

REPORT

Konrad-Adenauer-Stiftung e.V.

RULE OF LAW PROGRAM
SOUTH EAST EUROPE
DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

13 October 2009

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INTEGRITY AGENCY WITH INTEGRITY ISSUES?

AN ANALYSIS OF RECENT DEVELOPMENTS REGARDING THE WORK OF THE NATIONAL INTEGRITY AGENCY AND THE NATIONAL INTEGRITY COUNCIL

In the past several months, post-accession monitoring in Romania has been focused, for good reason, on the financial crisis of the Romanian justice system—including the unprecedented conflict about Magistrates' salaries which resulted in the ongoing protest of Romanian judges. As a result, important developments regarding the work of the National Integrity Agency (ANI), in particular the challenges to the credibility of ANI and of the National Integrity Council (CNI), have received much too little public attention. The establishment and well-functioning of an integrity agency "with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken" is one of the four benchmarks, *i.e.* Benchmark 2, which the European Commission (EC) set in December 2006 as part of the Co-operation and Verification Mechanism (CVM). The CVM was created upon Romania's accession to the EU to help the country address outstanding shortcomings in the fields of judicial reform and anti-corruption. The remaining shortcomings regarding the work of ANI and the CNI are manifold and complex. Therefore, a closer look at recent developments with regard to the work of these institutions is justified.

EC ASSESSMENT OF THE SITUATION

On 22 July 2009, the EC released its fifth Report on Progress in Romania under the

CVM. The main EC Report summarizes the key findings of the Commission regarding Romania's progress in meeting the four benchmarks, and presents recommendations for action¹; the supporting document provides a more detailed assessment of Romania's progress in meeting each of the benchmarks². The EC's assessment of the activities of ANI as of 22 July 2009 is generally positive. The Commission commends, in particular, the agency's *ex officio* investigations which, in the opinion of the Commission, ensure a certain preventive effect. The Commission does, however, point out that the actual impact of ANI's work can only be fully assessed when investigations regarding assets and conflicts of interests are followed by final court decisions, *i.e.* when the first cases regarding unjustified wealth, incompatibilities or conflict of interests (which are currently pending in the relevant judicial or disciplinary bodies) are decided (which can not be expected in the short run).

ASSESSMENT

In the months preceding the release of the July EC Report, there was a remarkable increase in the amount of information about

¹ See http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm.

² See http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm.

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investigations conducted by ANI - which likely shows an intensification of the agency's activities. However, the Integrity Agency does still not have an easy task as it continues to face various internal and external challenges. Among the former is a large number of still-unfilled positions including that of Vice-President; among the latter is constant public scrutiny and continuous allegations that the investigations conducted by ANI are sometimes politically motivated. This latter point has been suggested not only by people working closely with ANI or the CNI, but is also drawn from the fact that very few high-ranking politicians³ and statespersons have come under investigation. Although the President of ANI, *Catalin Macovei*, has publicly declared in May 2009 that a number of ministers are being checked, those declarations were made without any known follow-up measures⁴, while most of the investigations actually targeted local public servants. Finally, ANI - like the National Anti-Corruption Directorate (DNA) - is one of the national institutions which are regrettably often disrespected by public officials. At the same time, there is a risk that ANI will rely too much on the positive assessments it has received (in particular from the European Commission) and disregard the steps that still need to be taken in order to improve its activity: In all the opinions publicly expressed by the Agency since the European Commission report, ANI referred

to the positive appreciation of the EC as proof that the Agency functions well. If measured against the amount of cases filed by ANI in recent months, this argument holds true, despite the fact that the number of sanctions confirmed by the courts is rather modest. However, the work of the Integrity Agency can not and should not be assessed in quantitative terms only. Rather, a qualitative analysis (including aspects of integrity and transparency regarding the management of the agency, the type of cases ANI is handling and ANI's relationship with the CNI) is needed for a proper assessment of the Agency's work and the fulfillment of Benchmark 2.

