

## Corruption phenomena in Romanian context. Legal and economical aspects

Rădulescu Drago Lucian, Szekely Cătălina, Vieriu Eufemia, Gheorghe Calcan

Department of Law and Social Sciences  
Petroleum-Gas University of Ploiești  
Ploiesti, Romania  
dragosradulescu@hotmail.com

**Abstract:** Favorable conditions in developing and transition countries, like poverty, accident or unemployment [8], have generated acts of corruption in the form of bribes, extortion, nepotism, influence peddling and fraud, leading to a lack of economic, political or social development [3]. Generally, in the case of a discretionary power the acts of corruption occur in the form of monopoly on the goods or services or, in the case of public authorities, in public service [17] area.

Due to analytical methods, the article refers to the history of corruption as a phenomenon, to the classification of states from this point of view, the causes and determinant factors of the phenomenon, as well as the way in which the global society is involved. Regarding Romania, we take into consideration the trends in the evolution of the phenomenon, the ways to combat corruption from the perspective of national regulations, but also the perspective of harmonizing national strategies with international organizations that act in this field.

**Keywords:** legal, international organizations, corruption, national

### I. INTRODUCTION

In terms of prevalence, studies point out that corruption is widespread in different degrees, in countries or regions, increasing transaction costs, economic uncertainty and producing inefficient results.

The costs of corruption are mostly related to the progressive reduction of foreign and domestic investments, bringing business towards the underground economy, triggering a poor allocation of talent and reducing public revenues. Because of this, the state becomes unable to provide essential goods, to maintain tax levels and indirectly, the standard of living and to find effective ways to combat this phenomenon.

Generally, the lack of mechanisms to limit corruption will lead to its gradual development, finally prejudicing the legitimacy of the state. The effect will be that of reaching the level of a captured state [18], in different degrees. Thus, there are countries in the **medium/medium** category that have reduced corruption in the administrative and the private sector to a somewhat manageable dimension, **medium/high** category states where administrative corruption is the central issue, as well as a **high/medium** category of countries that have kept administrative corruption under control, but with a high rate level of "state capture". The last level is the state within the **high-high** category with serious administrative corruption problems in the context of a state effectively "captured" in the private sector.

The increase in the degree of administrative corruption at state level can be stopped first by creating a department of the concerned ministries (justice, employment, etc.) [10] to examine candidates for public office. Also, public sector reform, the establishment of meritocracy and the increase of accountability are necessary conditions to limit [10] the phenomenon. But these goals can not be achieved without strengthening the judiciary system [3], creating a competitive private sector or the civil society participation in anti-corruption programs.

As you can see this phenomenon has its roots in ancient times, and over time it transformed itself, adapting to new social, economic and political conditions, seeking new forms of manifestation such as terrorism and organized crime; although, periodically, countries take measures to combat the phenomenon, it is more efficient, even if more difficult, to change the system than to just punish the authors participating in the crime.

Internationally, however, the last decade of the twentieth century was characterized by a genuine change in all areas of economic and social thinking and way of life. We are thus witnessing the phenomenon of globalization of trade, financial markets, environment protection, human rights etc. This trend has caused two simultaneous results:

- disappearance of boundaries between national, regional and international, the world becoming almost a state;
- intertwining of political, economic and social issues, to the point of becoming inseparable.

If in previous centuries, the history was determined to a large extent by events that took place in certain regions of the world, today, in this century, the future of humanity is born and shaped in the most various and unimaginable areas. This is because of a continually expanding network of influence and determinations.

Globalization does not leave too many opportunities for states to live in isolation. On the one hand, their populations feel the need to be represented and led on the international arena and on the other hand, developments in one area of the world have a quick, surprisingly quick impact over another.

