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**CORRUPTION OR WIDESPREAD ADMINISTRATIVE MALFUNCTION?  
A POLICY FAILURE WARNING**

In 2001, the Government published its National anti-corruption Strategy. Long prompted by international partners, the strategy was received with mixed feelings by an increasingly cynical public, despite the fact that, for the first time, it addresses the core of the issue. It is true that the media treated the Strategy lightly and sceptically, emphasizing the stress it gave to petty corruption, which was interpreted as lack of political will to go after the grand corruption. However, the stress on petty administrative corrupt behavior makes a lot of sense. Evidence shows that personal negative experience in dealing with corrupt civil servants is feeding the public's perception of widespread administrative corruption<sup>1</sup>. Therefore, sending political signals by tackling grand cases of corruption is by no means more important than convincingly handling widespread petty corruption. Moreover, the Strategy addresses important issues, including the limitation of the parliamentary immunity status (which would require a constitutional modification).

Having said the above, the Strategy still falls short of providing practical solutions in some key areas. Above all, it does not establish clear priorities, which means that too many objectives compete for immediate attention, in a context of overlapping and incomplete regulations.

In the above context, it should be highlighted that, since the release of the strategy last fall, Romania has been plagued by some of the worst corruption scandals in a long time, and the manner in which the Government has dealt with these scandals is still a topic of heated public debate.

This article reviews the evidence on corruption, and proposes a set of policy recommendations.

**How widespread is corruption?**

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<sup>1</sup> See Politics section, EWR 2/2001.

How do we measure corruption? One way would be to look at people who have been indicted as being corrupt, but since the general perception is that most corruption cases go unpunished and unreported, this would not provide an accurate estimate. Another way is to ask people to report on their personal experience with corruption. This can be done in two ways. The first would be to ask people for their own assessment of corruption in society, which we will call *subjective corruption*. The second way would be to ask them to report on their personal experience with corruption, which we will call *corruption experience*. Both measurements are subjective, relying on one's ability to perceive, assess and report correctly situations that are not always clear-cut.

The first category of questions (how wide-spread do you think corruption is in the public sector?) actually ask for a generalization from every respondent, regardless of his or her personal experience. From the point of view of survey theory, such a question would be considered as 'misleading', since it asks people to answer a query that they have little or no means to answer properly. Consequently, subjective corruption is associated with other things beyond one's experience. The second category of questions is not without problems either, since they ask respondents to report illegal behavior, and there are practically no means to check their story, or to differentiate between an active party and a passive party (since corruption involves at least two actors). Two risks are obvious here, namely that respondents would be tempted to underreport socially undesirable behavior, and that, while reporting it, they would attribute it to other sources than their own behavior, in order to avoid personal guilt.

However, based on a large number of regional and national surveys, it has been noted that the above mentioned risks are smaller than one would believe. People seem to be so willing to get rid of the 'extra-tax' represented by corruption, and the behavior of offering bribe is so generalized, that they tend to report it with no fear of consequences. Having said this, such risks are still present when addressing specific target groups, such as investors, since businessmen tend to be quiet on their own initiative and cooperation in acts of corruption. Furthermore, they often obscure the fact that at the original motivation for bribing officials is not to defend some legal right of theirs, as with the ordinary citizens, but to obtain "favors", such as shortcutting existing laws and regulations.

Putting aside these reservations, current measurements provide a picture of large-scale participation in bribe giving (see Fig. 1).

**Fig. 1. Experience with the public sector in the previous year<sup>2</sup>**

<b>Experience with bribing</b>	<b>School %</b>	<b>Court %</b>	<b>City Hall %</b>	<b>Police %</b>	<b>Hospital %</b>
Last year dealings with...	19.3	14.9	42	20	46.9
...and had to bribe to get service	26.5	22.6	14.8	13.9	51.5

Direct experience show schools as being more corrupt than the Courts, the police and city hall, but all are within close range. The widest spread corruption is reported in relation to hospitals and medical care. However, in this chapter, we will focus on experience with bribes within the narrower borders of the state, namely the judiciary, the local government and the law enforcement agencies.

When attempting to correlate bribe giving with consequent satisfaction with the service received, the survey finds an inverse correlation, namely that people dislike bribing, and that they are not satisfied with the outcome (see Fig. 2).

