

INCIDENTS OF INTEGRITY IN PUBLIC INSTITUTIONAL SPHERE: THE LEGAL FRAMEWORK, MONITORING AND MEASURES OF PREVENTION AND LIMITATION

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Abstract

Our approach aims at the issues of integrity in the performance of public functions in Romania. Specifically, after the development of the ethical considerations in national administrative system, we present the conceptual and legal aspect of integrity incidents, then making reference to monitoring and measures to prevent and limit them. On two major strategies of the Romanian Executive – Strategy regarding the development of public function and the national anti-corruption strategy, both covering the period 2016-2020 – we can detach some goals regarding correction of deficiencies (conflicts of interest, incompatibilities and violation of rules regarding conduct in the exercise of public functions) insisting on the lines of action to be followed in the next four years. The documentation of the paper was founded on the expense of literature, law - national and European - in the field, but also on recent reports issued by some public bodies (Ministry of Justice, National Integrity Agency, the National Agency of Civil Servants, etc.).

Key words: *ethics, integrity, conflict of interest, incompatibilities, conduct rules, the exercise of public functions.*

JEL Classification: *D73, J28*

I. CONSIDERATIONS ON ETHICS IN THE NATIONAL ADMINISTRATION SYSTEM

The issue of ethics in the national administrative system as possible is one important principles of morality and integrity require to be placed at the heart of all those who, by nature of jobs / positions filled, should serve the citizen. Assertion that "The quality of human resources in public administration is critical to its ability to meet the public interest by providing quality public services" (ANFP, 2013), is quite true, and achieving performance certainly "depends on the professionalism, competence and integrity of employees whom they have available, which is why human resource management is one of the key processes in the functioning of the public entity" (ANFP, 2013). A whole series of scholars have studied closely on issues derived here (Magherescu, 2005; Nita, 2012, 2013; Popa, 1969; Vedinaş, 1998), unhooking it that an appropriate legal framework on human rights and duties of officials It plays a special role in bringing significant improvements to the plane approached. In particular, another author (Magherescu, 2016), based on "responsibilities of civil servants and considering that their role is to achieve the general interests of citizens", sees the code of ethics and professional them as "the basis on which are based ethics rules - detailed rules, guidelines, standards of work". However, we find in the literature and the opinion that "ethics in public administration has not spoken Romanian never seriously. In the aftermath of the 1989 Revolution ethics it was addressed only in terms of forms of corruption manifested in the public sector ..." (Matei, 2010). However, we find in the literature and the opinion that "On Ethics In our case, we retain adoption of several laws (the Romanian Parliament, 2000, 2001, 2003abc, 2004ab, 2010; the Government of Romania, 2002), which by their content give embodiment ethical norms that should not be neglected in any way. They promote certain values, including "integrity, fairness, transparency, decision-making, responsibility" designed, obviously, "combating and preventing conflict of interest and corruption" (ANFP, 2013). Then, we must not forget the conventions and instruments European Union on anti-corruption and integrity (EU, 1995, 1996, 1997abc, 2003abc) having in view that "A public administration must be competent and impartial in order to accomplishment functions adequately; citizens must have confidence in the way authorities perform their duties in accordance with the rule of law and democratic frameworks, in an open and unbiased. Integrity is a trend made up of incorruptibility, reliability, impartiality, objectivity and justice ..." (Doig, 2015). In the context of the current legislative approaches have regard to all categories of human resources in local and central government (Government of Romania, 2016a), namely: (i) persons appointed or elected public positions similar functions; (ii) the civil service, the three sub-components (senior civil servants, public management and executive civil servants); (iii) persons working relationship (or their equivalent) with public authorities and institutions belonging to the central government and / or local. An estimate of the number of posts / positions in public administration in Romania (Romanian Government, 2016a) shows that there are

1.183.608 posts; total public office records 31 December 2015 was 164.125 (belonging to a total of 4.363 public institutions, management skills pertaining to the Ministry of Regional Development and Public Administration, through ANFP), of which 134.500 public positions occupied (128.376 employed and temporarily occupied and 6.124 - temporarily vacant) and 29.625 vacant public.