Within this trend, globalization was also expanded to crime. Thus the organized crime appeared, both at the transnational and transcontinental level. This type of crime has turned its attention to certain areas favored by the climate of globalization, such as drug trafficking or the illicit arms trafficking, terrorism, prostitution, pedophilia, money laundering, corruption in multinational companies and perverting government officials. Organized crime has

donned a globalized appearance affecting public safety, clouding the sovereignty of states and perturbing the effective exercise of economic, political and social institutions.

From day to day the manifestations of organized crime have diversified, moving from traditional areas such as gambling, usury and prostitution, to organizing criminal activity after the model of legal businesses (reception, production, transport, recovery, protection sectors) and white-collar crime.

The visible side of illicit profit, accomplished by money laundering, knows increasingly sophisticated means and the huge amounts obtained as a consequence are exploited by criminal cartels to control major banks or financial institutions and economic and social institutions, often creating true monopolies by removing competition.

Through corruption, the most terrible and treacherous weapon, organized crime goes up to the tops of society, including the vital institutions of the state, limiting its freedom and independence, endangering its safety.

According to the author Damian Miclea, corruption alongside terrorism are ways of the manifestation of organized crime and is another phenomenon that affects our society today; in the opinion of most authors it is the creation of the last centuries of this millennium and has appeared at various points on the globe (U.S., China, Japan, Italy) with specific social and historical causes, bearing different [4] names: the mafia, yakuza, triads, etc. It may be noted that corruption has older roots than that of organized crime, with which it is in a cause and effect relationship.

A typology of organized crime is represented by white-collar crime as a contemptuous and indifferent attitude towards the civil society, public property and the law, and their actions are represented by large-scale damage with negative consequences on the living standards of population. The manifestation of this type of crime occurs most often under the protection of public authorities, but also of decision and policy makers, including parliamentarians, says the author above [4].

Across Europe, various measures have been taken to combat corruption such as the Italian criminal code which imposed penalties for sanctioning the activities of criminal organizations such as the Mafia and the Cosa Nostra; in France, the French criminal law combats organized crime sanctioning separately the acts called 'association with other wrongdoers' and in the Netherlands there are provisions for dealing with such phenomena both by the Penal Code and by special laws [4].

## II. THE CASE OF ROMANIA

### A. History

The origin of the phenomenon is associated with the appearance of the first forms of state organization since ancient times. The term has kept its significance, as can be seen from the phrase used by Sallustius 'corrumpere aliquem pecunia' - to bribe [9] someone.

Corruption is defined by the explanatory dictionary of Romanian language as 'deviation from the state of morality,

honor and duty'[21] and can be found at various levels. Over the centuries, Romania has had an unfortunate position geographically, economically, politically and socially. Located at the crossroads of Europe and Asia, it was always under the influence of the great empires that led the political and economic destiny of our country. The 17<sup>th</sup> and 18<sup>th</sup> centuries are known for a very frequent change of Romanian leaders, a period during which the influence of the Ottoman Empire was strong. Thus, families with tradition bought their way to the throne from the Turkish sultans. The functioning principle was 'who gives more'. Over time, these families have begun to be more open towards Europe because they studied in countries like France, Germany, Austria and upon return they attempted to implement Western projects and programs.

Another bad period for Romania in terms of corruption was the communist era. Although fear of the dictatorial regime was very high, there was corruption mostly among party ranks, because some people occupying important positions were associated with this phenomenon.

After the events of 1989 the political regimes that alternated at government were open to meet European requirements regarding programs to be implemented in Romania. At the same time the new democracy had to deal with the crime wave, some offences not encountered until then by the governments concerned, which often became powerless. Ever since Romania started negotiations to join the European structures, efforts have been made to combat this phenomenon which affects all countries in a greater or lesser extent depending on the political regime and the existence or implementation of control measures. It should be noted that depending on the affected media one can talk about the lesser corruption or greater corruption, in other words it refers to the involvement of persons holding public office of lesser impact or of dignitaries with decisional political power. Globally there is already, in some way or another, a *Public Integration System*, a concept created and developed by Jeremy Pope in the early 1990s, representing the theoretical basis for global cooperation against corruption- Transparency International. What does this national integrity system presupposes? It is composed of all institutions and practices of a State which are important for creating a climate of integrity for the mechanisms that govern the state, whether it is about public institutions or private sector organizations / companies as specified by some [1] authors.