**Fig. 2. Association between bribe giving and satisfaction with service delivered**

<b>Predictors</b>	<b>Association and significance</b>
Bribe giving	- **

*Dependent variable: Satisfaction with service after bribing.*

Legend: - a negative correlation; \* predictor significant at  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$  (\*\*\*=strongest association); N/S means that the variable did not turn out a predictor

Equally, there is a strong correlation between a reported bribe and reported abuse by administration, which shows that a bribe is often a consequence of mistreatment (see Fig. 3). People bribe because otherwise they would not obtain the services that they need. Mistreatment is generally interpreted as a signal to provide an extra payment to the civil servant or public official.

<sup>2</sup> Based on BOP Metromedia 2001.

**Fig. 3. Association between reported mistreatment and bribe<sup>3</sup>**

	<b>Association and significance</b>
How often did you have to bribe?	+ ***
Wealth	N/S
Age	N/S
Town size	N/S
Education	N/S

*Dependent variable: Mistreated by a civil servant after 1989.*

Legend: - a negative correlation; \* predictor significant at  $p < 0.05$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$  (\*\*\*)=strongest association); N/S means that the variable did not turn out a predictor

Romania's situation is not unique in the region. Comparative data show that subjective perception of corruption, frequency of bribing and accountability of the administration are similar to other post-Communist countries (see Fig. 4). Regardless of their other differences, it seems that CEE countries are similarly struggling with widespread malfunction of their administrations, which is translated in terms of their incapacity to provide a satisfactory service without bribes.

**Fig. 4. Comparison across selected CEE countries<sup>4</sup>**

	<b>Romania</b>	<b>Bulgaria</b>	<b>Slovakia</b>
Corruption (most or almost all officials are involved)	69.5%	62.0%	64.3%
Frequency of bribe	67.1%	29.1%	55.9%
Accountability index	1.75	2.64	1.51

### **The relation between subjective corruption and institutional social capital**

A glance at the explanatory models of subjective corruption shows that the perception of widespread or general abuse is mostly encountered in less developed regions, and more in urban areas than in rural areas (see Fig. 5).

<sup>3</sup> CURS-SAR 2000 data.

<sup>4</sup> Freedom House-SAR survey in 2000.

**Fig. 5. Explanatory models of subjective corruption<sup>5</sup>**

<b>Predictors</b>	<b>Association and significance</b>			
	<b>Model 1</b>		<b>Model 2</b>	
Village and small town	-0.058	(0.020)***	-0.057	(0.020)***
Age	-0.054	(0.026)**	-0.047	(0.026)*
Education	0.029	(0.010)**	0.029	(0.010)**
Regional development index	-0.003	(0.002)*	-0.003	(0.002)
Income	-0.000	(0.000)*	-0.000	(0.000)
Agree that “Romania is a rich and beautiful country”			0.220	(0.058)***

Legend: - a negative correlation; \* predictor significant at  $p < 0.1$ ; \*\*  $p < 0.01$ ; \*\*\*  $p < 0.001$  (\*\*\*=strongest association)

Subjective corruption is associated with younger and better-educated people, but also with low income. It is strongly correlated with paranoia (“Romania is a country both rich and beautiful, but its many enemies prevent it from prospering”) and low trust in government<sup>6</sup>. More than a measurement of corruption, it represents, therefore, a measurement of institutional social capital. High subjective corruption indicates lower social capital, implying a low local administrative capacity. Institutional social capital is lower in cities than in villages, and is lower in poorer areas than in developed ones. Obviously, there is a correlation between the performance of local administration and institutional social capital, but also between the personal poor performance of the respondent and the tendency to blame it on government – the two actually coexist.

**Fig. 6. Satisfaction with civil service and government**

<b>Variables</b>	<b>%</b>
Mistreated by a civil servant after 1989	59
MPs work for the public interest	11
Judges work for the public interest	27
Central govt civil servants work for the public interest	16
Local govt civil servants work for the public interest	33
Government does not do enough to curb corruption*	75
Unsatisfied with Government’s law enforcement performance*	50

<sup>5</sup> CURS-SAR survey in October 2001.

<sup>6</sup> Component extracted from trust in Prime Minister, President and Parliament. See Annex for details on this index.

Note: Items marked \* come from a May 2001 BOP survey; the rest come from a CURS 2000 survey.

