

What is left of the fight against corruption in Romania?

A critical analysis in light of the recent parliament elections

The electoral campaign for the November 30 parliamentary elections in Romania began under the sign of alarming figures:

According to an opinion poll by INSOMAR released on November 2, 54.5 % of the Romanians believe that the level of corruption in their country increased in 2008 as compared to 2007, and 29 % think that the efficiency of anti-corruption institutions has decreased.¹ The electoral campaign stood in stark contrast to these figures, as far as its thematic focus was concerned: Corruption was almost entirely absent from the campaign agendas. As the new Romanian government is about to be constituted, and the country expecting the next interim report of the European Commission (to be issued at the end of January/beginning of February 2009), a closer look at the latest developments in the fight against corruption in Romania may be in order.

This report will analyze the role that corruption played in the parliamentary elections, as well as developments regarding the National Anticorruption Directorate (DNA) and the National Integrity Agency (ANI).

A campaign with little focus on justice and corruption issues

During the first half of 2008, the treatment of high-level corruption cases and the issue of parliamentary immunity fuelled much of the public debate. It even led to conflicts between state institutions (the Presidency on the one hand, and the Parliament or the Superior Council of Magistracy on the other hand). With the electoral campaign, however, the previously-omnipresent discourse related to corruption faded away almost entirely. The electoral campaign was a competition between individuals, rather than issues. It lacked a clear focus on points of concern for the public at large, in particular the fight against corruption: Despite the fact that the anti-corruption work of courts and state institutions score poorly in opinion polls, none of the political competitors put the need for continuous justice reform or the fight against corruption at the top of their campaign agenda.

In the programs of Romanian political parties, justice ranks rather low in the priority list. It ranks highest on the program of the National Liberal Party (PNL), where it holds 6th place, as compared to 7th place on the Social-Democratic Party (PSD) list, 10th place on the National Democrat Union of Hungarians in Romania (UDMR) list, and 21st place on the priority list of the Democrat-Liberal Party (PD-L).

¹ Cf. <http://www.evz.ro/articole/detalii-articol/826907/Lupta-anticoruptie-privata-cu-neincredere/>.

Proposed solutions for the problems in the justice and corruption field were neither

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

new, nor concrete. Interestingly enough, the PSD electoral campaign agenda included only one proposal for the fight against corruption, i.e. the establishment of specialized courts for dealing with corruption cases. Similarly, the program of the PNL barely addressed the corruption problem at all and even then only to stress the government's institutional achievements in the field (in particular with regard to the National Integrity Agency).

**The Coalition for a Clean Romania
(Coalitia Romania Curata)**

The political parties' lack of interest in issues of justice did not find a match in civil society during the electoral campaign, however. On November 18, eight Romanian non-governmental organizations² together with the Initiative for a Clean Justice, launched an anti-corruption internet portal.³ The web-page presents the results of a long-term research which describes the "anti-rule of law-behavior" of some Romanian Parliamentarians who won their seats in recent elections. The criteria used by the researchers were the following: (1) if the respective Parliamentarian was under criminal investigation for corruption; (2) if his or her voting behavior in the Parliament blocked criminal investigations with high political stakes or hampered the activity of integrity or anti-corruption bodies; (3) whether the respective Parliamentarian has signed the "Pact for the Rule of Law" proposed by civil society representatives in July 2008⁴; and (4) if the respective Parliamentarian had changed membership in more than two political parties.

² The Advocacy Academy, Civic Alliance, Society for Justice Association, the Center for Independent Journalism, Freedom House Romania, the Social Dialogue Group, the Romanian Academic Society and the Timisoara Society.

³ See www.romaniacurata.ro.

⁴ Cf. http://media.hotnews.ro/media_server1/document-2008-07-30-3768537-0-pactul-pentru-statul-drept.pdf

The results of the research⁵ are worrying with 244 Parliamentarians meeting all the criteria and 221 having refused to sign the pact. The parties which have most representatives on the negative list are the PSD, followed by the PNL, and PD-L. Eleven PSD, two PNL, and two PD-L candidates are under criminal investigation, with former Prime-Minister *Adrian Nastase* (President of the PSD National Council) leading the list.