**THE NATIONAL INTEGRITY
COUNCIL**

One aspect of the EC Reports (both the main report and the supporting document) worth mentioning is that they do not focus on issues concerning the activity of the CNI. This seems surprising at first because the CNI is the body that supervises the functioning of ANI, and as such plays a crucial role in the evaluation of - *inter alia* - the managerial issues within ANI.⁵ Therefore, the composition and mandate of the CNI has been controversial from its inception. The motivation for the silence about the activities of the CNI in the Commission Reports is, however, not difficult to guess: the work of the CNI cannot be assessed in technical terms only - and technical measurements are usually the reference for the EC Reports.

As the EC Reports only briefly note, the months following the previous Commission



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³ The most recent high-profile cases are those of former Environment Minister *Nicolae Nemirski* (PSD), and of the Member of Parliament *Sorin Pandele* (PD-L).

⁴ In a declaration to the NewsIn press agency on 12 May 2009, the President of ANI, *Macovei*, declared that the integrity inspectors are checking the assets of seven members of the Government, and of four sector mayors from Bucharest (www.newsin.ro).

⁵ As for the mandate of the CNI, see our Report of 9 July 2008, "The fight against corruption - the problem child of the Carpathians?", which is available online on our website at http://www.kas.de/wf/doc/kas_14145-544-2-30.pdf.

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Report of February 2009 were marred by several still-unresolved issues both with respect to the smooth functioning of ANI and to the activity of the CNI. As soon as the accusation that former CNI member and lawyer *Alice Draghici* had tried to interfere with an investigation that ANI was conducting against one of her clients was made public, suspicions about internal pressures within the Agency itself came up.⁶ Starting in February 2009, four petitions against distinct ANI-staff (its President, its Secretary-General, its director of human resources, and of finance-economics, respectively) which had been submitted by whistleblowers from within ANI were sent both to Transparency International Romania and to the CNI. The whistleblowers were claiming, among other things, that the President of ANI, *Macovei*, found himself in a conflict of interest situation because he was – apart from his public position as head of ANI - a partner and an administrator of two private companies. If the whistleblowers' claims are confirmed, the consequences would be two-fold: First, this would be an incompatibility situation between the position of President of ANI, a public institution, and that within a private company, for which the law establishing ANI provides the dismissal of the president.⁷ Second, and more importantly, it would also mean that *Macovei* had submitted a false declaration (a criminal offence under

⁶ See our Country Report of 9 December 2008, "What is left of the fight against corruption in Romania?", available online on our website at http://www.kas.de/wf/doc/kas_15747-544-2-30.pdf.

⁷ Article 25 of the Law 144/2007 establishing ANI states the situations in which the President and Vice-President of the Agency can be dismissed. Among these are the managerial incapacity that the special evaluation committee might come across in their verifications or the existence of certain incompatibilities or conflicts of interests.

Romanian law⁸) which would compromise the reputation of the institution he directs, *i.e.* ANI – an institution whose mandate is to investigate conflicts of interest situations and integrity issues.

A second issue of concern which has been brought to public attention by the aforementioned whistleblowers regards the position and activities of the Secretary-General of ANI, *Horia Georgescu*. The claims against *Georgescu* were related to both the way in which he obtained his current position (which has been extensively covered in the media and in our previous report as of 9 December 2008⁹), and his relationship with integrity inspectors and other staff members of ANI. *Georgescu* was accused of interfering with ongoing investigations by pressuring the inspectors for a certain outcome and threatening them with accusations of undignified behavior towards the staff or towards gendarmes securing ANI offices, including irregularities when it comes to hiring new personnel, and even of illegal public procurement for ANI's IT system. When these accusations were made public, the National Integrity Council created a special five-member evaluation committee to look into the substance of the *petitions* and the evidence supporting them, and come up with a conclusion which would be eventually sent to the Senate (Articles 3 and 25 of Law 144/2007 regulating the activity of ANI stipulate that the CNI will

⁸ The Romanian Criminal Code (CC) defines the false in declarations as the improper statement of the truth in front of a state body or institution, or in front of one of the bodies listed in the CC, with the purpose of producing legal effects for oneself or for another [...].

