronic lack of appropriate installations, criminal organizations resort systematically to illegally storing or disposing of toxic-harmful waste, obtaining huge profits, and such activities, with disastrous and irreversible consequences on the environment often benefit of the complicity of corrupt public servants;
- The traffic of guns, nuclear material, drugs or human beings;
- The expansion of terrorist networks and activities and of transnational organized crime;
- Misapplying and changing the destination of subsidies, with special reference to community financing; in this respect, a specific legislation for the protection of the financial interests of the European Communities has been adopted.

Forms of corruption in Romania

Within the governmental programs regarding prevention and fight against corruption, starting from the identification of sectors vulnerable when dealing with corruption and of the specific risk factors, the following forms of corruption were identified:

- administrative corruption – it has in view the activity of the local and central public administration, customs authorities, health and social assistance, culture and education, institutions in the field of defense, public order and national security;
- corruption in justice – with reference to legal authorities– prosecutor’s offices and courts;
- economic corruption – it is also met in the sector field, especially in the financial-banking sector; it can also be spotted in agriculture, forestry and certain industrial braches: metallurgy, as well as oil processing and trade;
- political corruption – it is especially related to parliamentary activity and that of political parties: the negative effects of parliamentary immunity, influencing legislative initiatives, financing political parties and electoral campaigns.

In the process of transition and adjustment to the conditions of the competitive market economy, corruption tends to become a structured and specialized phenomenon, present in all the fields of the economic, social and political life. This process was initiated by the change of the political regime and is alimeted by current risk factors: the relation with other antisocial facts and underground economy, improper management of political and legislative decision-making, as well as the mutations that have taken place in the Romanian society.

It is well-known that the legislative process considers closely the social needs existing at a certain moment, being an accurate barometer of the society evolution and of the risk factors as to its stability. From this point of view, during the last decade, the political factors in Romania have taken numerous measures, including legislative ones, meant to limit corruption and its consequences. Thus, there have been promoted institutional reforms and measures for adjustment to the European legislation in the field.

As a recently adhered country, Romania has made the object of the European Union preoccupation, which has monitored and continues to analyze the corruption phenomenon in our country.

Romania is involved in the Stability Pact Anticorruption Initiative (S.P.A.I.), is founding member of GRECO – The group of states involved in the fight against corruption set up in 1999. One of the conclusions of GRECO expert missions is that in Romania, the institutions with the greatest involvement in fighting corruption, including the police and the legal system, are also affected by corruption, being necessary to observe strictly the specific recommendations GRECO addressed to our country:

Noticing that the corruption phenomenon tends to get global and take serious forms in Romania has become an ordinary coordinate of the public speeches of the high officials in Romania, who constantly evoke new methods and tools to prevent and control corruption socially.

We discover the same approach in the mass-media, which treats the corruption phenomenon as a real plague of the Romanian society and which criticizes the ineffectiveness of the measures indicated to limit and control corruption. Thus, there is a highly negative public perception of corruption, increased by the lack of short-term concrete and spectacular results in fighting corruption. At the level of the ordinary citizens, corruption has a direct impact, with implications including on their political options, since they notice that the state does not ensure its safety to a significant degree.

Under the circumstances, the corruption phenomenon in Romania has been repeatedly evoked by representatives of European or international entities (European Union, World Bank, USA), as well as by prestigious nongovernmental organizations whose object of activity is represented by this very field (Transparency International). It has resulted that the current stage of corruption in Romania represents the main obstacle to European integration and economic relaunch by attracting foreign investors, although Romania has adhered to the European Union.

Corruption represents a significant problem of the current Romanian society, which affects almost all fields of social sectors and finally, the citizen, from whose fundamental rights and interests starts the very concept of national security.

The purpose of national security is legitimated including through the promotion and protection of Romania's fundamental rights, the protection of Romanian citizens, the guarantee of their fundamental rights and individual freedom. Reaching this objective is seriously threatened by the intensification of corruption which affects the accomplishment of national objectives and especially the operation of the political-institutional system, the effectiveness and continuity of economic-structural reform process, the implementation of the market economy, the expansion and strengthening of relations with Western democratic states and with European economic-financial institutions, full integration in the Euro-Atlantic structures and the perfection of military component of national security.