II. INCIDENTS INTEGRITY – CONCEPT AND MONITORING

„Integrity” can be understood by simply reading the definition that "assimilation integrity means being honest; honesty, probity; incorruptibility; appropriation to be or to remain intact, whole” (DEX, 2014, <https://dexonline.ro/definitie/integritate>). In the incident of integrity, it appears where on an employee of an institution / authority / public enterprises was taken / disposed at least one of the following measures (Government of Romania, 2016b): "(a) the termination of disciplinary labor relations, following the commission of a deviation from the rules of ethics or other similar provisions designed to protect the integrity of the civil service; (b) sent to trial or conviction for an offense of corruption or facts related to the failure regime prohibitions, incompatibilities, conflict of interest and declaration of assets; (c) a final act of finding issued by the National Agency for Integrity, alleging breach of legal obligations regarding unjustified wealth, incompatibilities or conflict of interest; (d) a final decision issued by CNATDCU on a scientific paper”. In fact, any "file ANI DNA or disciplinary penalty for breach code of conduct constitutes a failure of the institution's management to prevent incidents of integrity" (CRJ, 2014). According to civil service development strategy (2016-2020), "the issue of integrity in the exercise of public functions in Romania is built around three main components which are detailed in national legislation - conflict of interest, incompatibilities and rules regarding conduct in the exercise of public functions. Compliance with the rules associated with any of the components was given in the implementation of the National Anticorruption Strategy, the generic name of incident integrity" (the Romanian Government, 2016c). Let's mention that "a public official is in conflict of interest when, in virtue of the public occupying make a decision or participate in making a decision on who has a personal interest" and incompatibility supposed to be enough the fact that the "occupy two or more functions simultaneously whose overlapping is prohibited by law" (ANI, 2016a). The total number of cases (incidents) investigated by ANI is relatively high, the findings are related to "significant differences between the acquired wealth and income, incompatibilities, conflicts of interest in administrative matters, reasonable grounds for committing criminal acts (conflict of interest, false statements, offenses assimilated to corruption, etc.)" (ANI, 2016b). Here as at end December 2015, the situation findings of the National Integrity Agency became final (Figure 1):

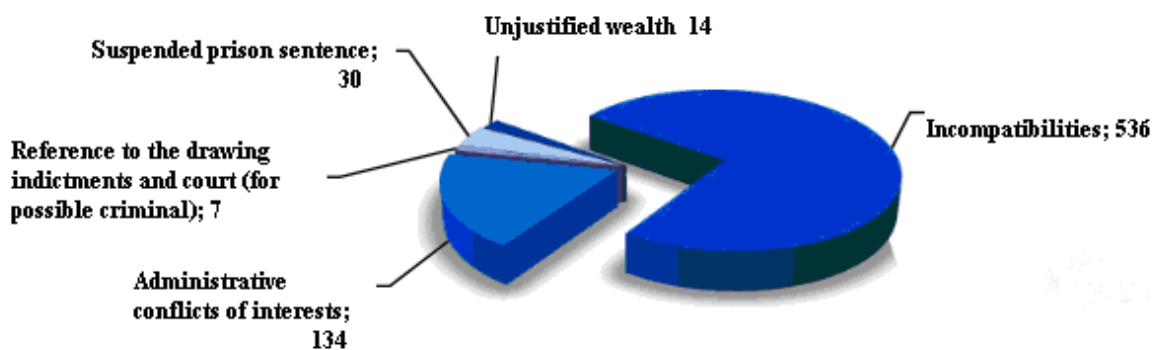


Figure 1. State the findings of the National Integrity Agency became final 31.12.2015

Source: <https://www.integritate.eu/>

Evolution of the number of files that were found by the National Agency for Integrity incidents (2015 vs. 2014) shown in Figure 2.