⁹ See our Country Report of 9 December 2008, "What is left of the fight against corruption in Romania?", online available on our website at http://www.kas.de/wf/doc/kas_15747-544-2-30.pdf.

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designate five of its members to form a special evaluation committee which will deal with conflict of interests and incompatibility situations of ANI's personnel, as well as any other complaints regarding the same personnel. The evaluation committee also ensures the assessment of the managerial abilities of ANI based on information and reports submitted by ANI. The conclusions of the committee must be submitted to the plenum of CNI and the Senate.)

The work of the evaluation committee became an issue itself, as its preliminary conclusions were supposed to be presented two weeks after the committee's creation (*i.e.* on 12 February 2009), but the committee has not presented its complete final report to this day, almost eight months after (as to the release of partial reports, see below). The first CNI sessions during which the presentation of the preliminary conclusions of the evaluation committee was expected were either canceled due to the lack of a quorum or other administrative problems: The President of the CNI, *Nicu Marcu*, who is also a member of the evaluation committee, declared that it was extremely difficult to bring the members of the committee together, and that it was, therefore, impossible for the committee to work and reach a conclusion.

In June 2009, a media article published a document which was allegedly obtained from "sources" within the CNI, and which included the conclusions and recommendations with respect to the claims of incompatibility against *Macovei*. The document which has no signature or any official identification mark presents the steps taken by the evaluation committee in investigating the conflict of interest situation of *Macovei*, and the evaluation committee's recommendations to both the CNI and the Senate. According to the above-mentioned document, the evaluation committee had discovered that *Macovei*

continued to be administrator and shareholder of two companies after the date of his appointment as Vice-president, and President of ANI, respectively. In this document, one can read that *Macovei* had declared that he presented his resignation from both companies on 2 October 2007, *i.e.* before his appointment. His resignation was, however, not registered with the National Trade Register Office until November 2008 and March 2009. As a consequence, the resignation is not valid as far as the conflict of interest situation is concerned. As a result, the evaluation committee proposed to the plenum of the CNI to file a criminal complaint against *Macovei* for false declarations, suspended the verification of incompatibilities because of the ongoing criminal investigation by the General Prosecutor's Office, and proposed the dismissal of *Macovei* for breach of the legal provisions regarding conflicts of interests and incompatibilities.¹⁰

On 6 June 2009, the CNI published a press release in which its President announced that the evaluation committee has completed its work and will present its final conclusions at the moment when the verification is finalized. This press release neither explicitly confirms nor denies any of the aspects presented by the abovementioned media document, which leaves some space for speculations. Moreover, the media document alleges that one of the CNI members said the report of the evaluation committee could not be presented because not all of the committee's members wanted to endorse and sign it. Unfortunately, the ambiguity of



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¹⁰ Both, the article and the document were published by Mediafax press agency. They can be found at <http://www.mediafax.ro/social/presedintele-cni-activitatea-comisiei-de-evalua-re-in-cazul-ani-nefinalizata-449092>.

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the aforementioned institutional response, in combination with the lack of official information and declarations which had been taken from some CNI members off the record, prolong the process and enforce suspicions about the vested interests that the CNI – according to its critics - might be protecting. Furthermore, during the CNI meeting on 29 July 2009, the CNI President declared that the evaluation committee was unable to meet after April 15, the date when the unofficial report mentions a final hearing of *Macovei* by the committee. It remained unclear whether the aforementioned document published by the media was actually produced by the evaluation committee, and why it has never been mentioned by its members. The issue of incompatibility and conflict of interests in *Macovei's* case remains still officially unaddressed despite some interim verification results presented during the CNI meeting on 29 July 2009.