The data on people’s experience with corruption and their trust in civil servants and representatives are quite worrisome (see Fig. 6). Corruption is a symptom of widespread lack of administrative performance and of Romania’s institutional weaknesses. Widespread administrative corruption is a consequence of the administration’s overall failure to provide public services. The core services that the Government is supposed to provide are the most affected. Bribes are an extra-tax that Romanian citizens pay in order to obtain the services to which they are entitled to as normal taxpayers. Therefore, a purely repressive approach to corruption will not solve the problem. The most worrisome is the perception of corruption of representatives, who are singled out as the least trusted among public officials. Whilst conflict of interest and corruption amongst civil servants are regulated by the Public Administration Law (repeatedly modified) and Civil Servants Law (188/1999), and the corruption among executives is regulated by the Law for Responsibility of Ministers (115/1999), representatives, from local councillors to MPs, are sheltered from any legal consequences for their misdealings.

When we write or say corruption, we usually associate it with business, for example, phony bids involving large amounts of money. The point of this article, however, is that the large-scale corruption in the post-Communist world is not the one correlated with business, but with the simple everyday functions of the public service. Neither in the Romanian survey, nor in the Bulgarian, can one find a correlation between being engaged in business and bribing. A Chi-square test of the Romanian survey data indicates no association between the two variables, and the percentages appear strikingly similar (see Fig. 7). It is not the reinvention of business, which prompted corruption in post-Communist Europe, but rather the survival of the organization and culture of public administration, from Communist times.

**Fig. 7. Cross tabulation of “Engaged in business” with “How often do you have to bribe”?**

<b>BUSINESS</b>			
	<b>Yes</b>	<b>No</b>	Total
Always	13.5%	13.8%	13.7%
Depends	57.1%	52.9%	53.4%
Never	27.1%	28.2%	28.2%

The CURS poll, executed for a World Bank Study in Romania, reported encounters of corruption amongst 38% of the civil servants (self-reports of being offered a bribe), 42 % of the public, and only 28% of businesses. Even if the businessmen, admittedly (see above), may have played down their experience with corruption, this points to the fact that business-related corruption is just a part of a more widespread phenomenon.

### **Conclusion. Can we even call it corruption?**

The widespread practice of bribing in dealing with the public administration must be understood as part of a more complex design. Post-communist societies can hardly be considered as fully modernized societies, and their administrations have never achieved the impartiality, impersonality and fairness that are supposed to characterize a modern bureaucracy. Corruption is not simply the use of a public position to seek personal gain, as its most common definition states, but more broadly, it is the infringement of the impersonal and impartial norms that should characterize modern public service. Providing discriminative public service may not be prompted by financial gain only, but may endure as a norm in societies dominated by status groups. A favor may be granted to acknowledge superior status, or to establish one's position, without necessarily involving money or immediate gains.

The superimposition of Communism on traditional rural societies led to a sort of neo-traditionalist, or *status society*, governed by unwritten rules more than by formal laws<sup>7</sup>. The explicit modernizing design of Communism was doomed from the start by the contradictions embedded in the communist power structure, namely the legitimization of status groups such as the 'nomenklatura', who enjoyed political and economic monopolies, and the enforcement of hierarchy over ideology. Romania passed from a peasant variant of status society to a Communist one, and it is the survival of Communism's core features that still hinders today the development of an open society and of a free market. Such societies are characterized by *unpredictable patterns of distributing social and legal rights, from a rational point of view, but are fairly predictable for whoever is acquainted with the patterns of authority, which generate the unwritten rules of the game*. Weber originally defined status societies as societies dominated by status groups and ruled *by convention rather than law*. "The firm appropriation of opportunities, especially of opportunities for domination, always tends to result in the formation of status groups. The formation of status groups, in turn, always results in monopolistic appropriation of powers of domination and sources of income...Hence, a

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<sup>7</sup> This argument draws on the work of Kenneth Jowitt (*Social Change in Romania.1860-1940*, Berkeley: University of California, Institute for International Studies, 1993); see also Alena Ledeneva 'Unwritten Rules: How Russia Really Works', CER Essay for Centre for European Reform, London, 2001

status society always creates ... [the] elimination of individual's free choice ... [and] hinders the formation of a free market.”<sup>8</sup>

The slow, modest, and often contradictory reforms in Romania, since 1990, have been unable to identify this structural problem and to address it effectively, and this is the main reason why so many of them failed to make a difference. Post-communist societies are complex societies: the legacy of communism often appears as an entangled mix of complicities, in which victim and perpetrator are difficult to tell apart, and in which unwritten rules prevail over written ones.