The Coalition for a Clean Romania is to be welcomed not only in the context of the recent political events, but also as a sign of the civil society's dedication to justice reform and the fight against corruption. It did, however, prove somewhat ineffective as far as raising voters' awareness and influencing their voting behavior is concerned: Many of the Parliamentarians included in the negative list of the Coalition for a Clean Romania were reelected to Parliament on November 30, some of them with an absolute majority from the first round (among those are the two prominent Social-Democrats, *Adrian Nastase* and *Miron Mitrea*, frequent subjects of the high-level corruption and parliamentary immunity debate, and *Dan Voiculescu*, former President of the Conservative Party - PC⁶).

On the other hand, many candidates who stand for a continuous reform of the justice system and the fight against corruption did not manage to get a seat in the Parliament. Examples of this are the former Minister of Justice *Catalin Predoiu* (who had only shortly before the beginning of the election campaign invited all relevant NGOs to discuss the state of affairs with regard to the EU post-accession benchmarks, and to develop a strategy for the continuation of the justice reform) and the former President of the Legal Committee in the Senate, *Peter Eckstein-Kovacs* (UDMR) (who is known for his up-right attitude in major political decisions

⁵ The results are published at www.romaniacurata.ro.

⁶ On December 4, the DNA prosecutors sent to court a big corruption file in which *Voiculescu* is among the defendants, see www.pna.ro.

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

concerning the National Integrity Agency or the Criminal Procedure Code).

It would, of course, be too simplistic to conclude from the election results that the Romanians rewarded candidates with a poor anti-corruption track record and punished those who campaigned on justice reform. There are also candidates with a negative track record who did not manage to be re-elected to the Parliament, such as two former members of the Legal Committee in the Senate, *Norica Nicolai* (PNL) and *Serban Nicolae* (PSD). The election results do, however, show that corruption issues did not significantly affect voters' decisions (contrary to what opinion polls have shown). Having said this, one has to keep in mind that only 39.26 % of the Romanian citizens who are eligible to vote turned out to vote – a result which speaks for itself, and raises questions with regard to the state of the Romanian democracy. The high absence rate might be reflective of the lack of trust most Romanians have in the capability of their Parliamentarians to (among other tasks) reform the justice system and tackle the fight against corruption successfully.

**The National Anti-Corruption Directorate:
An update on its work**

An important aspect of the fight against corruption is the work of the National Anti-Corruption Directorate which – among other institutions - is under close scrutiny by the European Commission in the context of the post-accession co-operation and monitoring mechanism⁷. As is so often the case in Romania, a country in which politics and

⁷ Cf. Benchmark No. 3: Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption – Continue to provide a track-record of professional, non-partisan investigations into high-level corruption cases. Ensure the legal and institutional stability of the anti-corruption framework, in particular by maintaining the nomination and revocation procedure for the general Prosecutor of Romania, the Chief Prosecutor of the National Anti-Corruption Directorate and other leading positions in the general prosecutor's office.

public affairs are highly personalized, the DNA recently attracted attention concerning individual persons and posts (i.e. the contentious nomination process for the institution's Chief Prosecutor) rather than to substantive matters.

In August 2008, the Minister of Justice *Predoi* decided not to renew the mandate of *Daniel Morar*, the Chief DNA prosecutor. The decision came as a surprise, especially since *Morar's* anti-corruption efforts have been continuously praised by European officials - and by others as well. On December 2, *Morar* was nominated for the European Voice magazine "European of the Year" award in recognition of his efforts in the fight against corruption.

Instead of *Morar*, Minister *Predoi* nominated *Monica Serbanescu* for the position of Chief Prosecutor at the DNA. *Serbanescu*, a prosecutor delegated to the Ministry of Justice shortly before this nomination, is not well known to the public at large or within the legal community. The reasons for *Predoi's* decision were not made public, which lead to the following speculation: According to diplomatic sources, it was a compromise solution between having DNA dismantled (as has been proposed in the past by the institution's opponents) and keeping it as a separate institution, but with a different Chief Prosecutor.