These partial outcomes of the verifications undertaken by the evaluation committee were elaborated after several relevant institutions have also been questioned (such as the National Agency of Public Servants, the National Authority for Monitoring and Regulating Public Procurements, the Romanian Gendarmerie, the Court of Accounts etc.). In essence, the conclusions were that Mr. *Georgescu* was legally hired, the public procurement contracts were legal, and that there was no conflict with gendarmes ensuring the security of the Agency (towards whom *Georgescu* was alleged to have exhibited indecent behavior). Furthermore, when the special committee interviewed 20 integrity inspectors regarding the accusations of interference from the Secretary-General and the President, the inspectors did not confirm the accusations of the whistleblowers. Additionally, the National Anticorruption Directorate (DNA) confirmed that the DNA did neither prosecute nor accuse *Macovei* or

Georgescu in any criminal investigation. According to a press communiqué by TI-Ro, criminal investigations had been moved from the DNA to the prosecutorial office at Sector 1.¹¹ The Court of Accounts is still to issue its report regarding financial issues that had been raised with respect to ANI.

The final report of the evaluation committee, which was scheduled to be presented during the CNI meeting of 31 August 2009, was presented in a different form on 7 October 2009. The evaluation committee announced during the 7 October CNI meeting that it had decided to split the report into two parts, as the initial allegations envisaged two persons, namely *Macovei* in his capacity as the President of ANI, and *Georgescu* in his capacity as Secretary-General of ANI. The evaluation committee presented the conclusions of its report on *Georgescu* only, which confirmed their partial conclusions presented above. The committee concluded that none of the allegations against *Georgescu* could be confirmed,¹² and announced that the final conclusions of the verification of *Macovei* would be presented in the next CNI meeting.

**REMAINING SHORTCOMINGS IN
THE MANAGEMENT OF ANI**

While the evaluation committee seems to be approaching the completion of its mandate, other problematic issues continue to impair the smooth functioning of ANI and its cooperation with the CNI. One of these



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¹¹ See

http://www.transparency.org.ro/stiri/comunicate_de_presa/2009/2octombrie/index.html.

¹² The report of the evaluation committee can be read at

http://www.integritate.eu/UserFiles/File/Sedinte%20CNI/2009-10-07_RaportComisiaEvaluare_CNI.pdf.

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issues is the prolonged (since 2008) vacancy of the position of Vice-President of ANI coupled with a lack of budgetary resources to cover this post after the revision of the Agency's budget. After a failed attempt to fill this position in the spring of 2009, when none of the candidates managed to pass the interview, the CNI decided during its August 31 session to restart the selection procedure and established a timeline for this process. The discussions regarding the selection procedure did not, however, meet with success: during the following CNI meeting on September 22, the members of the CNI decided to suspend their previous decision, and thus the vacancy in the position of ANI's Vice-President. This decision is at least partly due to budgetary restrictions, as well as a government ordinance forbidding the filling through competition of any public position.¹³ It does, however, remain unclear why the CNI decided, first, that it can organize the competition for Vice-President despite the respective legal provisions, only to realize later that it did not have the legal power to go through with the selection procedures. In between these two contrary decisions of the CNI, ANI requested the Government's General Secretariat (SGG) for an advisory opinion (*aviz facultativ*) on the application of OUG 34/2009 suspending the organization of any competition for public positions. As a consequence of the interpretation offered by the SGG, the CNI suspended the contest. The civil society representative within the CNI, *Codru Vrabie*, disagreed with this interpretation. He

¹³ Art. 22 of OUG 34/2009 provides for the suspension of the organization of any competition for a public position. A public entity wishing to hire more personnel can do so only up to the limit of 15% of the vacant positions and if its approved budget allows for that. In the case of ANI, its budget covers only 80% of its employees and does not include the Vice-President position.

argued that since the position is expressly provided for by the law on the establishment of ANI and since it would have been filled in 2010 anyway, the competition should have proceeded. With the suspension of the competition, ANI will enter its third year without a Vice-President, a position which – once filled – might bring some balance within the Agency's management, whose reputation is marred by allegations of discretionary ruling and lack of transparency. As a result of all of this, the question of ANI being fully operational (Benchmark 2) continues open. Interestingly, the inexistent Vice-President has a cabinet and staff (provided for in the budget), which reveals even more the contradiction between the law and the status-quo.