Does it make sense to call this “corruption” then? The plain answer is no. Addressing this merely as an individual derailment from a general norm of impartiality and fairness cannot succeed. Rather, considerable effort must be made to signal that the current norm consists of impartiality and fairness, which, unfortunately, is the opposite of what has happened over the last ten years. In addition, the reason for which politicians are hated above everyone else, is that the public perceives them as the super-status group rather than as the bearers of a new social order.

The above considerations can be summarized in the following conclusions, which are relevant for policymaking:

1. Corruption is a diffuse post-Communist phenomenon grounded in the ineffectiveness of public administration as a provider of public services; business-related corruption is only a variety of this general phenomenon, even if business-related corruption involves more money than the “ordinary” corruption. Actually, since entrepreneurs have more means and incentives to obtain certain public services indispensable to their activity, they are more prone to become passive supporters of corruption than ordinary citizens; but the same happens with all citizens who dispose of more resources.
2. Corruption is only one consequence of the general lack of accountability and transparency, which is, again, rooted in Communist administrative culture, and is enforced by bad and complicated regulations. These have to be addressed directly, and by means other than judiciary, in order to de-rationalize corruption as an informal institution. As long as corruption remains the only means to make the administration work, it will endure regardless of the punitive measures taken against it.
3. Corruption persists due to the lack of civic competence and self-assertiveness of the less educated and economically disadvantaged citizens; if these cannot be mobilized to act on

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<sup>8</sup> Originally from Weber, *Economy and society*, quoted after Weber, *On charisma and institution building*, Chicago: University of Chicago Press, 1968, p 177-180



their own behalf, someone else has to act for them. The private sector and the NGOs have an important part to play here.

The following section contains recommendations for priorities of the anti-corruption campaign, and proposes concrete actions to be taken.

## **Recommendations for Government and political parties**

### **1. Regulate and criminalize conflict of interest**

The Government's Action Plan highlights the need to take action to regulate conflict of interest. However, it does not specify what action to take. A good start would be to acknowledge that regulation of conflict of interest, and enforcement of pre-existing regulations, have been constantly sabotaged by a lack of political will. There have been previous attempts to separate business and politics in the last decade, and one should carefully examine what made them fail, before making promises on future moves in the same direction. The simple conclusion is this: previous moves were shipwrecked by the very same parties who initiated them. For instance, President Iliescu endorsed, during the Vacaroiu government, an unsuccessful bill stipulating that MPs could not sit on the Board of privatising companies, and the bill was sunk in the Parliament by the government coalition of that time. In 2000, the current government party sponsored many Trade Union leaders on their electoral lists. In 2001, an amendment to prevent local councillors from occupying positions in companies dealing with the City Hall was postponed to 2004, in order to protect current businesses, and a special initiative seeking to regulate conflict of interest in local government, initiated by the Democratic Party, was discarded. The real question is: what makes the situation different in 2002? Are the President and Prime Minister more powerful or more committed to confronting the issue within their own power base? If the answer to this question is no, then nothing can be done. Conflict of interest is not only a widespread practice in Romania, but it is embedded in the new legislation as well<sup>9</sup>. The 1996-2000 governments also sponsored this development. Is there political will to tackle this situation? At least at the formal level, nothing is simpler than drafting a conflict of interest framework bill and passing it through the Parliament<sup>10</sup>. Enforcement, however, is a different matter altogether, but at least such a move would give a signal and would create a starting point.

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<sup>9</sup> As per the 1998 revision of the Public Television Law concerning the composition of the Board, the only such law in Europe making conflict of interest legal.

<sup>10</sup> There are ready-made packages available, such as the US Agency for Government Ethics' one, [http://www.usoge.gov/pages/laws\\_regs\\_fedreg\\_stats/oge\\_regs/5cfr2635.html](http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html). No Romanian political party has manifested any interest in endorsing such options so far.