The public reaction was harsh, as *Morar* was highly appreciated for his efforts to fight high-level corruption, and as *Serbanescu* seemed to lack the professional qualifications required by the position. The latter reason was confirmed by the Superior Council of Magistracy (CSM) on September 4, when it voted against *Predoi's* nomination. The final say belonged to the Romanian President, *Traian Basescu*, who refused to appoint *Serbanescu* as chief at the DNA. *Basescu's* decision did not come as a surprise given his strong support of *Morar* in the past.

The negative vote of the CSM supported *Morar's* retention, and prevented another political conflict between the President, the Ministry of Justice, and the CSM. As a con-

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

sequence of the President's refusal to nominate *Serbanescu*, *Morar* continues his second interim mandate, which will end by the beginning of next year, while the responsibility for a new nomination is left to the new Minister of Justice. *Morar* has good chances of having his interim mandate extended for another 90 days starting January 2009.⁸

The presidential "no" to *Monica Serbanescu* gave rise to yet another controversy between the Romanian President and Parliament (with the CSM on the latter's side), with regard to, inter alia, the appointment of Chief Prosecutors at the DNA and the Department for Combating Organized Crime and Terrorism (DIICOT): On September 16, the Senators of the Romanian Parliament adopted a PSD-supported proposal for the modification of Law No. 303/2004 on the Status of Magistrates. The amendment changed the manner in which the General Prosecutor, and Chief Prosecutors of the DNA and DIICOT were appointed in that in the future, it would be the responsibility of the CSM and no longer the prerogative of the President to appoint those prosecutors upon proposal of the Minister of Justice. The amendment will not take effect, however: On October 8, the Constitutional Court of Romania, acting upon a complaint by Parliamentarians representing the PD-L, declared the amendments to be unconstitutional for reasons of breach of procedural rules: The Court argued that the Senate had broken the legal procedure of bicameralism when adopting the law.⁹

⁸ According to art. 57, paragraphs 7-8, of Law No. 303/2004, prosecutors can be delegated for 90 days in a year, and then have the delegation prolonged with another 90 days. This means that General Prosecutor *Laura Kovesi* could delegate *Morar* for 90 days in 2009 and then prolong his delegation for another 90 days, if the new Minister of Justice does not nominate the chief-DNA prosecutor by then.

⁹ Decision No. 1.029 from Oct. 8, 2008 of the Constitutional Court, [see](http://www.ccr.ro/decisions/pdf/ro/2008/D1029_08.pdf)

The DNA and Electoral Campaign Files

When it comes to evaluating the efficiency of the DNA, opinions are split: Some argue that the small number of convictions in (high-level) corruption cases is due to the poor quality of the files prepared by the prosecutors of the DNA, while others hold the courts and judges responsible for the poor sentencing record. The fight against high-level corruption does involve, however, various actors and factors: the suspects, the Parliament (primarily with regard to lifting Parliamentary Immunity or even law-making), the Prosecutors, the Courts etc. With all this complexity in mind, DNA is still perceived as the main actor in putting together the corruption files and conducting the investigations. Thus, its work is and has to be under continuous public scrutiny. In the past two months, news about DNA's investigations had filled the media. This is believed to be (by those who consider that the work of the DNA is under political control) a consequence of the electoral campaign. As such, DNA files could have served as ammunition for electoral battles, but looking at its recent activity it is difficult to make any observation of the kind.

According to the website of the DNA, November was a month of relatively small cases for the Directorate's prosecutors. Apart from investigations against police officers or civil servants in the Bucharest City Hall, few cases have drawn public attention. Among the latter are: The director of the biggest power plant in Romania (Turceni Energy Complex) who is suspected of abuses against the public interest (equivalent to corruption under Romanian law); the general director of the National Health Insurance Office in Tulcea for bribery, or older cases with new investigations such as the Romanian Post case or the National Railway Company case.¹⁰

Apart from the older case of the Romanian Post which involves two former ministers, one member of the National Integrity

¹⁰ <http://www.pna.ro/>.

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

Council (CNI)¹¹ and many others, there have also been some more politicized cases. The Vice-President of the PSD, and President of the Teleorman County Council, *Liviu Dragnea*, is under criminal investigation by the DNA prosecutors for illegal use of European funds. *Dragnea* characterized the situation as an electoral attack launched by President *Basescu*.