**TRANSPARENCY QUESTIONS
WITHIN THE AGENCY**

As regards the continued monitoring of ANI, careful scrutiny should also be paid to the number and types of investigations led by ANI. This aspect has, for the past few months, raised several questions about ANI's transparency in processing files. The CNI recommended on a couple of occasions that ANI should publicize the general administrative rules of its work, but to no avail. ANI sent an official response to the President of the CNI stating that the respective procedures are undisclosed in order to protect the integrity inspectors and make them more responsible.¹⁴ If the ANI Law is read in a legal-formalistic way only, without taking into consideration the purposes of its respective provisions, this response finds its legal basis in Article 5 of the ANI Law: Article 5 stipulates that the acts and procedures of the integrity inspectors are not public, the only person

¹⁴ A copy of the official ANI document to the CNI of 31 August 2009 is on file with the authors.

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having access to those being the person under investigation. The purpose of this provision is, however, to ensure that the agency's inspectors do their work without any sort of interference. It does not prevent ANI from making public its general administrative rules.

This often-criticized transparency issue is not a singular one in the public discussion regarding ANI's activities. Rather, some questions were raised with respect to ANI's operational strategy for 2009, and the audit report for 2008, which the Agency's management did not answer.¹⁵ Furthermore, the communication between ANI and the CNI has been hampered either by tense relations between ANI's management and some members of the CNI (see for instance the *Alice Draghici* case), or by mere administrative measures. This latter aspect concerns the distribution of documents, especially those issued by ANI, that are brought to the discussion of the CNI in print, rather than electronically. This makes it difficult for CNI members to prepare for the meetings and make informed decisions. The issue was raised several times by the members of the CNI, but instead of remedying the situation, it escalated into an open conflict between ANI and CNI member *Codru Vrabie*, the civil society representative in the CNI.

Vrabie had posted all public documents (both official communiqués and documents that were to be submitted to the CNI for discussion during their public meetings) on an on-line forum available to both ANI and

¹⁵ *Vrabie* has, in his capacity as member of the CNI, on several occasions asked ANI to provide more information with respect to management decisions (a type of control which falls within CNI's attributions), but the answers were so far postponed or refused, as in the case of the questions regarding the 2008 activity report and the 2009 operational strategy.

CNI members as well as any interested citizen. ANI protested several times against this type of publication, claiming that *Vrabie's* behavior disregards the rules of official institutional communication, and fundamental principles of professional secrecy, and asked CNI to settle the matter. As a consequence, on 22 September 2009, ANI sent CNI an official letter in which it submitted to the Council's attention the fact that the Agency found it impossible to communicate with the CNI, given the allegedly irresponsible attitude of the above-mentioned CNI member. As a result, the Agency decided that all institutional communication will be transmitted to the President of CNI in print only, and that no document or information will be sent to *Codru Vrabie* from then on.

**INTRICATE INTEGRITY
EVALUATIONS**

The abovementioned incident must be seen within the broader context of the difficult relationship between ANI's management and the CNI, in particular CNI member *Vrabie*, which started at an earlier point when the allegations of mismanagement and incompatibility issues first came to public attention. The past few CNI meetings - which the authors of this report attended - were characterized not only by the difficulty in reaching the necessary quorum of the evaluation committee, but also by tensions among CNI members on the one hand, and between CNI members and ANI staff on the other hand. The latter aspect is related to the whistleblowers having reported the abovementioned irregularities to Transparency International Romania (TI-Ro), one of the most prominent NGOs in Romania (of which *Vrabie* is a member). *Vrabie* was accused by ANI Secretary-General *Georgescu* of being in a conflict of interest situation, first of all because he had a double position as far as the whistleblowers were concerned, being both a member of the board of TI-Ro and of the

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CNI, and secondly because an investigation regarding the declaration of interests of the Executive Director of TI-Ro, *Victor Alistar*, was under way. ANI had asked the Senate in June 2009 to remove Mr. *Vrabie* from his position as a CNI member, claiming that his actions were not in conformity with the statute of his position. The request has not been honored so far.