### B. Causes and determinant factors

In Romania [11], besides the legislative uncertainty, the decentralization and distribution of responsibilities as well as the cooperation between representatives of the parallel market from the socialist period and their counterparts in the international underground economy determined an increase in the number of corruptibles. The level of poverty and the high rate of unemployment add to the above, generating activities related to corruption (Romanian Centre for Economic Policy's study showed that the economy is, notably, an economy of subsistence).

On the other hand, in case of the perception of corruption in state institutions it was demonstrated that the phenomenon has a high impact within customs authorities and a minimal one among the military. In this regard, the church and the army enjoys the highest credibility in the eyes of the public.

In general [5], in Romania the effects of corruption affect the economy (delayed restructuring, macroeconomic instability, discouraging strategic investors, etc.), the moral and social reform (spread of evasive behavior) and the political reform (complicity between successive governments, the syndrome of interest groups, decrease in national credibility, etc.).

Corruption Perceptions Index (CPI), which is measured [19] in terms of frequency and amount of bribery in public and private sectors, places Romania (CPI 3) behind developed countries in Western Europe like Germany (CPI 8.2), Britain (CPI 8.6), Finland (CPI 9.6), Sweden (CPI 9.2), Switzerland (CPI 9.1) or France (CPI 7.5). However, in comparison with the former socialist countries, Romania is after Estonia (CPI 6.4), Slovenia (CPI 6.1), Hungary (CPI 5), Czech (CPI 4.3), Bulgaria (CPI 4) but before Moldova (CPI 2.9), Ukraine (CPI 2.6), Russia (CPI 2.4) and Albania (CPI 2.3).

### *C. Regulations to combat corruption*

In recent years, Romania has taken a series of measures to align with international standards, as can demonstrate the legislative provisions designed to prevent, detect and prosecute acts of corruption applying to a series of people such as:

- a) those exercising a public function in public authorities or public institutions regardless of how they were invested;
- b) those who, permanently or temporarily, according to the law, hold a position or an assignment, to the extent that they participate in decisions or can influence them, in public services, autonomous public enterprises, commercial companies, national companies, cooperatives or other business undertaking;
- c) those who exercise powers of control, according to law;
- d) those who provide specialized assistance to the institutions mentioned above, to the extent that they participate in decisions or may influence decisions;
- e) those who, regardless of their role, effect, supervise or provide specialized assistance, to the extent that they participate in decisions or can influence decision making on: operations which involve the movement of capital, bank operations, foreign exchange or credit operations, investment operations, in scholarships, insurance, mutual investment or investments regarding bank accounts and those assimilated to it, domestic and international commercial transactions;
- f) those holding a leadership position in a political party, in a trade union or employers organization, in a non-profit association [15] or foundation;

It is noted that states' low effectiveness in fighting corruption is due to lack of appropriate [8] strategies. As a result, mechanisms to limit the phenomenon belong to the national legislation of states, but can be made more efficient following international cooperation.

Thus, nationally, the phenomenon is controlled by means of Law 78/2000 and Law no.176/2010 [16]. Law 78/2000 sets out special rules of conduct for certain categories of persons, in order to prevent the occurrence of the phenomenon, both in terms of crimes of corruption and crimes similar to acts of corruption or in direct connection with them. Crimes of corruption [1], within the meaning of law, are bribery – giving or receiving, receiving undue advantages and influence peddling. In the first case we consider an official's act which, directly or indirectly, claims or receives money or other benefits he/she is not entitled to, or accepts the promise of such benefits or does not specifically reject it, in order to satisfy, or not to delay the performing of any act concerning his/her job duties or to do an act contrary to these duties. In turn, giving bribe implies the promise, offering or giving money or other benefits, if the briber was not coerced in any way by the person taking the bribe. Undue advantages are situations where an official receives money or other benefits, directly or indirectly, after having completed an act falling within his job attributions. Influence peddling is when an influential person, or one that wants to give this impression, receives or claims money or benefits, directly or indirectly, in order to determine an official to make a transaction falling within his/her job attributions. In the case of the four mentioned crimes, the benefits deriving from committing such operations shall be confiscated. The subjects of these offenses can be public servants, persons exercising powers in international organizations to which Romania is a party, those who have responsibilities within the structures of the European Community, members of international courts, officials of foreign states or members of parliamentary or administrative assemblies of a foreign state.