A second important case with which the DNA dealt during the electoral campaign was that of the PNL candidate *Virgil Pop* who was arrested for influence peddling. *Pop* also maintains that this accusation was a political instrument in the electoral campaign. The irony of this case is that though in prison, *Pop* won a seat in the Parliament as a result of the elections. Another candidate from a rather unknown party, the National Christian Democratic Party (PNCD), is also under criminal investigation for paying a bribe to a court clerk in order to obtain a favorable court decision.

Irrespective of whether these cases are connected to the electoral campaign or not, they show that DNA is still working regardless of all the (mostly political) obstacles in its way. According to *Morar*, high-level corruption cases are the top priority for the institution which he still runs, at least until the end of the year. Both the Romanian society and the international community are waiting for serious convictions in high-level corruption cases. The fight against high-level corruption should, therefore, become a top-priority for the new Parliament and Government as well. With the new composition of the Romanian Parliament, the DNA might, however, face serious challenges regarding the fight against corruption because many of the "new" old Parliamentarians will most likely try to hide behind Parliamentary immunity as they or some of their colleagues did in the past.¹²

¹¹ CNI is the body entrusted with the supervisions of the National Integrity Agency.

¹² The names of some of the electoral candidates from all political parties who made it to the Parliament despite the

Integrity vs. Corruption – The Case of ANI

With the National Integrity Agency, Romania – in fulfilling one of various accession requirements – has established a unique body dealing with the control of conflict of interest situations and unjustified wealth. ANI is perceived at the European level as a crucial institution for combating corruption, and its work is closely monitored by the European Commission under the post-accession verification and cooperation mechanism.¹³

ANI once again put to test

As so often happens in Romania, both institutions and persons that benefit from EU support and appreciation come under attack. ANI is no exception to this, and its very ability to function has been put to test. One of the more recent attempts to challenge the institution's mandate, and reduce its capability to work efficiently, was a petition to the Romanian Ombudsman submitted by the CSM: In October of this year, the President of the CSM, *Lidia Barbulescu*, acting on behalf of various Magistrates, asked the Ombudsman to file a complaint with the Romanian Constitutional Court regarding the constitutionality of the ANI Law (Law No. 144/2007 with the modifications as of May 2008). *Barbulescu* petitioned the Ombudsman after a great number of Magistrates had not met the deadline to submit their assets declarations as required by the above-mentioned law. The CSM's petition challenged the publication of assets declarations in as far as the protection of personal

fact that they have a well-known corruption track record are enumerated in an article which appeared in Cotidianul newspaper on December 2, called "DNA has its own Parliamentary Group" ("DNA are grup parlamentar"), [see http://www.cotidianul.ro/dna_are_grup_parlamentar-66471.html](http://www.cotidianul.ro/dna_are_grup_parlamentar-66471.html).

¹³ See Benchmark 2: Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

information according to the right of privacy was concerned. The CSM based its petition on a Constitutional Court decision from April 2008 on the unconstitutionality of Law No. 115/1996 regarding the control and declaration of assets in which the Constitutional Court found the respective law unconstitutional. Among the provisions declared unconstitutional were those related to the confiscation of unjustified wealth, which was contrary to the Constitutional guarantees of private property, and also to the publication of declarations of interests and of assets, which according to Law No. 115/1996 did not fall under the general protection of confidential data. As such, the publicity of declarations under the ANI Law should also be declared unconstitutional, the CSM argued, as the Constitutional Court should be bound by its previous decisions. The CSM did, however, not take into account that personal data (apart from the name) are not included in the assets declarations submitted to the specialized offices in the respective institutions and are in any way protected by Romanian legislation in as far as its publication is concerned. The Ombudsman must have felt the same way about it: He found the request unfounded, and decided not to submit it to the Constitutional Court. The Superior Council of Magistracy's petition was considered by most observers as an attempt to create further obstacles for ANI's activities, and to deprive the agency of one of its main attributes, i.e. ensuring transparency in the public sector. Harsh reactions also came from the Romanian President¹⁴ and even the Minister of Justice¹⁵, as well as

¹⁴ President *Traian Basescu* said, according to a press communiqué on the Presidential Administration website on October 6, 2008, that regrettably despite the lack of progress in the CSM's activity during the mandate of *Lidia Barbulescu*, CSM is more interested in how to block ANI's activity in controlling the assets of officials, rather than trying to comply with the EC recommendations.