Criminal Code modifications are on the Parliament's agenda: what would be simpler than to criminalize conflict of interest and give it the broad definition that it deserves? The bill should be a simple and short framework-type regulatory act, formulating clear principles and penalties, prevailing on previous legislation in every field. It could, for instance, stipulate that one cannot sit on the board, or have an executive position in any agency involved in the spending of public money, if he or she (or any of their close relatives) is associated in any way, formally or informally, with the type of activity which is being sponsored by that board; that the relationship must cease at least one year in advance of occupying such a position, in case that the individual would rather give up the activity than the Board position. The previous example is extracted from the US Government Code of Ethics and could be adopted as such. It has the great advantage of criminalizing the failure to notify conflict of interest when one risks being involved.

*“Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

*Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to co-workers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.”

In the model of the code quoted, conflict of interest should be regulated for a period of time before and after one holds or leaves office. In the very recent SOV scandal<sup>11</sup>, there may not be any evidence of misdoings by officials yet, but there is clear evidence of conflict of interests involving at least the current President of the Senate (former Prime Minister Nicolae Vacaroiu) and the former head of cabinet of the Prime Minister (Sorin Tesu). Although these cases were scandalous, they are not illegal under the current Romanian law.

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<sup>11</sup> Sorin Ovidiu Vantu.

## **2. Tackle corruption of law and order agencies**

Special care is needed in tackling corruption within law enforcement agencies and the judiciary system. Heavy repressive campaigns, such as the one initiated by Justice Minister Rodica Stanoiu, are unlikely to solve the problems, and may even be interpreted as political tampering with the freedom of the judiciary, as in the European Commission's last progress report. It is the basic organization of these institutions that is defaulting here, and if this is not addressed as a main policy focus, then the whole process becomes hopeless. The lack of effectiveness of these agencies in delivering law and order, which is badly needed by society, and the unpredictability of their acts, is a consequence of their general lack of transparency, which in turn is a corollary of their status as organizations. The anti-corruption strategy admits that over-regulating the delivery of services to the public is at the core of the administrative corruption. The next logical step, namely proposing de-regulation, does not, however, concern home and justice affairs. The draft police status, currently in the Parliament, is a poor one, leaving the police centralized and hierarchically organized, with no clear provisions for horizontal accountability, which is the only one that could work. Law and order is a service for communities, therefore communities should be provided with some way to make accountable those who fail to provide such services. The status of the local government in the accountability mechanism of local police in the current bill is unclear and inferior on all accounts. The same goes for the Prosecutor's Office. The simple evoking of "management" as being related to prosecutorial work is not effective. The whole status of prosecutors needs revising, and this opaque and ineffective institution, plagued by Communist-time institutional culture, must be reformed. This is merely saying that the best way to attack corruption in these organizations is through long due structural reforms. If secrecy and absurd regulations will continue to be the rule of the game in the way in which these organizations deal with the public, the most entrepreneurial or well off will continue to bribe prosecutors, judges and policemen. The only way to make law and order impartial and fair is by making their agents transparent and accountable along horizontal, not vertical, lines. Mayors should be able to act on behalf of their communities against a corrupt and ineffective prosecutor or policeman, which is not currently the case. The status of the police bill should be rewritten, taking into account suggestions of expert bodies, domestic or foreign<sup>12</sup>. The status of the Prosecutor, Judge and Council of Magistrates should be fully revised to shake existing status groups.

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<sup>12</sup> Such as the Romanian Helsinki Committee.

### **3. Implement fully the Freedom of Information Act**

Another weak spot of the strategy is that it does not grant an important role to instruments already at hand. The last and most important one is mentioned just briefly by the strategy. The 2001 Freedom of Information Act is actually an accountability bill, asking every public agency to make every record transparent and to publish a yearly report on the spending of public money in the Official Gazette (*Monitorul Oficial*). It also requires that every non-classified piece of information should be made public ex-officio. If the Government is serious about an anti-corruption, it should thoroughly implement FOIA. If tender procedures and motivations for selecting winners are made accessible to the public, many acts of corruption would be prevented. Political will is best shown in the using of already available tools, not in the proposal of further strategies or drafts. Here is the test case for the Government. The transparency act, passed due to the excellent cooperation between a responsive Ministry of Public Information and civil society organizations, must be implemented as a full-fledged accountability act, and as part of the anti-corruption strategy. If it is reduced by reluctant implementation to the status of a “rights” type of act, its impact on the reform of the public sector would be reduced. Accountability reports published by government agencies, starting in 2002 according to FOIA, should be controlled on a regular basis and regulations be issued to prevent reporting false or distorted data.

