

The Current Status of the Romanian National Integrity Agency

TIMELINE AND DEVELOPMENTS

Background

The recommendation for implementing an effective mechanism for wealth control already existed in the common position document on the field of justice and internal affairs, prior to the Romanian access to the European Union (EU). As a direct consequence of these recommendations, combating corruption through administrative means became one of the objectives of the National Anti-corruption Strategy 2005-2007.

Thus, in **May 2007, the National Integrity Agency (ANI)** was created (see Law no. 144/2007). This has led Romania to become the first European country to create a specialized institution to check wealth, conflicts of interests and incompatibility issues. It has to be noted that even though wealth declarations were mandatory since 1996, and that these declarations became public documents in 2003, the control mechanisms were difficult to implement. More over, the conflicts of interests were never systematically controlled.

ANI was regulated as an autonomous administrative authority, benefitting from operational independence. The management of the Agency can not require and can not be required for any dispositions from any public authority, institution or person.

ANI can start an investigation either on the basis of a physical or juridical person's request, or on the request formulated by the president of the Agency. All requests need

to be accompanied by the information and proofs which sustain the request. In cases which imply ANI personnel, the requests are submitted to the National Council for Integrity¹.

If an unjustified wealth was discovered (with a difference of at least 10.000 EUR between the value of the wealth and the official incomes), the integrity inspectors had to file a case to the court, asking for the seizure of the illicitly gained wealth. As a complementary penalty, for a three years period, the accused person is forbidden to exercise any public function. In the case of conflicts of interests, any juridical act which was signed, with the infringement of the law is declared null. Also, among the sanctions following an investigation by ANI are the disciplinary actions, which can lead up to dismissal from the public function. Again,

¹ The National Council of Integrity (CNI) is the body that supervises ANI's activity and is also regulated by Law 144/2007. CNI members are appointed by the Senate for a period of three years and they represent the parliamentary groups in Senate, the minority group in the Chamber of deputies and a number of administrative bodies. The main attributions of the CNI are: proposes the president of ANI and his/her dismissal; analyzes the reports and briefing notes submitted by the ANI and provides recommendations regarding ANI's strategy; analyzes the annual audit report regarding ANI's activity; reports to the Senate about ANI's activity any time it deems necessary.

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the interdiction to exercise any public function for three years is implemented.

In the interim report from March 2010 of the European Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism (CVM), it was noted that the progress of the National Integrity Agency (ANI) has been consolidated and extended. Its results are clearly stated: *“From 22 May 2009 to 4 January 2010, ANI finalized 769 verifications and referred 174 additional files to competent institutions to apply sanctions or pursue criminal investigation. Of these 174 files, two files have been sent to the courts to confiscate unjustified wealth 60 files to disciplinary bodies to sanction ANI’s findings of incompatibilities or conflicts of interest, and 112 files have been referred to prosecutors to investigate suspicions of false statements or other crimes. As of 22 February, sanctions have been applied by disciplinary bodies in eleven cases concerning incompatible officials.”* The Commission report praised the progress in ANI’s work, but its results had still to be confirmed.

Recent changes

Following an unconstitutionality complaint during a trial involving an investigation by ANI, the Romanian Constitutional Court declared, on the 14th of April, that certain articles of the Law 144/2007, regarding the organization and functioning of ANI are unconstitutional. Among these articles, maybe the most important one is article 13, which establishes the attributions of ANI (controlling the wealth and interest declarations, identifying and denouncing incompatibilities, and also applying sanctions). The main reason that was invoked for this was the fact that ANI had attributions beyond the ones of an administrative organ which made it a quasi-prosecutorial body.

According to media reporting, the decision of the Constitutional Court (CCR) came in the same period in which 7 out of 9 judges from the court were supposedly investigated by ANI. CCR declared, nevertheless, that at

the date of its decision, they were not informed about any investigation.