¹⁵ *Lidia Barbulescu* accused Minister *Predoiu* that he also voted in favor of petitioning the Constitutional Court during the CSM meeting when the assets declarations were discussed, but afterwards sent a letter criticizing this decision. [See](http://www.realitatea.net/lidia-barbulescu--csm-) <http://www.realitatea.net/lidia-barbulescu--csm->

from civil society representatives, such as Transparency International Romania.¹⁶

ANI has been made operational in May 2008. If one looks at the institution as a whole, one can conclude that ANI is doing its job despite the various operational and technical deficiencies with which it is coping.¹⁷ Though few cases on which ANI has worked have so far caught public attention, many inspections led by ANI make it to court every week, among which are the cases of two Parliamentarians, *Daniela Buruiana*, former deputy of the Greater Romania Party (PRM), and *Stelian Fuia* (PD-L) both for fake declarations.

**ANI and the National Integrity Council:
Who watches the watch-dog?**

When it comes to conflicts of interests and ANI's work, much of the attention goes to the National Integrity Council. According to the Law establishing ANI (Law No. 144/2007), CNI works under the control of the Senate, and has a primarily supervisory role: The Integrity Council analyses ANI's activity reports, nominates the President and Vice-President of ANI (appointed by the Senate), makes recommendations regarding ANI's activity, and conducts an annual audit of the Agency. CNI does not have the right to get involved in ANI's activities, nor does it have the right to refer certain cases to it.

[este-vanat-inca-din-2005--iar-predoiu-a-votat-si-el-neconstitutionalitatea-legii-ani_360796.html](http://www.transparency.org.ro/stiri/comunicate_de_presa/este-vanat-inca-din-2005--iar-predoiu-a-votat-si-el-neconstitutionalitatea-legii-ani_360796.html)

¹⁶ In a press release by Transparency International Romania on October 2, the CSM petition is characterized as a "serious breach of the transparency standards which should govern the activity of any person in service of a public institution." It also harshly criticizes the CSM's ("autocratic and autarchic") approach towards the balance of powers in society and the protection of the general interest. [See](http://www.transparency.org.ro/stiri/comunicate_de_presa/index.html) http://www.transparency.org.ro/stiri/comunicate_de_presa/index.html

¹⁷ Among the latter is the filling of the post of Vice-President of ANI which is still vacant after several contests during which none of the candidates passed the exam.

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

The de facto relationship between ANI and CNI has, however, not been as clear-cut as the law states it.

The *Draghici* Case: An Integrity Council without Integrity?

In September 2008, one of ANI's integrity inspectors reported to the institution's Secretary-General and President that a CNI member, lawyer *Alice Draghici* (who represents the Conservative Party - PC) pressured her to stop an investigation regarding *Serban Bradisteanu*, a former Senator for the PSD who happens to be *Draghici's* client in a criminal law case. Subsequently, ANI's President, *Catalin Macovei*, asked the CNI to determine the unlawfulness of *Draghici's* interference, and to inform the Senate about it. The CNI forwarded the documents presented by ANI to the Legal Committee in the Senate to decide on the case. It did so without taking an explicit stand on the conflict of interest situation concerning lawyer *Draghici*.¹⁸ It did not come as a surprise that the Senate did not take punitive measures against *Draghici* because she, like other CNI members, is nominated by the political parties (in her case PC) in the Parliament. What was disappointing, however, was that the Senate did not even approach the case from an incompatibility or conflict of interest point of view, but instead treated it as a conflict between the two institutions (i.e. ANI and CNI), and merely asked them to co-operate with each other – which is a most unsatisfactory treatment of the issue indeed.