### **4. Unify the existing regulatory framework in one Code of Conduct**

Too many pieces of legislation compete and overlap already on corruption and accountability. The main piece addressing civil servants is far from being comprehensive, nor does it cover their possibly being related to a controversial activity before or after having a public position, and carries no penalties for infringement of incompatibilities between the position of civil service and “economic activities” other than, at worst, dismissal (article 7, paragraph 2). “Economic activity” is a poor formulation, which leaves open possibilities for having or fostering profit of every kind. The administration needs one clear code of conduct to outline not only regulations, but also ideal current practice, and to provide a comprehensive guide for every situation. Models are available, such as the Code of Conduct of the American Federal Office for Government Ethics quoted above. Not only does such a Code need to be adopted, but also an agency must be created and empowered with its enforcement (Office of Ethics). This agency should be different from the Control Body of the Prime Minister, which can be suspected of political intervention, and which has limited staff and resources. It could be a large autonomous body, with special status to

protect agents from political interference and a head appointed by the Minister of Justice with the approval of Parliament.

### **5. Regulate and criminalize speculation and banking activities of agents who are not authorized by regulatory agencies**

No lessons seem to have been learned from the collapse of mutual funds in recent years. After the collapse of *FNI* and *Banca Populara* in 2000, it became obvious that poor regulations (the National Bank can scrutinize only a few of the agents acting on the financial market), poor enforcement of the existing banking regulations (even those whom they can supervise are largely unaccountable when it comes to sanctions) and absence of adequate penalties in the criminal code made speculation and embezzlement almost a risk-free enterprise. Supervisory agencies for savings banks, mutual funds and insurance companies are toothless. After CEC, the main savings bank, was compromised in the FNI scandal, in January 2002, the Romanian Post Office also became involved. Despite having a bank of its own, BankPost, the Post Office risked its money (public money) in a small and adventurous private bank, which served mainly embezzlement purposes. The insurance company ASTRA suffered a similar fate. Both these companies had many officials sitting on the Board, which explains why the scandal broke out so late.

The regulatory framework of financial transactions must be completed, a powerful audit agency empowered, and companies compelled to adopt a unitary, clear and transparent records system at hand for eventual controls. Besides the conflict of interest regulations mentioned above, many of the dubious and risky transactions that have become current management practice should be criminalized. Romania should adopt existing European standards on financial accountability and audit.

### **6. Make some room for the consumer**

The majority of citizens who complain of abuse by the administration suggest that the philosophy “the public is our customer” is far from gaining acceptance in the administrative culture, not to speak of implementing. Signals given by the new laws and old practices in the administration cannot but hinder a more accountability-based approach. For instance, in the oath introduced by the Romanian law of civil servants (188/1999), the civil servants swear allegiance to their administrative superiors, whilst the public is never mentioned. The same philosophy was the underlying factor for the laying off of thousands of tenured civil servants at the change of

power in Romania last winter. The Ruling 1 of the Romanian Government in 2001, concerning the reorganization of the Presidential Administration, establishes personal allegiance to the President as the main rule for a civil servant working in the institution.

## **7. Make representatives accountable**

Representatives deserve a special chapter, as they have managed to consistently maintain the lowest position in public trust, and they are the least regulated, if at all.

- 7.1 Giving up political immunity for anything other than political acts. This would give the public the impression that the political class is more accountable, and would stop the drive of tax evaders and embezzlers to seek refuge in the Parliament.
- 7.2 Giving up both the practice and the regulation that make practically every important vote of a representative a secret. One reason why constituents do not trust their representatives is that they cannot find out how they vote. A radical revision of the electoral system<sup>16</sup> would be of little help, if the vote of a representative remains a secret to his or her constituents. The emphasis on the secret vote was due, in the early nineties, to reminiscences from authoritarian times of Communist takeover. Anti-Communist parties feared that they would be held accountable for their voting against the government, and the authors of the 1991 Constitution agreed on this point. Such fears are now obsolete, as Romania is a consolidated democracy. The main goal that the voting procedure must achieve now, is accountability to the constituents.
- 7.3 Amend regulations of Parliament, political parties law and local government laws, so as to automatically dismiss a representatives who swing parties from any representative bodies, national or local. They should be replaced with the next one on the party list. As long as Romania has a proportional system, and the vote is entrusted to party lists, the migration to whichever party offers more, is immoral and affects negatively the foundations of political legitimacy.
- 7.4 Adopt campaign-financing legislation, as proposed by civil society.<sup>13</sup>

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<sup>16</sup> As shown by SAR's Crisis Alert Papers, the passing from the proportional system to a majority system would leave a majority of voters not represented in the Parliament, with the potential of creating even more anti-political feelings.