Likewise, the law treats as corruption the intentional ascertainment of a diminished value for properties in which the state is the majority shareholder in the case of forced execution or liquidation, granting subsidies in violation of the law or using subsidies for purposes other than those for which they have been granted. Also the acts of obtaining undue benefits in case of public servants in managing positions, carrying out financial operations that are incompatible with the job position, using confidential information, influence peddling when it comes from party, trade union or employers leaders, as well as abuse in office are punished as crimes similar to acts of corruption.

Concealment of proceeds from such acts, the association for this purpose, extortion, abuse in office, money laundering, smuggling, forgery and use of forgery, fraudulent bankruptcy, drugs or persons trafficking are directly related to crimes of corruption.

Also Romanian law sanctions those acts that are prejudicial to the European Communities' financial interests such as the use, production of documents or false, incomplete or inaccurate statements in order to fraudulently

obtain funds from the general budget of the European Communities or from budgets managed by them or on their behalf. The change of the destination of funds, without complying with the applicable provisions is also considered an act similar to corruption.

One way to ensure control and accountability from the part of the officials is their obligation to make their assets public, in order to remove corrupt officials from office [7]. In this respect, Law no. 176/2010 [16] established the National Integrity Agency whose role is to ensure the integrity in the exercise of public functions and dignities and institutional corruption prevention through compelling the persons exercising their public obligation to submit declarations of assets and interests, in order to determine the incompatibilities and potential conflicts of interest. When, as a result of evaluating the declaration of interests, the integrity inspector identifies a potential conflict of interests or incompatibility, he/she informs the person concerned and may order his/her removal from the job position.

It is known that the goal of every national integrity system is to prevent the emergence and spreading of corruption and not necessarily to punish individuals breaking [1] the law. In other words, it is preferable to change the system to create a space that is not conducive to the perpetuation of corruption than to punish the participants in these acts.

In this respect a public institution with legal personality was created as part of the Prosecutor Office of the High Court of Cassation and Justice by the reorganization of another institution called National Anti-corruption Prosecutor's Office (NAPO) which aims at:

- conducting prosecutions under the law to prevent, detect and punish acts of corruption ;
- leading, controlling and supervising the criminal investigation conducted by judicial police officers subordinated to the prosecutors ;
- leading, controlling and supervising the ethic activities of the prosecution conducted by the Department specialists ;
- refer the matter to courts to enforce measures on those listed above and who commit acts of corruption ;
- attend meetings in the court according to law ;
- appeal against decisions given by courts where deemed appropriate ;
- study the causes that generate and encourage acts of corruption, develop and propose measures for their control.

This Department is financially independent and receives the aid of specialists and police officers in criminal, economic, customs fields, etc., and the officers conducting criminal investigations are detached from the departments that they work in and transferred under the direct subordination of the Chief Prosecutor. At the same time the provisions regulating the rules by which the criminal investigations regarding corruption are conducted are those stipulated by the Criminal Code.

National Anti-corruption Prosecutor's Office was created under pressure from European structures when Romania was preparing to join the European Union. Since its establishing, this direction had critics saying that the Prosecutor's functions overlap those of the General Anti-corruption Department under the Ministry of Administration and Interior, which aims to research and prevent corruption acts carried by officers and non commissioned officers in the ministry. The two departments work together with national and international institutions and organizations to achieve their objectives as provisioned by law.