The President of ANI, *Catalin Macovei* felt the same: At the beginning of November, he sent a new request to the CNI asking the Council to take all necessary legal measures

¹⁸ The civil society however reacted to the situation created by *Alice Draghici*. In a press release by Transparency International Romania on September 19, the CNI is asked to "debate and analyze with celerity the risks raised by this situation" and to ask the Senate to revoke *Draghici's* mandate as CNI member. See http://www.transparency.org.ro/stiri/comunicate_de_presa/index.html

to revoke *Draghici's* mandate as member of the CNI for reasons of conflict of interests and incompatibility. The result of the debate among the members of the CNI did not come as a surprise to those familiar with Romanian politics (in particular in the justice and corruption field): The majority of the Council members hid behind formal-legalistic arguments which are popular among Romanian jurists and politicians alike. They argued that the Law establishing ANI neither stipulated any situation of the kind, nor did it provide for the possibility of the Council to take any measures against one of its members, e.g. in a conflict of interest situation. Hence, the CNI did not have the legal mandate to decide or express an opinion on the matter.

For the observers present at the public CNI meeting (among which were the authors of this report), the approach taken by the majority of the members of the CNI with respect to what obviously was an incompatibility/conflict of interest situation and, even more, an interference with ANI's operational independence, was disappointing. Notwithstanding the absence of a legal prerogative to deal with such cases by the Council, the CNI members could have at least expressed their opinion on the matter from an ethical and integrity point of view. *Codru Vrabie*, the representative of the civil society within CNI, was the only one to ask the CNI to petition the Senate to dismiss *Alice Draghici* even before *Catalin Macovei* sent his request to the CNI. Another CNI member, who was absent at the respective meeting (November 6) however, sent a letter to the President of the CNI in which he asked *Alice Draghici* to resign from the Council.

Naturally, *Draghici*, herself, should have resigned from the Council, in her and her client's interest, and in order to protect the reputation of the Integrity Council. Instead, *Draghici* openly proclaimed that she was innocent and did not see anything wrong in her behavior.

Various CNI members argued that in *Draghici's* case there has not been an investigation by the Senate proving that she was in fact in a conflict of interest situation, and

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

that she interfered with ANI's independence. Without even discussing the particular circumstances of *Draghici's* interference (to which she has admitted), the mere fact that she is both a CNI member and the lawyer of someone investigated by ANI poses an incompatibility issue. A case which is at least an apparent incompatibility should have roused some reaction from the members of a body which works on integrity issues: All public officials have a duty to avoid any conflict of interests, be it real, potential or apparent.¹⁹

Instead, CNI declined any responsibility in the *Draghici* case, and simply signed the petition already sent by CNI-President *Marcu* to the Senate. With this purely formal endorsement, the CNI members missed the opportunity to make a clear statement in an obvious integrity issue.

As soon as the *Draghici* case drew public attention, other problems of the integrity bodies (ANI and CNI) came to the fore: ANI started investigating the declarations of assets of CNI members, and discovered that *Draghici* was one month late in submitting her declaration. At present, the issue is being dealt with by the Bucharest Court of Appeals. The verifications also revealed that eight of the CNI members are already in an incompatibility situation, as they fulfill two remunerated public offices (that of CNI members and that of mayors, magistrates etc.).²⁰ CNI member *Tiberius Florin Tanase* is tried by the Bucharest Tribunal for corruption (he modified the results of an exam for a public function within the Ministry of Labor). Similarly, another CNI member, *Zaharia Lefter*, is under criminal investigation

in a major corruption file concerning the Romanian Lottery.

Does it follow from all this that we have a National Integrity Council without integrity? There are good reasons to suspect we do. And the majority of members of the CNI do not seem to care much about the Council's damaged reputation, as their response to a submission by the civil society representative in the CNI, *Codru Vrabie*, showed: *Vrabie* proposed the adoption of a Regulation regarding the functioning of CNI, as well as a set of norms regarding the conduct and deontology of CNI members. Once again, the majority of CNI members (many of which did not even bother to read the proposal which had been sent to them in advance of the public session) resorted to formalistic-legalistic arguments which supposedly did not allow them to adopt the proposed "Code of Conduct" – an easy way to avoid taking responsibility, and a lost chance to improve the Council's reputation.