<sup>13</sup> Pro-Democratia, a civic association, has long been advocating the adoption of such a law.

## **Recommendations for civil society and donors**

No anti-corruption strategy can succeed if the public does not play a part in it. The likeliest role for the Romanian civil society is to assist the overall process of FOIA implementation and to take an active part in the debate on adopting new legislation, such as the Code of Conduct, police law, and so forth. The following recommendations specifically address the implementation of FOIA, as this piece of legislation was enacted on January 1, 2002.

### **1. Year One: Achieving state building: empowerment of the government**

The first need that arises from FOIA is to build the capacity of the information offices, which must be created under the new law. Even where they existed before, these offices had, as a sole task, to deal with journalists and organize public relations campaigns. Most public agencies do not have such an office, but they are now required under the law to create such an office in the first year after the FOIA is enacted (Article 4). The information officers dealing with the implementation of FOIA have not only the task of satisfying requests for information, but also of publishing ex-officio, for the first time, a large volume of documents, and editing a newsletter (which has become compulsory under the law). Equally, wherever they have computers, they are required to develop a web site and post all of the information in electronic format. These new tasks require a number of skills and operations, such as:

- 1.1 To produce the list of documents specific for their institution, which need to be published ex-officio, according to the law.
- 1.2 To gather the relevant data from within the public agency, for publication, or for responding to individual requests from citizens.
- 1.3 To organize the information in a meaningful and ready-to-use format.
- 1.4 To publish the information in a user-friendly format.
- 1.5 To systematically collect and use feedback on the success in performing the above tasks, in order to achieve “consumer” satisfaction, i.e. to satisfy the needs of the public who use the information.

The difficulty of these tasks should not be underestimated; considerable expertise transfer is needed for the law to make a difference. Wages in the public sector are at about the national average (around US\$100 per month), which makes that individuals with writing skills prefer, as a

rule, to work in the media or the private businesses. The most knowledgeable people on what kind of information is most solicited, and what formats are the most convenient, are the journalists who cover the area of the respective public agency or local government. Capacity-building programmes of the public relations offices should involve, as an essential resource, such journalists, at least for the editing of the newsletter and activity reports.

## **2. Year Two. Bringing the consumer in: empowerment of the community in the accountability process**

Let us assume that the public agencies will meet some success in achieving the objectives set for the first year of FOIA implementation, at least formally. They will publish some documents, and for the first time the public will have the possibility to read the spending report and the budget of public institutions. However, most of the public is neither willing, nor competent, for such a task. What is needed, therefore, is some intermediate agent to act on behalf of the public, competent enough to check expenditures reports, but independent enough to be able to follow suit in any event. It may turn out that the reports are fair and accurate, and this must be made public by an independent source, since the Romanians' lack of trust in their public institutions is notorious. Or, alternatively, it may turn out that they are not fair and accurate, or that essential data is missing or is misused, in which case action must be taken, as the FOIA allows. However, it is most difficult for ordinary citizens to do this, hence the need for an intermediate agent.

Reading a budget and suing the Government require certain skills. Thus, the solution is to allow local NGOs or other community organizations checking reports and filling complaints on behalf of citizens, in the first years after the enactment of the law. This requires training for the organizations volunteering to act in this capacity, and the creation of a national network, which requires donor assistance.

The differences between assisting implementation and letting it go on its own can be seen in other countries. In Bulgaria, where implementation is assisted by a string of NGOs acting as Ombudsmen and auditors, FOIA is already making a difference in the performance of the administration. In Albania, where the law was adopted hastily, after insistent international advocacy, then left to itself, nothing changed, and, after several years have passed, it is hard to dig it out from public indifference and skepticism. This sad story should not be repeated with the Romanian FOIA.



