

THE RIGHT TO CORRUPTION-FREE GOVERNANCE – A CHALLENGE

Ada-Iuliana POPESCU¹

e-mail: ada.popescu@uaic.ro

Abstract

Corruption is a widespread phenomenon that is fought against at international and national level. Sporadic or systemic, corruption weakens governments, distorts trade, fosters instability, accentuates inequality, and, most cruelly, crushes the most vulnerable, the poor. Anti-corruption initiatives, on paper and in practice, vary from nation to nation. The European Union has joined the fight against corruption with mixed results due mostly to because of its members' different political, social, economic and cultural realities. Romania is one of the countries that are struggling with an endemic corruption. This article presents some of the initiatives meant to tackle public sector corruption in Romania.

Key words: corruption, human rights, anti-corruption

Corruption and human rights is not a match. And how could they be when a bribe can cause death, poverty, insecurity, mistrust, inequality, instability and other harms against humans and social order.

Fighting domestic and international corruption has become a priority for most governments and international organizations. Some of the European countries upgraded their anti-corruption legislation and enforcement systems according to international standards.

Multiple-pronged national strategies to fight corruption are focusing on transparency and accountability in political activities; transparency, accountability, and efficiency in public administration; sound business environments; and openness in society. (Anderson J. et. al, 2001)

Romania has been struggling for a long time with corruption, especially in the public sector. Since getting its European Union membership, Romania has improved its anti-corruption legislation but its enforcement has been the real issue. Proof to that, among other things, is the amount of European Court of Human Rights (ECHR) rulings against Romania.

In recent years, at the pressure of the European Union, ECHR, other international organization, civil society and Romanians, the anti-corruption fight has intensified and some positive results have been registered. However, eradicating corruption remains one of Romania's major challenges. The article is going to illustrate some of the positive anti-corruption results and some of

the challenge Romania still has to face in the near future.

MATERIALS AND METHOD

The analysis emphasizes the improvement of European Union anti-corruption legislation and its implementation at national level in Romania.

The research is empirical, focusing on the analysis of European and Romanian legislation concerning public procurement, the finance of political parties and the protection of whistleblowers in the public sector and its anti-corruption effect. Also, the research is based on data extracted from expert studies and reports focused on international standards and good anti-corruption practices. The information comes from various sources such as the European authorities (European Commission, Eurobarometer, OLAF, GRECO, Council of Europe, CEDO) and independent international organizations (OECD, Transparency International). The information has been analysed, drawing conclusions and formulating suggestions regarding the improvement of Romanian anti-corruption results.

RESULTS AND DISCUSSIONS

According to article 2 of the Treaty on European Union, the Union is "founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities." The provision notes that these values are common to the Member States in a

¹ "Alexandru Ioan Cuza" University of Iași

society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Corruption stands against all these human and social values. The European countries have anti-corruption strategies that target both, public and private corruption. However, expectations are not matching the results. According to a Transparency International report, “political parties, public administration and the public sector are evaluated as the weakest players in the fight against corruption across Europe” (Mulcahy S., 2012, p.3).

Thus, during the last decade, the European Union has intensified its anti-corruption fight by improving its legislation and by establishing an anti-corruption reporting mechanism that determines member states to comply with the imposed standards.

The results of such requirements vary greatly from country to country because of twenty eight different national realities. Thus, anti-corruption cohesion is hard to achieve and proof to that are the mix national results, very different from Western and Eastern member states. To date, the EU lacks a legal text defining and addressing corruption in general, such as a framework decision or a directive. Instead, the existent legislation targets private sector corruption. In 2003, the EU released its Framework Decision on combating corruption in the private sector, aiming to criminalize active and passive bribery. Its implementation has proven slow and difficult as some member states failed to build on it in their domestic law or to enforce it.

The European Union has taken the steps in the right direction when it came to stricter but more flexible, new public procurement rules, vital changes in political party finance legislation and the encouragement for its members to create whistleblower protection systems. The goal is to promote integrity, transparency, accountability, fair competition and professionalism in the public sector.

Romania is adapting to the new standards and requirements but the pace is slow and inconsistent. The legislative improvements and the law enforcement is no match for an endemic and systemic corruption affecting both, public and private sector. Bribes, conflict of interests, traffic of influence, illicit finance of political parties and money laundering, state capture and political involvement in the justice process are most common infringements of human rights.

Romania has ratified some important international conventions that improved our national anti-corruption legislation such as United

Nations Convention against Corruption (UNCAC), and the Council of Europe Criminal and Civil Law Conventions on Corruption. Also, EU directives and framework decisions are transposed in our national legislation. However, most rules and regulations are addressing the public sector corruption and fewer the private one, such as business corruption. For example, the new Romanian Criminal Code in article 294 criminalises among other corruptive behaviours, the bribing of a public official done by a foreign official for securing a business advantage.

Private sector corruption has been the target of an array of rules and regulations design to discourage it, if not stopping it. The efficiency of such norms has been greatly undermined by their poor enforcement. Some of the most vulnerable to corruption public activities remain public procurement and political party financing. Whistleblower protection has proven more successful as Romania is among one of the few European countries and EU members that has such a protection system for public employees that report potential corruption situations at their workplace.

Public procurement contracts concerning urban/infrastructure constructions, health care, water/waste, postal services are sources of corruption. Thus, local communities are often deprived of their right to a decent living and to economic progress.