ANI, too, has in the recent past been subject to criticism in the media for the way in which the contest for the position of Secretary General of the Agency was conducted.²¹ The issue came up in the context of the vacancy for the Vice-President of ANI, a selection process which is managed by CNI. *Horia Georgescu* (counselor within the Ministry of Justice, first for ex-minister *Tudor Chiuariu*, and then for *Catalin Predoiu*) had a six-month interim mandate as Secretary-General of the Agency, although he didn't meet all the requirements for the job. The Law no. 188/1999 regarding the Status of civil servants allows for a person who does not meet all the requirements of the job to take the exam for this position if he/she is the only candidate. The media reports that the conditions for the exam were modified by

¹⁹ See Art. 8 (1) of Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials, Council of Europe: [http://www.coe.int/t/dg1/greco/documents/Rec\(2000\)10_EN.pdf](http://www.coe.int/t/dg1/greco/documents/Rec(2000)10_EN.pdf)

²⁰ A presentation of each of the CNI members can be found on the Clean Romania website, while their declarations of assets are available on ANI's website.

²¹ According to an article in *Cotidianul* on November 4, 2008, „Concurs cu dedicatie la Integritate: interimarul ia postul” (Contest with dedication at the Integrity Agency: The interim Secretary General gets the post). See http://www.cotidianul.ro/concurs_cu_dedicatie_la_integritate_interimarul_ia_postul-63343.html.

Konrad-Adenauer-Stiftung e.V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

DR. STEFANIE RICARDA ROOS
CORINA REBEGEA

9 December 2008

www.kas.de/rspsoe
www.kas.de

the Human Resources Department of ANI (which is subordinated to the Secretary-General, i.e. to *Georgescu*) so as to leave *Georgescu* as the only candidate. After having taken the exam, *Georgescu* became the full-fledged Secretary-General of ANI.

Concluding Observations

On November 25, news about the European Union (EU) cutting 220 Million Euros due to Bulgaria's failure to tackle corruption and organized crime were released. Those who are unfamiliar with the Romanian mentality would think that this news might worry and alarm Romanian decision-makers and politicians alike. The prospect of EU sanctions, however, hardly plays a role in Romanian political debates in between European Commission reports, and has little deterrent effect: The new electoral system seems to have absorbed most of the energy in the Romanian public sphere, while important decisions – like the nomination of the new Chief Prosecutor of the DNA or the adoption by Parliament of the new Criminal Code and Criminal Procedure Code – are left for the new Government and Parliament to resolve. What happened to Romania's Southern neighbor is, however, a signal that the state of affairs of the two new EU-Member countries does not go unnoticed by the EU, and that the fight against corruption, among other issues in the justice system, will still receive top-priority treatment. The political struggle and negotiations for the formation of the new government, the person who ultimately holds the office of Minister of Justice, and the constitution of the new Parliament will have a major impact on the future of the justice reform and fight against corruption. Thus, although the electoral competition somehow left aside these important issues, in the light of the up-coming interim report of the European Commission, politicians should turn their attention towards Romania's obligations to its European partners.

With a tight score between the PSD and PD-L, Romania awaits the new Parliament and the new Government with a fair amount of expectation. The new leaders will not have an easy task in dealing with the problems

confronting Romania today, which is particularly true for the new Minister of Justice. Drawing on the previous experience of how checks and balances are understood by Romanian politicians, one can only hope that the new Parliament and Government will not leave important decisions to political whims.

While Romanian politicians should not forget the responsibilities and obligations they assumed upon the country's accession to the EU, they should also be aware of their responsibility with regard to the fight against corruption towards their country-men because of the impact corruption has on all levels of society. The United Nations Convention against Corruption summarizes the dangers of embedding a sense of impunity within a society's political and civil culture: Corruption "undermines the institutions and values of democracy, ethical values and justice and jeopardizes sustainable development and the rule of law".²² The mandate of a Parliamentarian is given to a politician in the interests of the citizens he or she represents, and not in his or her own interests. Effectively fighting corruption falls among the former, if not the latter. One can only hope that the newly-elected Parliamentarians will exercise their mandate accordingly – even though, given the election results, expectations with regard to this are not very high.

²² See

http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf