

RESEARCH ARTICLE:

The role of civil society in monitoring the integrity phenomenon

Daniela MITUTOIU

ABSTRACT

Integrity is a concept that speaks of consistent actions, according to values, methods and measurement elements, as well as reporting to principles and expectations that can be verified by results. Considering the implications of the phenomenon of corruption on society, preventing and combating this phenomenon requires a multidisciplinary and systematic approach from a legal point of view

The research conducted is dedicated to the analysis of integrity phenomenon and the important role that civil society has.

KEYWORDS: *integrity, anti-corruption, legislation, institutions, civil society*

1. Introduction

Integrity considerations

“When the man loses integrity, he has nothing to lose”.

Cilibi Moses

This quote refers to the moral aspect of a man’s life; if economically, losing everything means bankruptcy, poverty, in moral terms integrity is the most important value and its loss degrades the individual in the eyes of the society in whose midst he lives, unless he completely disintegrates him. It can, however, be noticed that integrity as a moral value has a historical character: that is, the attitude of human society towards it is different.

If during the duels the loss of honour was so overwhelming that many knights committed suicide, preferring to die rather than live in the contempt of society, today there are enough individuals who do not conspire if society considers their integrity or not. I suppose this happened with the rise of money in social life.

Today, one can see how money holds an honourable place. No one notices that an average person has reached a high social level because of the fortune which is known to have been acquired by un-honourable ways. As a sad conclusion, I would add that Cilibi Moses' quote does not seem to be valid anymore today.

We all know enough un-honourable people who live in a wealth that defies honour through their origins, and their consensus seems quite peaceful. Because social values have overturned.

Integrity is a concept that speaks of consistent actions, according to values, methods and measurement elements, as well as reporting to principles and expectations that can be verified by results.

The origin of the word “integrity” derives from the Latin adjective “integer” (whole, complete), and in this context, it refers to the totality of the qualities of an

individual, expressed by honesty and consistency of character.

Integrity must not be demonstrated, it simply exists. Man can be whole even when nobody watches because its place is deep in the character, not conditioned by external elements or situations.

In order to determine whether an individual is ethically integrated, it is sufficient to observe and analyze his actions, beliefs, methods, measures and principles. They all derive from one core of values and that is its character.

In the exercise of public functions and dignity, integrity is the central element around which all the activity of a person gravitates. Lack of integrity leads to violations of the legal regime of incompatibilities and conflicts of interest, which, if not properly identified and sanctioned, contributes to the emergence of the phenomenon called corruption.

In 2001, the Government initiated the first National Anticorruption Strategy to fight corruption and reform the state by promoting a series of regulations on wealth declarations and conflicts of interest.

In order to increase transparency in public administration, Law no. 544/2001 regarding the free access to public information and Law no. 52/2003 on decisional transparency in public administration had appeared.

Considering the implications of the phenomenon of corruption on society, preventing and combating this phenomenon requires a multidisciplinary and systematic approach from a legal point of view, ranging from the regulation of criminal law issues to disciplining the relations of commercial law and ensuring transparency in the economic life¹. Thus, Law no. 161/2003 was adopted.

¹Reason to the Law on measures to ensure transparency in the exercise of public dignity, public functions and the business environment, prevention and punishment of corruption.

By adopting the Law no. 144/2007 there was a wish to set up an institution to monitor compliance with the legal regime of incompatibilities and conflicts of interest in the exercise of public office and dignity. Thus, the National Integrity Agency was established.

By the Constitutional Court Decision no. 415 of April, 14, 2010, a series of key articles of Law 144/2007 were declared unconstitutional, which was the reason why a new normative act, namely Law no. 176 of September, 1, 2010 on integrity in the exercise of public office and dignity, amending and completing the Law no. 144/2007.

At present, there are many confusions between incompatibilities and conflicts of interest. The conflict of interests generates a state of incompatibility *latu sensu* but, in terms of the causes that generate this incompatibility, the conflict of interest is distinguished by the fact that the determining factor is not necessarily a legal situation or an activity incompatible with the activity that is carried out within the service, but a personal interest of patrimonial nature that could influence the objective fulfilling of the attributions according to the Constitution and other normative acts².

The word incompatibility comes from the Latin, in “ne” and “compatibilis” = suitable and is defined as³ “The legal interdiction for a person who held two functions, in principle contradictory. - The express situation provided by the law prohibiting a person appointed / elected in a public position to exercise at the same time another public office. - The prohibition (1) aims at ensuring the independence of action of the person in charge of the public office

and the role of protecting his professional and moral probity”.

Equality of rights is a basic principle of the institution of fundamental rights and freedoms of citizens recognized primarily by the Constitution of Romania: “Equality of rights is by itself an equal opportunity that the Constitution grants to all citizens. This is also the meaning of paragraph (1) of art. 16, which guarantees equality before the law and the public authorities, without privileges and discrimination”⁴.

Over time, it has been attempted to distinguish between notions of public authority, authority of public administration, public institution, public power and public service.

“Good governance means that public administration structures do everything possible from a legal point of view to achieve reasonable and fair results in any situation. The administrative research of a matter necessarily involves a legal analysis, but it must first of all show what could be done - under the law - in order to obtain a fair solution for the citizen and not to defend, rigidly, the position of the administration”⁵.

“Such a distinction would not have any relevance in practice, the main meaning of the term public authority being that of a public body, that is, a group organized by people exercising public power prerogatives at state or local level or in another form, an organizational structure acting in a public power regime, in order to achieve a public interest”⁶.

“As to the notion of public institution, we consider that it does not identify itself

²Lazăr, A. 2016. *Conflict of interests, theory and jurisprudence*, Comparative law studies, Bucharest, Romania: Publishing House Universul Juridic.

³Parlagi, Anton P. 2000. *Dictionary of public administration*, Bucharest, Romania: Economic Publishing House, p. 78.

⁴Muraru, I. and Tanasescu, E. S. (Coord.). 2008. *Romanian Constitution, Commentary on Articles*, Bucharest, Romania: C.H. Beck Publishing House, pag 151.

⁵Bălan, E., Iftene, C., Văcărelu, M. 2015. *Non-contentious administrative procedure*, Bucharest, Romania: Wolters Kluwer Publishing House, p. 18.

⁶Apostol Tofan, D. 2014. *Administrative Law*, Volume I, Edition 3, Bucharest, Romania: C.H. Beck Publishing House, p. 7.

either with the notion of public authority or with the authority of the public administration, the legislation often using the term “public authorities and institutions”; forms from which there is an obvious distinction between the two notions”⁷.

The status of Romania, that of a member of the European Union, has imposed an ample process of modernization on all levels, in the spirit of European values, so that in the last 27 years Romanian society has been in a continuous process of change.

In this context, it is absolutely necessary to reform and modernize the public administration, a priority area that was appropriately organized for a democratic state but which contains an increasing number of normative acts in force.

Nowadays, due to the issuance of normative acts or the modification of existing ones, parallelism, overlapping and, implicitly, difficulties in practical application have been generated.

As solutions to addressing these issues, governments have proposed: simplifying and restricting legislation, achieving a unified legal framework in a given area, and clarifying a specific topic, simplifying beneficiaries' access to and enforcing existing legislation.

The need for rationalization and systematization of regulations, including codification tools, is also highlighted in the context of the European Union, which places particular emphasis on “good governance” and “smart regulation”.

The public administration reform in Romania represents a commitment assumed in all programmatic documents and a constant concern of the Romanian Government.

Even though there is no Community *acquis* in the field of public administration, there is a growing “European administrative space”, a space that requires

a transparent, credible public administration, based on efficient management, efficiency, an administration oriented towards the citizen.

The notion of public administration is the central notion of administrative law, and it also constitutes the fundamental notion of the administration of science, which examines it under multiple concepts, its complex content being comprised of the imperatives: to provide, to organize, to lead, to coordinate and to control⁸.

The intention of the Romanian Government to codify the legal framework in the field of public administration, through an Administrative Code and a Code of Administrative Procedure, was established in 2001 as part of government programs and legislative programs of the Government.

The Strategy for Strengthening Public Administration 2014-2020 also includes the Strategy for the Development of the Public Function 2016-2020, both of which have the role of improving the quality of governance, impacting the whole of society.

The National Committee for Coordination of Strategy Implementation for Strengthening Public Administration (NCCSISPA)⁹ had the role of coordinating the drafting process of this Strategy. That is why regular consultations took place within the Human Resources Working Group of NCCSISPA regarding the substantiation and elaboration of the Administrative Code Project.

The process of drafting the strategy for the development of the public function strategy 2016-2020 involved a broad substantiation process, in which a series of thematic analyzes and studies were carried out, consultation and collaboration actions with both Romanian public sector entities

⁸Apostol Tofan, D. 2014. *Administrative Law*, Volume I, Edition 3, Bucharest, Romania: C.H. Beck Publishing House.

⁹Strategy for the development of the public office 2016-2020.

⁷Idem.

and with international partners, representatives of academic and civil society, respectively representatives of representative trade unions.

2. Role of civil society

On the background of all the transformations taking place in the Romanian society, the role of civil society in the monitoring of the integrity phenomenon is observed, through the establishment of many NGOs and associations.

In this respect, the Pro Democracy Association has produced a publication called “The Road to Integrity” within the national project “Get attitude! - Campaign of NGOs and local media for identifying and preventing corruption”.

This publication was intended to be a collection of useful tools for identifying and addressing public integrity issues.

Public integrity is one of the essential conditions to be met with a view to ensuring good governance.

Without public control on the part of civil society on public institutions there is always the risk of their removal from the principles of an integrated administration.

This material has been printed with the financial support of the European Union, in order to strengthen the position of civil society in the fight against corruption.

The preface of the publication, written by one of the collaborators, represents the quintessence of all the aspects that are the subject of the paper: “Far from being at an abstract level, corruption is a phenomenon that affects us as much as citizens. We experience the day-to-day effects of an unprivileged administration with poor public services, public services that do not meet the needs of the community, and unjustifiably expensive public services whose costs are borne by everyone in the public budget.

These effects of maladministration are most often the cause of corruption

committed far from the public eye and left unpunished by state institutions that have no less, the obligation to trace, document, judge and sanction under the laws governing their activity.

In order to combat systemic corruption and to increase public integrity in Romania on a long-term basis, constant efforts by civil society are needed to strengthen its control over the act of governance.

As journalists, as representatives of the non-governmental sector and as citizens interested in the quality of life in the community, we have - yet the ability to force the transparency of public institutions, to influence the decision-making process and to empower all those who take decisions for us and on our behalf.

The integrity, transparency and accountability of the administration towards the community are elements that underpin the trust of the community in the institutions.

The image of corrupt administration undermines public confidence in the institutions affected by this scourge and removes citizens from any act of involvement and participation in government.

Thus, corruption, if it is generalized, does not only affect the quality of public services but also has the capacity to reduce the system of organizing society on the principles of the rule of law and representative democracy”¹⁰.

Public integrity is the attribute of workers in the central and local public administration of the country.

The term “integrity” is sometimes understood as an antonym of corruption, but integrity is not just a lack of corruption, but involves improving the transparency of

¹⁰Bucheru, M. November 2010. Pro Democracy Association, Radu Nicolae - Legal Resources Center and Cristina Mastacan - NGO Assistance Center, Bratu, C. November 2010. APD Club Timisoara – Bucharest.

the public decision-making process so as not to create suspicion that private interest prevails over the public interest.

The term corruption, in a broad sense, means “the abusive use of the entrusted power in order to obtain personal benefits”. In the public-administrative sphere, the definition of corruption could be: “abuse of public power to obtain private benefits”.

In addition to the monitoring of the integrity phenomenon, the whistleblowers, who are persons within the public institutions who make complaints about facts they are aware of and that contravene the law, morality, professional deontology or transparency within the public institution in which they work.

The concept of decisional transparency implies the prior information of the citizens regarding the intention to regulate the public institutions and their consultation in the elaboration of draft normative acts, ie the free access of citizens to information of public interest.

The whistleblower is not a public function, but the designation of a legal status that provides legal protection to a person in a public institution when claiming a particular irregularity from the workplace.

We can not but remember the ethics counsellor representing the person employed in a public institution with clear attributions of preventing the violation of the norms of conduct at any level.

The monitoring activity can be carried out by any Romanian citizen or Romanian legal person (mass media, non-governmental organization, party, trade company, etc.).

Civil society, through any form of organization, may be informed, based on the right to access information of public interest, to monitor the activity of public institutions with the ultimate goal of identifying issues of public integrity.

Subsequently, he/she has the right to notify the competent authorities of the concrete acts of corruption that he/she has identified following the monitoring and to

propose solutions to solve the identified integrity problems;

Civil society expects from public institutions:

- to be effective and efficient in delivering public services;

- local elected officials and public servants to serve the public interest and to manage public resources correctly;

- public institutions to be adaptable to the needs of the community and lead the decision-making process in the light of these;

- public institutions to be transparent and accountable to the communities they serve;

- public institutions to legislate in the public interest and correctly apply the existing regulatory framework.

The role of non-governmental organizations is to pursue the fulfilment of the above expectations.

Civil society can exert pressure for the adoption by public institutions of conduct leading to solving the problems identified and can be involved in decision-making and public policy adoption to ensure that they meet the needs of the community and not the private interests of decision-makers in public institutions.

Monitoring public institutions involves observing and recording information about:

- observance of the specific organization and functioning legislation;

- procedures for conceiving, debating and adopting a draft budget, development strategy, judgement, decision, order, ordinance, law, etc.;

- implementation of an adopted administrative act (budget, development strategy, judgement, decision, order, ordinance, law, etc.);

- procedures for the organization of public auctions and compliance with applicable national and European legislation;

- informing citizens, civil society, economic agents and other social actors about the current activity of the institution.

The first step towards the construction of a legal and institutional anti-corruption framework was made by the Romanian Government as a result of Romania's intention to join the EU and NATO.

Global indicators of corruption perceptions show that Romania does not need a wider legislative or institutional framework, but concrete efforts and political will to fight corruption.

The same aspect was also reported by the European Commission through the Cooperation and Verification Mechanism.

Non-governmental organizations such as the Pro Democracy Association, Freedom House Romania, the Independent Journalism Center, the Association for the Implementation of Democracy and the Institute for Public Policies are very involved in the fight against corruption.

There are more than 60,000 registered organizations in Romania, but less than 15% focus on anti-corruption, democracy, good governance and public participation.

Romania does not have a category of NGOs based on voluntary association.

NGOs have been able to develop laws on free access to information or transparency in decision-making processes, but their involvement in decision-making processes does not materialize in most cases.

The Ministry of Justice has established permanent and institutionalized structures designed to cooperate with civil society, especially during the process of implementation development and monitoring of the National Anticorruption Strategy.

Unfortunately, NGOs rarely cooperate with the Parliament to prevent corruption.

The fight against corruption, both at national and EU level, has to fulfil a preventive and repressive role but must be supported by a coalition of state, governmental business, citizens and civil society organizations, such as NGOs and academic research organizations.

3. Legislation and main framework for fighting corruption

Romanian legislation includes a series of legislative acts that allow citizens and civil society to be informed and involved in the decision-making process:

- The Romanian Constitution;
- The Law 544/2001 on free access to public interest information
- The Law 52/2003 on decisional transparency in public administration;
- The Ordinance 27/2002 regulating the activity of solving petitions
- The Law 215/2001 on local public administration;
- The Law 189/1999 on the exercise of the legislative initiative by citizens.

The first National Anti-Corruption Strategy considered cooperation with civil society as a priority: "One of the major objectives of the prevention policy is the involvement of civil society in actions aimed at preventing corruption and informing the public about the costs, causes and consequences of corruption"¹¹.

One of the fundamental values that the National Anti-Corruption Strategy is based on is transparency, described as: "Representatives of public institutions and authorities will provide free access to information of public interest, transparency in decision-making processes and civil society consultation in these processes"¹².

In Romania, the main framework for fighting corruption is composed of:

- The Legislative - Parliament;
- The Prosecutor's Office - Public Ministry: parquet units, including NAD;
- The Ministry of Justice (MJ) - organizer of the justice system as a public service / Government;

¹¹Walker, C. 2005. *The Anticorruption Policy of the Romanian Government Assessment Report*. Washington DC: Freedom House, p. 142.

¹²Ministry of Justice, 2012, *National Anticorruption Strategy for the Period 2012-2015*, p. 7.

- The Ministry of Internal Affairs - including GAD;
- Courts – The High Court of Cassation and Justice (HCCJ) is the Supreme Court.
- The system also includes judges, tribunals and courts of appeal;
- NIA- verifies wealth, conflicts of interest and incompatibilities;
- Institutions that monitor and control public funds: the Court of Accounts, the National Authority for Regulation and Monitoring of Public Procurement (NARMPP), the Anti-Fraud Department (AFD) and the Permanent Electoral Authority (PEA), which monitors electoral expenses.

Non-governmental organizations and public institutions involved in the fight against corruption must cooperate to develop, promote and monitor tools to support whistleblowers.

Anticorruption fight is an international phenomenon, not only national.

“Transparency International is one of the world's leading global corruption actors. Founded in 1993, it is the largest non-governmental international organization dedicated to fighting corruption, putting civil society, business people and institutions in the strongest global coalition at the same table, generating an anti-corruption movement. Through its Berlin-based secretariat and over 90 independent subsidiaries around the world, it works at national and international level to halt demand and supply in the field of corruption: at international level, TI carries out campaigns on the harmful effects of corruption, supports reform policies, activates for governments, corporations and banks to implement multilateral conventions; at a national level, subsidiaries carry out activities to increase accountability and transparency by monitoring the performance of the main institutions, pushing for necessary reforms in a non-political manner (lobbying), and

bringing together people worried about corruption in their country”¹³.

Transparency International has been involved in drafting the most important international anti-corruption tools and gave a new bribery connotation, including accepting gifts and conflicts of interest in the phenomenon of corruption.

The main anti-corruption instrument, specific to Transparency International, is represented by the National Integrity System Studies.

¹³Danilet, C. 2009. Corruption and anti-corruption in the legal system, Bucharest, Romania: C.H. Beck Publishing House.

4. Conclusions

Promoting integrity and, implicitly, preventing corruption implies a holistic model of public and private institutions as well as civil society.

As a conclusion of the above, we believe that the key role of civil society in monitoring the integrity phenomenon is primarily to prevent abusive, non-integrity behaviours by determining public institutions to create a set of standards and to set up a set of good practices.

There is a presumption, more or less real, that "whoever has the power is tempted to abuse it".

Montesquieu

It is also said that "power tends to corrupt; absolute power corrupts absolutely".

Lord Acton

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ABOUT THE AUTHOR

Daniela Mitutoiu, PhD Candidate at the National School of Political Studies and Public Administration;

Email: dana.mitutoiu@yahoo.com