Traian Basescu, the President of Romania, took an active role in the whole scenario. After declaring that the Constitutional Court exaggerated with its decision, on the **26th of April** he convokes the political parties for discussions on the situation generated by the CCR decision on the unconstitutionality of certain provisions of the Law of Organization and Functioning of National Agency for Integrity. He urges the political parties to adopt a new law for ANI in 10 days, a law which would comply with the requirements of the Constitutional Court. At the same time, the Romanian president ensured the European authorities that Romania will respect its commitments and will have a functional agency that can control the wealth of dignitaries and undertake investigations.

The Minister of Justice, *Marian Predoiu* reacted just as harsh, criticizing the decision of the Court. In his opinion, *“the legal and constitutional operation of the National Agency for Integrity is essential to fulfilling the commitments assumed by Romania in the accession to the European Union, the Cooperation and Verification Mechanism”*. Even before the reasoning of the Constitutional Court was published, the Ministry decided to create a working group on this issue, trying to establish a new legal framework for the functioning of the agency.

In the meantime, both representatives of ANI and the Prime Minister, *Emil Boc*, declared that a change in the functioning law of ANI must be implemented, as the normal functioning of the Agency is imperative. The initial solution proposed by *Emil Boc*, right after the decision of the Court, an emergency ordinance, has proven to be useless. The reasoning published by the Court clearly stated the fact that the decision can not be changed by an emergency ordinance.

The proposed solution, on the 26th of April, was a new law project which regulates the ANI situation. According to the new law, there will be two kinds of wealth declarations: public ones and private ones, which

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will be gathered by ANI. The integrity inspectors will still be able to seize the National Agency for Tax Administration (ANAF) and the Prosecutor's office.

The new draft law stirred up the spirits, different opinions being expressed. *Mark Gitenstein*, the American Ambassador in Romania, declared, during a debate with law students, that if he were a parliamentary, he would not vote for the changes brought in the new ANI law. *Monica Macovei*, former Minister of Justice, declared she is extremely disappointed with the new project: "It's a project that shows contempt towards transparency, and towards public opinion in Romania."

On the **28th of April**, the new ANI law was voted in the Chamber of Deputies. Being an organic law, in order to be adopted it should meet at least 167 votes. Hence, the law was passed only after the second round of voting; in the first one it did not get the necessary number of votes. This happened only after the possible seizure of assets was eliminated from the law text. The document, adopted by show of hands of deputies went to the Senate, which is a decisional Chamber in this case.

On the **5th of May**, the Senate decides to postpone the debate until the decision of the Constitutional Court is published in the Official Gazette. This led to missing the 10 days deadline proposed by the President. Following this reaction, the decision of the Court is published in the same day.

On the **12th of May**, the Senate adopted the new Law of organizing and functioning of ANI, but only after operating major changes. Among these changes, some were more visible in the media: the officials that do not fill in their assets declaration in a correct manner will not be criminally responsible, assets control commissions have been removed from the law, and jewels and art collections totaling more than 5000 EUR will remain confidential. The Senate is the decisional chamber on this issue.

New vehement reactions came up after the above-mentioned changes. *Monica Macovei* declares that through the new law, the politicians satisfied their own interest to get rid of the public scrutiny. The American Ambassador expressed once again his disappointment regarding the law, considering that ANI will be substantially weakened. The civil society also took a decisive stance, by requesting the President not to promulgate the law.

Traian Basescu sent the law back to the Parliament, with a review request, on the **2nd of June**². The president is also urging the two chambers of the Parliament to adopt the ANI law before the parliamentary holiday. *Marian Predoiu* also requested the deputies to debate the law regarding ANI having in mind the strategic interest of Romania to consolidate its EU member state position.

On the **22nd of June** the Chamber of Deputies adopted the new form of the law, taking into consideration the review request sent by the President and his recommendations. Almost all the remarks sent were integrated in the new draft law.

On the **27th of June**, a day before the law debate in the Senate, the German and American ambassadors met with the presidents of the superior chamber of the Parliament, *Mircea Geoana*, of the Judicial Committee, *Toni Grebla* and of the Human Rights Committee in the Senate, *Gyorgy Frunda*. The ambassadors have recommended that ANI should not become weaker than before the Constitutional Court decision.