### III. INTERNATIONAL ISSUES

International cooperation on the other hand, involves the exchange of information between countries, implementing the best strategies, new legal instruments, regional seminars, and providing technical assistance. Priority goes to measures meant to reduce administrative corruption as a result of the political system restructuring, but also to streamline the relationship between state and the civil [6] society.

In this respect, within the World Bank [12], in Washington in 2006, was set out a strategy to combat corruption, demonstrating that the eradication of the phenomenon leads to an increase of up to four times in incomes. Because corruption causes weakening and distortion of market systems, anti-corruption measures will consider more effective loans, supplementing them to areas of public service reforms, judicial reforms or to increase information transparency. Attempts are inclusively made to eradicate corruption within programs coordinated by the bank, to limit the export of corruption in transitional countries, but also to limit money transfers from these countries into foreign accounts. Monitoring of the program results will be made through the International Finance Corporation.

At the United Nations, the United Nations Global Programme against Corruption (GPAC), refers in particular to vulnerable economies in transition states and involves providing technical assistance to legislative revision projects and to the establishment of national anti-corruption bodies at national level, promoting public warning campaigns, implementing codes of conduct and standards for officials, supporting civil society, and evaluating institutions, strategies and policies used against corruption. United Nation Convention against Corruption, issued in 2003 in Mexico, defines the crime of corruption, stating the obligation of public authorities of the Member States to implement mechanisms based on transparency. The Convention sets out the conditions necessary to obtain extradition, the need to protect the persons who disclose corruption acts, as well as the importance of international cooperation to combat this phenomenon.

The Organization for Economic Cooperation and Development [20], engages in combating corruption through the OECD Anti-Bribery Convention, respectively foreign bribery offered to officials in developing countries. In this respect, the OECD underlined the fight against

corruption through the Recommendations [13] of 1994, 1996 and 1997, this activity culminating in the issuance in 1997 of the Convention on the prevention of corruption in international transactions. According to this document, the signatory States undertook to regulate, from criminal perspective, the acts of corruption and to ensure mechanisms' transparency. The implementation of the Convention took into account the stages of identifying the specific legislation applicable to signatory states, followed by assessing the application of the necessary mechanisms. The Working Group on Bribery monitors states in their efforts to implement the provisions and receives reports about the deficiencies of the regulatory arrangements in this respect.

#### IV. CONCLUSION

Corruption in Romania's case continued to grow [12] after 1990 due to a widespread attitude of acceptance of this phenomenon by the population - a situation also encountered in countries like Spain or Italy. In addition, certain favorable elements [2] such as inconsistent tax laws (large number of acts occurred in the tax law [14] in order to improve it), increasing corruption due to decentralization, the parallel economy inherited from the previous regime, small businesses generating underground economy, lack of specialists in the field of taxation, and the ever-rising tax burden were the barriers to limiting corruption. Added to this is the general attitude of tacit acceptance of corruption by the majority of the population. This plague could have damaging effects on the rights and freedoms of citizens, on the civic security, creating favorable conditions for organized crime activities, lowering living standards, determining officials' frustration due to promotions on the basis of extra-professional criteria triggering the loss of professional competition. Corruption tends to become an organized, specialized and professionalized phenomenon, emerging under the form of a network of organizations and natural persons, which by various means corrupt the decision makers to the highest levels of the political, legal and administrative world.

New regulations introduced in legislation in order to fight this phenomenon fail to be enforced by specialized bodies or are limited by political influence. Romania's integration in EU triggered a greater responsibility of decision makers in this field and also an increase in the role of public authorities of the Member States to implement mechanisms based on transparency. On the other side, international cooperation involves the exchange of information between countries, implementing the best strategies, and providing technical assistance of specialized international organizations. Because of that, an improvement is expected in the ways this phenomenon will be perceived by the civil society in future years.

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