Later on, ANI made public the fact that the case of Mr. *Alistar* had been sent to court because of irregularities in his assets declaration.¹⁶ ANI started the verification procedures *ex officio* after some newspapers published articles regarding the activities of *Alistar* as employee of the National Agency of Public Servants, Executive Director of TI-Ro and member of the Bucharest Bar Association. In response, Mr. *Alistar* claimed that the entire case was a mere act of revenge for TI-Ro having offered protection to the whistleblowers, who were later dismissed from the Agency anyway. What is surprising is the European dimensions which this incident attained: The actions taken by ANI against Mr. *Alistar* came to the attention of the board of TI International. The latter's Managing Director, *Cobus de Swardt*, on 18 June 2009, sent an open letter to the Vice-President of the European Commission, *Jacques Barrot*, in which he argued that Mr. *Alistar* faces "attempts to intimidation through orchestrated defamation campaigns", and asked both the EC and the Romanian Government not to allow the restriction of civil society organizations.¹⁷ As

¹⁶ *Victor Alistar* had to submit his assets and conflict of interest declaration with regard to his past position within the National Agency of Public Servants which terminated in March 2009.

¹⁷ The open letter is available at http://www.transparency.org/news_room/latest_news/press_releases/2009/2009_06_19_ti_romania_open_letter_eu_commission.

to sources from the EC, *Barrot* did not officially comment on the open letter.

The above-described situation is the more regrettable as ANI is once again put in the spotlight because of allegations of partisan and unprofessional investigations, with many of the cases it currently deals with – as holds also true for the cases other anti-corruption bodies are handling – having been discussed on TV rather than in court. The dispute between Mr. *Alistar* and ANI, too, was discussed on TV, thus shedding a negative light on the activity of ANI. This should be considered in the broader context of the debate regarding the limits of discussing different judicial or disciplinary cases in the media before a verdict has been passed by a court of law. Moreover, in the past several months, the media abounded with information which had been revealed by sources within ANI regarding verifications against current Ministers, and in some cases it was the President of ANI himself who spoke up about these cases on TV. In reaction, some commentators said this opening towards the media was a mere attempt to show transparency before the recent assessment of the European Commission, while ANI reports that their case record before the courts was much better than what the statistics presented in the media show.¹⁸

¹⁸ See for instance the article on www.mediafax.ro, "Focus: In Bucuresti peste 95% din cei sanctionati cu amenda de ANI au castigat procesele", 22.06.2009. In response, ANI maintained that their record in court was better given that 194 fines applied by ANI out of 850 were upheld by the court, which is almost 25 % as compared to 5 % as reported by the media, while 614 are still in different stages of court proceedings. See press release by ANI of 12.06.2009, available at <http://www.integritate.eu/1100/section.aspx/837>.

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**RECENT DEVELOPMENTS
REGARDING ANI**

After the release of the Commission Report in June 2009, the accelerated investigative activity of ANI seemed to be slowing down while nothing further was heard from the Ministers whom ANI – according to its announcement as of earlier this year – investigated. In exchange, the conflict with TI-Ro Executive Director *Alistar* reopened after 23 September 2009, when the organization published its National Corruption Report (NCR) for 2009.¹⁹ In response to the release of the report, on 30 September 2009, ANI published a paper in reaction to what they call “the publication of false, inexact and incomplete data” by TI-Ro.²⁰ In this document, ANI harshly criticizes the analysis done by TI-Ro, and presents counter-arguments on several points raised in the NCR, among which are the activity of the evaluation committee, the fulfillment of criteria under Benchmark 2, the Agency’s activity report and its operational activities. ANI’s response to the NCR also mentions the transparency issue with respect to the verification procedures and argues that the activities of the inspectors should be kept secret in order to protect the work of integrity inspectors, whereas the final documents resulting from their investigations could be made public. It also mentions that the individual who is the subject of the investigation has access to all documents and procedures. Furthermore, the communiqué points out that the external audit for 2008 regarding ANI’s management – the result of which was eagerly anticipated by both civil society

¹⁹ The report is available at http://www.transparency.org.ro/politici_si_studii/studii/global_coruptie/2009/index.html.