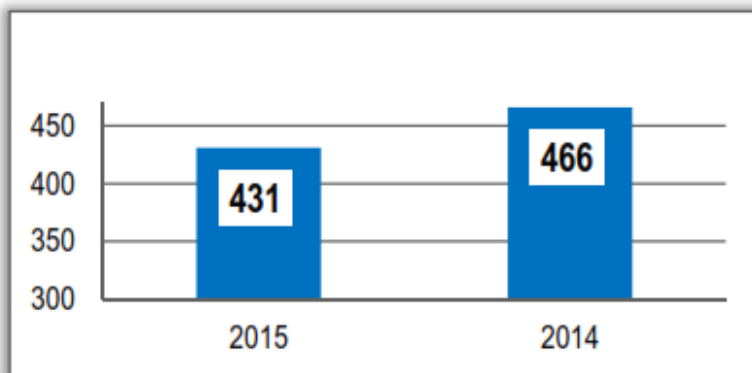


Figure 2. Cases in which the National Integrity Agency found incidents of integrity (2015 vs. 2014)

Source: <https://www.integritate.eu/>

536 incompatibilities become final (by contesting the assessment report or irrevocable decisions of the courts) targeted 23 dignitaries central, 351 elected 8 civil servants with special status, 36 persons responsible for the management of the institutions / central authorities or local 108 civil servants, 7 - other categories stipulated in Law no. 176/2010 and 3 magistrates (ANI, 2016b). Administrative conflicts of interest, numbering 134, were found in the case of 19 dignitaries central, 87 elected, 12 people in leading positions in public institutions, a magistrate, a public servant with special status and 14 civil servants (ANI, 2016b). At the end of December 2015 inexplicable wealth (established during 2015), the categories of positions is presented in Figure 3, situations of conflicts of interest (administrative and criminal) are played using Figures 4 and evaluation incompatibilities led to a situation as reflected in the Figure 5.

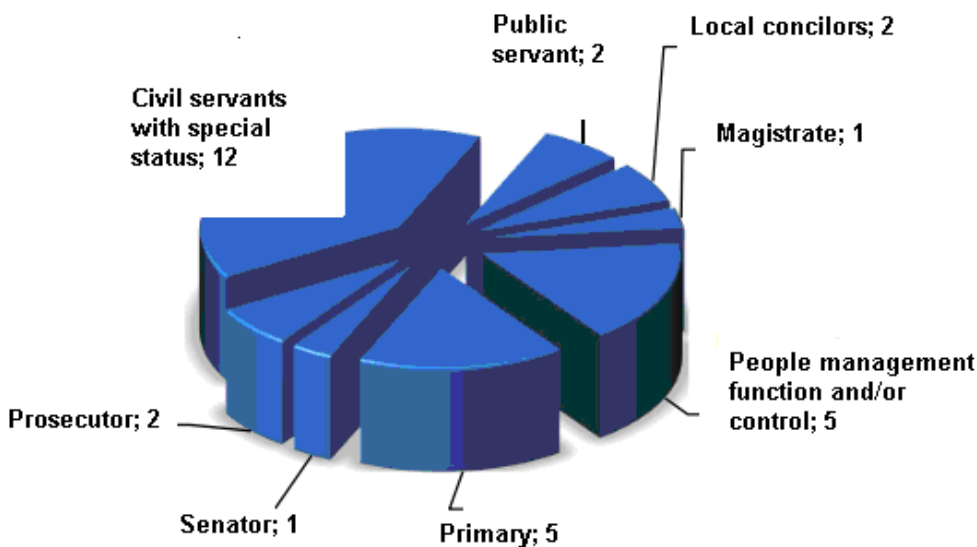


Figure 3. Inexplicable wealth, the category of public, found by the National Integrity Agency during 2015