Once again, during the debates held on the **28th of June**, the senators eliminated the main attributions of ANI, by removing the amendment which created the commissions for assets control. Another important chan-

² According to article 77 of the Romanian Constitution the President of Romania can, before promulgating a certain law, send it back to the Parliament for reconsideration. He can do that only once for the same law.

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ge was the decrease in the period in which an official can be investigated after the end of his mandate from 3 years to 1 year. These remarks, clearly stated in the review request sent by the President, were dismissed once again. The final decision needs to be taken in the plenary session of the Senate when the results presented by the commissions can be accepted or discarded.

Wednesday, the **30th of June** marked the change in ANI's functioning. The law was voted in the Senate in its modified form, disregarding the review request sent by the President. Out of the 6 important points recommended by the President, and introduced in the draft law by the Chamber of Deputies, only 2 were left untouched in the Senate. With an overwhelming number of 115 votes for and only 2 abstentions, the law was adopted in its amputated form. The assets control commissions were removed, and the period in which dignitaries can be investigated was reduced from 3 years to only 1 year after the end of their mandate. Jewels, precious metals, art collections, as well as objects from the national and universal cultural patrimony which have a bigger value than 5000 EUR do not need to be included in the public declarations. Another important point which was removed from the law is the requirement to declare any contract financed by public money, signed by themselves or their close relatives.

The reactions stirred by this vote are mixed. *Catalin Predoiu*, the Justice Minister, declares this decision will be noted as a weak point in the Country Report under the CVM. On the other hand, even though this law is not what everybody was expecting, it is an improved version of the first draft which was voted in the Senate immediately after the CCR unconstitutionality decision. He also expressed his hope for an increase in ANI attributions through the Code of Integrity that is expected to be voted in autumn.

Mark Gitenstein has once again publicly expressed his disapproval of the new law, stating that it limits the powers of ANI more than the Constitutional Court requested. The Ambassador's interventions were not however taken lightly by the senators.

Catalin Macovei, the president of ANI, declares that this decision will have a catastrophic outcome in the European Commission Report on justice. He is convinced that the parliamentarians that voted the law have something to hide, and *Gyorgy Frunda* legislated in his own interest.

The same opinion is shared also by *Iulian Urban*, senator from the Democrat Liberal Party (PDL). He thinks the Romanian parliamentarians have proven once again that no matter their political color, when it comes to their own interests, they co-operate. *"ANI was impartial and through its investigations deranged both persons in power and from the opposition. So they thought how it could be fixed in such a way so they can be much more relaxed than before. Senator Frunda played his role and acted in the name of the whole profoundly corrupted political class. Unfortunately, the vote proves that PDL was situated on the same side as the National Liberal Party (PNL) and the Social Democrat Party (PSD). The Parliamentarians have no excuse for the fact that today, the President's request was rejected in the Senate, and ANI was buried".*

Gyorgy Frunda, the president of the Human Rights Committee in the Senate, the same person who introduced most of the negative changes in the ANI law on the other hand, was offended by the way everybody seems to mix in the work of the Senate. He accused both *Catalin Macovei* and *Horia Georgescu* (ANI secretary-general) for their behavior. He also accused the intervention of the Ambassadors. He declares: *"I believe a sovereign Senate of a EU member state can not accept a political pressure, a psychological pressure at the decision making level. I do not recall any Romanian ambassador to require for a certain Parliamentary decision to be taken in Holland, Germany, USA."*

Perspectives

While the final version of law adopted by the Senate was unsatisfactory for many politicians and civil society representatives as well, new ideas come into play. Certain parliamentarians talk about a possible new ANI law, as well as of a Code of Integrity,

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gathering all legal documents on the topic.
With the European Commission report expected in August, the activity of ANI and the legal framework regulating its activity seem crucial.

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