²⁰ The communiqué is available at <http://www.integritate.eu/1133/section.aspx/1011>.

organizations and members of the CNI – was contracted in September 2009. On a final note, ANI considers that *Alistar* is using TI-Ro and its reports to denigrate ANI and cover his own legal problems. In response, *Alistar* stated that ANI was trying to misinform the public, and that the information in the communiqué was not correct.²¹ A couple of days after this declaration, TI-Ro published a press release in which it explained the methodology used in the NCR, in addition to other counter-arguments.²² Furthermore, the agenda of the CNI meeting on 7 October included the discussion of the NCR and the response from ANI, and as a consequence *Alistar* attended the meeting and presented the TI-Ro opinion on the matter. In essence, the problem pointed out by both TI-Ro and some members of the CNI was that ANI’s reaction could and should have been more moderate, showing that they are open to discussions and proposals for the improvement of their activity.

All in all, it is regrettable that such a conflict, which seems to be more a personal rather than professional one, developed between two otherwise respectable institutions. In different circumstances, what now looks like a game of ping-pong could have been a constructive and professional exchange of ideas in order to improve ANI’s operations and communications. It could have also been a chance for public opinion to focus on substantive issues regarding the activities of ANI – as the TI-Ro response shows. This conflict once again sheds a negative light on

²¹ See article in Romania Libera newspaper, www.romanalibera.ro/index.php?page=13&aid=166241.

²² The press release can be read at http://www.transparency.org.ro/stiri/comunicate_de_presa/2009/2octombrie/index.html.

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ANI's activity, its credibility and impartiality, instead of focusing on the Integrity Agency's achievements or needs.

CONCLUSIONS

The idea of creating a national integrity agency, as well as the laws establishing it, has been very controversial from the beginning. ANI was long awaited by both Romanian society and European Union representatives, and its creation was a difficult process. Being a rather complex and unprecedented institution, dealing with anticorruption and integrity issues in an environment that is not necessarily friendly towards such bodies, ANI has faced—and still faces—many challenges.

From a legal point of view, both the institutional setting of ANI and the exercise of its functions have been problematic. The law establishing the Agency has been modified twice within the first year since its establishment, and discussions about modifying it further still continue. In 2008, the ANI Law was challenged on constitutional grounds by the Superior Council of Magistracy, when ANI had faced the risk of having its competencies diminished. At the time the Romanian Ombudsman (who received the unconstitutionality petition from the CSM as part of his mandate to bring claims to the Constitutional Court) decided that there was no reason to send this complaint to the Constitutional Court—suggesting, instead, that the Parliament needed to make some modifications to the ANI Law. Apart from this, other laws which have a bearing on ANI's activity (for example, the law regulating transparency in exercising public office, the law on access to public information, the Emergency Ordinance dealing with budgetary restrictions, and others) are often unclear and leave room for interpretation. It comes to no surprise, therefore, that tensions appear between ANI and the CNI. On the other hand, with

all the remaining obstacles (including a serious budgetary issue) it is still commendable that ANI has managed to fulfill its tasks to a level that stirred positive comments in the EC reports.

Given its two-year experience, ANI together with the CNI could submit proposals to amend the law and thus improve their cooperation. Also, the relationship between ANI and the CNI needs to be more definite and precise, and the members of both institutions need to work together and approach each other more professionally. Situations like the severance of communication with certain CNI members show disrespect for the citizens who are expecting state institutions to function properly and according to the law. Moreover, transparency should be a key aspect of the work of a state agency – as well as the body supervising it - and is crucial in fighting corruption and creating upright public institutions based on the idea of the transparent exercise of public functions and accountability.

As for the CNI's activities, responsibility and responsiveness are also crucial. Delays in delivering evaluation reports or in taking certain decisions, postponement of important topics on the agenda or formalistic debates on certain decisions, make way for allegations of bad faith, incompetence or political bias.

In light of the challenges that ANI is still facing, both internally and externally, the institution should benefit from more public support (which could be gained, for example, through public discourse that focuses on the Agency's institutional status and its achievements) as well as implementing the necessary legislative changes that would help improve its work. The still-unfilled positions - among which is the position of Vice-President - hamper the agency's work and management. In addition, CNI's activities should be more

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closely monitored and transparency and
accountability should be overarching
principles of its work.

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