Source: <https://www.integritate.eu/>

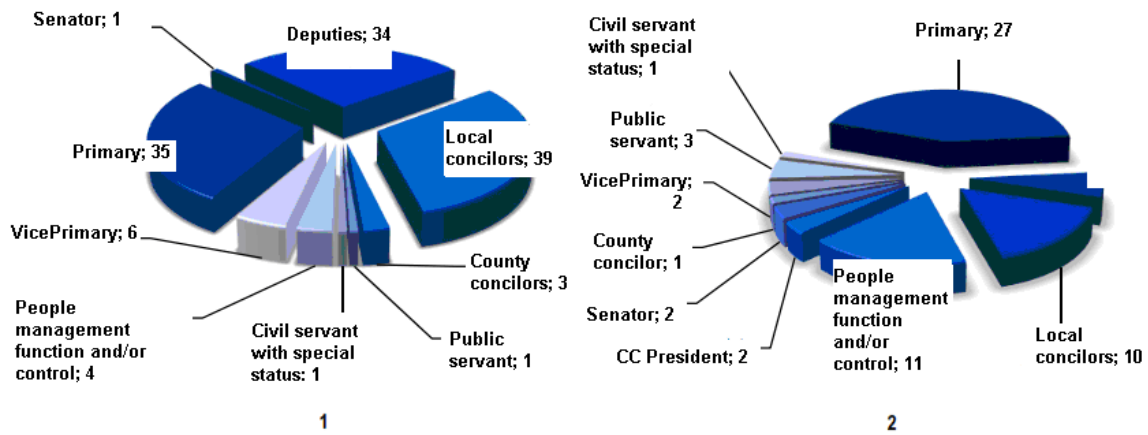


Figure 4. Cases of administrative conflicts of interest (1) and criminal (2) categories of public functions, established by the National Integrity Agency during 2015

Source: <https://www.integritate.eu/>

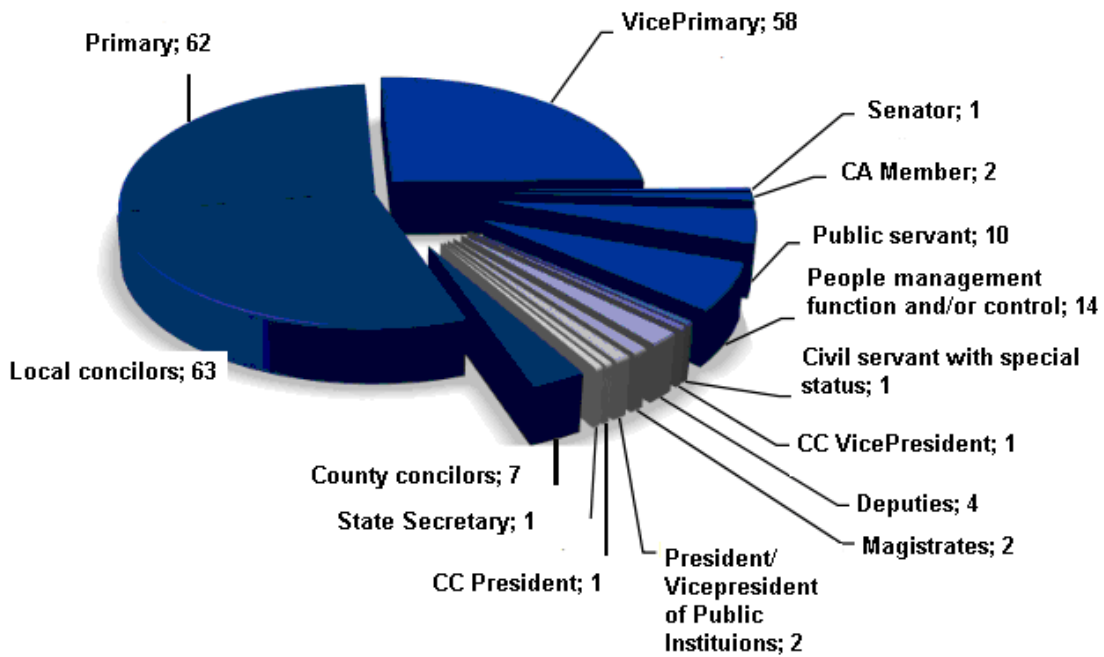


Figure 5. Cases of incompatibility noted by the National Integrity Agency during 2015