Consequences of the manifestation of the corruption risk as to national security

On the short- and medium-term, the various forms of manifestation of the corruption risk might have the following negative consequences as to national security:

- Romania's loss of credibility as adhered country to Euro-Atlantic structures, especially with respect to its ability to use fully and effectively the funds of the European Committee and to protect the Community financial interests against fraud and corruption;
- disorganization of management and execution systems and the deregulation of administrative, legal and economic mechanisms;
- failure of the reform process, especially of economic and institutional nature;
- increase of social costs, significant reduction of the living standard and impoverishment of the population;
- decrease of the population state of mind and erosion of trust in managing factors, the legal system and administration;
- perturbation of the operation related to essential urban service provision systems.

National sectors vulnerable to corruption

In the current context, a significant number of sectors pertaining to the Romanian social, economic and political life display vulnerability when faced with the corruption phenomenon. According to the data resulting from the national anticorruption strategy, the service sector is among the ones mostly affected by the corruption phenomenon and especially the financial-banking sector; also, here are a few of the activities which represent specific risk factors:

- a) Local public administration
 - ◆ enforcing land register law and building retrocession;
 - ◆ contracts of work, asset and service public procurements;
 - ◆ managing the public patrimony and the transfer of patrimony among public institutions;
 - ◆ granting governmental aids in case of disaster or other facilities to the population;
- b) Authorities of the central public administration
 - ◆ privatizing economic objectives;
 - ◆ public procurements;
 - ◆ granting licenses, exemptions and installments related to taxes and;
- c) Customs authorities
 - ◆ customs control for imported or transited goods;
 - ◆ activities of smuggling and tax evasion;
- d) Health and social assistance
 - ◆ failure to pay the contribution to the social insurance and the use of such funds for other purposes;
 - ◆ lack of medicines and health assistance;
- e) Financial – banking
 - ◆ granting or facilitating credits under illegal terms;
 - ◆ issuing payment documents without having a guarantee or a real coverage;
- f) Metallurgy
 - ◆ reducing prices for exported goods;
 - ◆ unjustified annulments, intermediary links and ghost companies;
- g) Oil field
 - ◆ directing economic contracts to certain persons;
 - ◆ changing the destination of funds granted by the state for oil import;
- h) Agriculture – forestry
 - ◆ concessions, sale of certain assets, associations or privatization of certain objectives;
 - ◆ the system of subsidies and tax exemptions with respect to imports;
- i) Parliament
 - ◆ lobby activities and influencing legislative initiatives;
- j) political parties
 - ◆ financing political parties and electoral campaigns

Measures to prevent and fight corruption

- adopting conduct and deontological codes for certain categories of public servants and sector plans for each field vulnerable to corruption;
- modifying the legislation with respect to financing political parties and electoral campaigns;
- perfecting the system for the selection, promotion and regular assessment of public servants, based exclusively on the objective recognition of professional merits and performances;

- reforming management in the public and institutional systems;
- setting up a partnership of public authorities with the civil society and the representatives of the private sector;
- inviting the civil society to supervise the activities vulnerable to corruption, such as important privatizations and public procurements;
- constantly monitoring the stage of implementation of the measures stipulated through the national anticorruption strategy;
- educating citizens with respect to the causes and consequences of corruption and the citizen's rights when confronted with cases of corruption;
- carrying out a scientific activity of diagnosis and forecast of the corruption phenomenon;
- ending the legal system reform, after the set up of the National Anticorruption Office, with a view to ensuring its independence, integrity and efficiency;
- international cooperation in the field.

Conclusions

Romania is perceived as the most corrupt country in the EU, as indicated by the Global Corruption Barometer for the year 2007, carried out by Gallup Organization Romania for Transparency International. Ranking was performed considering the answers provided by 63,199 persons in 60 countries and territories, between June-September 2007. According to the date made public by Transparency International Romania, the most corrupt sectors in countries are perceived as being the political parties and the Parliament, followed by the justice, police and the sanitary system. Fighting corruption is a priority of the post-adhesion strategy. Until 2003, reforms for fighting and preventing corruption will continue. Romanians will no longer be slaves of bureaucracy, since the strategy proposes to increase the transparency of public institutions. Also, the institutions involved in the process of preventing and fighting corruption will have to collaborate closely with those of the European Union in order to assimilate European practices.

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