A diverse range of criminal and mostly administrative provisions deal with corruption offences that contaminate the public procurement procedures in Romania. Thus, the Romanian Criminal Code provisions sanction bribing in general, traffic of influence, conflict of interests and other related corruption crimes that are usually committed by public servants. Also, criminal provisions establish the conditions of confiscation and extended confiscation of assets in these cases. Also, Law no. 78/2000 for the prevention, discovery and sanctioning corruption crimes, Law no. 161/2003 for integrity in exercising public functions and Law no. 176/2010, fill some gaps elsewhere, widen the range of corruption offences and strengthen enforcement.

Especially designed legislation addresses public procurement in Romania. Government Ordinance no. 34/2006 has suffered numerous modifications to resonate with the European Union requirements. Thus, the right to information of the general public imposes the standard of transparency and efficiency of public procurement procedures. This requirement is commonly met in Europe by using electronic platforms used for all public procurement stages, including contract management and payment. The use of standardized

and clear documentation is another solution adopted by the European countries.

The Electronic Public Procurement System (SEAP) has been created in Romania and used for public procurement contracts that are above the European threshold. However, the results of its use were not as expected. The integrity of the electronic public procurement procedures has drawn complaints. Most of them are referring to the CPV Codes classification, where the same product may be listed under different names, with different prices, confusing the bidders and making room for deliberate errors. Other negative practices are specifications tailored for particular companies, conflict of interests in the evaluation of the bids, unclear evaluation criteria, collusive bidding, fast-track procedures on the grounds of false emergency, involvement of bidders in the design of specifications (European Commission, 2014).

The execution of awarded contracts is also hardly monitored, allowing the acceptance of goods and services below the quality standard stipulated in the winning offer. At the same time, the lack of sanctions for delay in execution of the contract even if celerity was one of the award criteria has encouraged poor public procurement results with serious development consequences for local communities.

It is obvious that Romanian legislation should rely on the “most economically advantageous tender” principle and not on the “lowest price” one. Thus, social welfare, innovation and environmental protection are going to be favoured.

The new improved European Union directives on coordination of public procurement contracts and concession contracts for public works and services will maybe help reshape our legislation and its enforcement in the long run.

Another serious and common infringement of the right to corruption-free governance in most European countries, including Romania, is the political party financing.

The illegal financing of political parties with public money and vote-buying has raised suspicions in Romania over the past decade. Romanian politicians are famous, even internationally, for their lack of integrity. From this perspective, the Romanians are totally dissatisfied with their governance representatives. However, in spite of civil society awareness, the political will to uncover corruption at this level is often inexistent.

The pressure of international and regional organizations and the pressure of civil society and Romanians have determined our government to finally take action against political corruption. Thus, Law no. 334/2006 that provides the legal

base for political party funding have suffered numerous modifications during the last couple of years. These adjustments tried to bring more transparency and correctitude to the finance schemes used by the political parties. For instance, in Romania, local branches have occasionally opted to keep their accounts in a simplified form. This, however, is not acceptable when local branches are in highly populated areas where public funding is substantial. Local foundations of political parties involved in political campaign activities were not subject to any special financial or fiscal control, their supervision relying solely on their financial turnover. At the same time, the monitoring of political parties’ financial situation is still shared by two different institutions. The monitoring of public funds is assigned to the Court of Accounts, whereas monitoring of private funds falls to the Permanent Electoral Authority. However, the law does not provide for exchange of information between the two institutions, preventing the forming of a clear image of political parties’ consolidated accounts.

Also, Romanian law was criticized because it establishes weak sanctions that would fail to have a dissuasive effect and because administrative sanctions are favoured to criminal ones in spite of the fact that Title IX of the Romanian Criminal Code is sanctions illegal activities during election campaigns and voting (art. 385-393) (Popescu A., 2014).

Some of these legal lacunas and many others were covered this year by the Romanian legislator. However, the efficiency of the new rules is going to be proven next year, in 2016, when the parliamentary and local elections will take place in Romania.

Human rights are often flagrantly disregarded in Europe when it comes to whistleblower protection. However, Romania is one of the few European countries and EU members that have a good protection system for employees that are reporting corruption activities in the public sector.

Law no. 571/2004 on the protection of employees of public authorities, public institutions and other entities who report violations of the law provides the legal framework for whistleblower protection alongside with the provisions of the Criminal Code and Criminal Procedural Code dealing with witness protection.

However, a few years ago, Transparency International noted that in 40% of the cases some form of retaliation took place against whistleblowers in Romania (Transparency International, 2013). This proves that our whistleblower protection system mostly worked on paper, its implementation being weak. The situation slightly improved during the last

couple of years but insufficiently to achieve meaningful results.

It has been argued and proven numerous times that Romania imperfect legislation but mostly the lack of its enforcement are the sources of this country incapacity of efficiently tackling corruption and granting its citizens the right to corruption-free governance.

CONCLUSION

Corruption infringes human rights, affecting economic development and social progress. European countries are not sheltered from this plague. Thus, their anti-corruption fight has intensified during last decade.

Romania is also making efforts to tackle its endemic and systemic corruption. The Romanian law advances different solutions for preventing and curbing public sector corruption. However, while the legal framework is modernised, its enforcement proves difficult and inconstantly done. Public procurement, political party funding remain the most prone to corruption.

Maybe the new legislation and the new EU anti-corruption review mechanism will force the Romanian government to prioritize the anti-corruption fight and to achieve meaningful, long-term anti-corruption results, proving that the respect of human rights in Romania is a reality.

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