Source: <https://www.integritate.eu/>

It noted that the fines imposed by the National Integrity Agency during 2010 - 2015 experienced the following situation (ANI, 2016b): 3.457- for failure to file declarations of assets and interests within the time prescribed by law; 182 - for not applying disciplinary sanctions as a result of the final report; 32 - persons within public institutions responsible for implementing the statutory provisions; 14 - penalties imposed for breaching the law by the heads of public institutions. If we refer to some causes of the condition presented show that as recorded in the National Anticorruption Strategy 2016 - 2020 (Ministry of Justice, 2016), analysis of reports submitted by administrative units reveals a number of issues totally deficient. Thus, it shows that there is "a formalistic approach to preventing corruption at local level. Codes of ethics are drawn from a small number of units and persons responsible for ethics advice carry a formal role. The measures declaring a gift is not known at this level, and in most institutions are not implemented. There are no procedures to prevent conflicts of interest

and incompatibilities ..." (Ministry of Justice, 2016). Obviously related issues related to management, audit or law and they have shown their role in context (Burciu, 2008; Bostan, 2005, 2014).

III. IDENTIFY OPPORTUNITIES FOR PREVENTING AND MINIMIZING INCIDENTS OF INTEGRITY, STRATEGIC OBJECTIVES OF GOVERNMENT

In ethics, integrity and preventing corruption within the administration, the Government aims Strategy 2016-2020 civil development (Government of Romania, 2016c) reducing the total amount of integrity incidents recorded and reported at least 30% by the end 2020. An important specific objective of the Strategy is to promote mentioned by the public values like honesty, integrity, honesty, particularly by increasing transparency and accountability through a culture. For it was fixed conducting several actions, including (Government of Romania, 2016c): (i) Supporting responsibility and accountability in the public by publishing general information regarding: public procurement, public investment, payments etc.; (ii) Strengthening the status and empowerment counselor ethics and introduction of rules on the conduct updated for all functions, subsequent unification of their general rules of ethics and integrity in their regulated by the institutions of law and publishing information - electronically - in separate sections on websites; (iii) Definition based on clear criteria and procedures "functions / sensitive posts" and establish a coherent system for tracking and centralized management of them. National Anticorruption Strategy 2016 - 2020 sits on an important "premise undertaking by all institutions and public authorities (...) the following core values: (i) the political will - all three branches of government (...) understand the importance a society free from corruption and will work to comply with the requirements under this strategy; (ii) integrity - representatives of public authorities and institutions are required to declare any personal interests that may come with the exercise of duties objectively. Moreover, they are obliged to take all necessary measures to avoid conflicts of interest and incompatibilities; (iii) to the public interest - representatives of public institutions and authorities have a duty to consider the public interest above any other interest in the performance of duties. They must not use their public position to obtain improper benefits or patrimonial property, for them, their families or persons close; (iv) transparency - representatives of public institutions and authorities will ensure free access to information of public interest, transparency of decision making and consultation of civil society in this process "(Ministry of Justice, 2016). The same strategy, with one objective "Improve the identification, treatment and prevention of cases of incompatibilities, conflicts of interest and unjustified wealth", proposes as key actions, among others, the following (Ministry of Justice, 2016): (i) adopting rules and providing the necessary resources for ex-ante mechanism to be applied by ANI in public procurement; (ii) Continue to ANI assessment and ensure effective follow-up of cases that are settled on (courts, etc.); (iii) Revise rules on incompatibilities, first identifying the causes of inefficiency; speeding up and ensuring compliance with court decisions in matters of incompatibilities; (iv) Increasing the capacity of ANI data processing and "strengthening proactive approach in monitoring declarations of assets and interests" etc.

IV. CONCLUSIONS

Incidents of integrity in public institutional sphere, related to conflict of interest, incompatibilities and violation of various rules on the conduct of the public function, showed a relatively high momentum lately. As shown data taken from the ANI, the number of files that were found incidents of integrity (2015 to 2014) increased significantly, from 431 to 466. We note that two important strategies of the Romanian Executive - Strategy development civil and national anti-corruption strategy, both covering the period 2016-2020 - aim to bring some improvements in terms of ethics, integrity and prevention of corruption within the administration. The paper, after addressing the legal issues and conceptual perspective and presentation of numerical data on violations of law in the last two years, we referred to some courses of action to ensure the foundation to improve the situation described.

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