

DNA (National Anti-Corruption Department) a Specialized Structure for Combating High Level Corruption in Romania

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Abstract:

During the same period of time, more precisely in 2002, the first prosecutor's office specialized in investigating corruption offences was set up as an independent structure, called the National Anticorruption Prosecutor's Office (PNA). Currently, the anticorruption prosecution structure functions as a Department within the Prosecutor's Office Attached to the High Court of Cassation and Justice (DNA), yet it still holds many characteristics of autonomy. DNA is led by the General Prosecutor of Romania through the chief prosecutor of DNA, who is assimilated to the prime deputy of the General Prosecutor of Romania.

DNA's jurisdiction does not cover the entire category of corruption offences but only those of high and medium level. The prosecutor's offices attached to tribunals are still in charge with the rest of corruption offences (the small corruption).

DNA has jurisdiction in the whole state, having a central structure in Bucharest, as well as a territorial one. The central structure is divided in sections, services and offices. The territorial structure of DNA is made of 14 territorial services with their offices located in the cities where there are courts of appeal

DNA's activity was constantly followed and appraised by the European institutions in charge with monitoring Romania, and this is to be found in every Report on Progress in Romania under the Cooperation and Verification Mechanism.

Keywords: *high level corruption; DNA (National Anti-Corruption Department); organization and structure; jurisdiction; notification procedure; special methods of investigation.*

1. The DNA's Background

At the beginning of 2000, Romania was in the middle of negotiating its accession to the European Union. On this occasion, the topic of the fight against corruption was re-launched at the national level, as a major issue. Combating corruption was one of the important requirements for closing the negotiations chapter regarding justice and internal affairs. Consequently, a law on preventing and sanctioning corruption was adopted, *i.e.* the Law no. 78/2000 which, *inter alia*, added to the classic corruption offences, that had already been incriminated by the Penal Code (taking, giving bribe, traffic of influence, receiving of undue benefits) a series of new offences, assimilated and connected to those of corruption, suitable for the new political, economic and social realities of the state. The new incriminations reflected the methods used to defraud the public money and the abuse of power, which had become increasingly visible in the

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transition process from a closed economy to a market economy and also in the development of a democratic society. Thus, specific incriminations were introduced with regards to the defrauding of the privatization procedures, or of the procedures dealing with the sale of assets belonging to state institutions or state economic agents (usually by under evaluating the assets in question). Other specific incriminations referred to the use of nonpublic information for the purpose of private enrichment or to the abusive use of influence given by a political position in order to receive undue benefits in favor of certain private persons etc. These new incriminations proved to be modern and necessary, well-adjusted to the social and economic realities, but several years had to pass before these offences could be consistently prosecuted and sanctioned.

During the same period of time, more precisely in 2002, the first prosecutor's office specialized in investigating corruption offences was set up as an independent structure, called the National Anticorruption Prosecutor's Office (PNA). PNA's activity was mainly focused on the aspects dealing with the institution's organization and logistic endowment. After the revision of the Romanian Constitution in 2003, the institutional structure of PNA as an independent prosecutor's office was no longer suitable, a decision of the Constitutional Court stipulating that it couldn't investigate Members of the Parliament, the jurisdiction for such cases belonging only to the Prosecutor's Office Attached to the High Court of Cassation and Justice. Thus, in 2005, in order to keep the highest category of state dignitaries under the jurisdiction of the anticorruption prosecutors, the status of this institution's structure was changed. Currently, the anticorruption prosecution structure functions as a Department within the Prosecutor's Office Attached to the High Court of Cassation and Justice (DNA), yet it still holds many characteristics of autonomy. It is worth mentioning here that the specialization of the anticorruption prosecutors, the setting up of specialized structures for combating this type of crimes, either as prosecutor's offices, police units or any other type of body, is not a solution only to be found in Romania. The international conventions in this matter recommend setting up anticorruption specialized authorities, endowed with the necessary legal framework and technical and material resources.

A first example can be found in Spain. Moreover, the setting up of the anticorruption prosecutor's office in Romania was the result of an institutional twinning project financed by UE, in partnership with the Anticorruption Prosecutor's Office from Spain. Several anticorruption prosecutor's offices have been set up since then in Austria, in Moldova, or prosecutor's offices specialized in combating economic crimes including corruption, such as the recently created Financial Prosecutor's Office in France or the Prosecutor's Office OKOKRIM in Norway (a country located at the opposite side from Romania when it comes to the level of corruption, but who considers this topic to be a priority). There are prosecutor's offices specialized in combating organized crime and corruption, such as USKOK, from Croatia. In other states, there are anticorruption agencies with police or administrative functions.

2. The DNA's organization and structure

DNA is led by the General Prosecutor of Romania through the chief prosecutor of DNA, who is assimilated to the prime deputy of the General Prosecutor of Romania. He is assisted by two deputies assimilated to the deputies of the General Prosecutor of Romania.

The appointment of the chief prosecutor of DNA, of his/her deputies and of the chief prosecutors of sections follows the same procedure as the appointment of the general prosecutor, of his/her deputies and of the chief prosecutors of sections from the Prosecutor's Office Attached to the High Court of Cassation and Justice. This procedure implies the proposal of the candidate by the Minister of Justice, the approval of the Superior Council of Magistracy and the appointment by the President of Romania. The mandate of the chief prosecutor of DNA and of the other prosecutors with management positions is of 3 years with the possibility of renewing it once. DNA has jurisdiction in the whole state, having a central structure in Bucharest, as well as a territorial one.

The central structure is divided in sections, services and offices. The territorial structure of DNA is made of 14 territorial services with their offices located in the cities where there are courts of appeal. Both the central structure, and the territorial services have the same material jurisdiction, but the territorial services usually prosecute cases regarding facts committed in their area of territorial jurisdiction. The prosecutors' activity is carried out according to the traditional division of criminal proceedings, *i.e.* the criminal investigation stage and the trial. Therefore, the central structure is divided into criminal investigation sections (carrying out the inquiries) and the judicial section (functioning with prosecutors who plead the DNA cases in courts, both on the merits of the case as well as on legal remedies the means of appeal, are working).

A feature that illustrates the specificity of the National Anticorruption Department and distinguishes it from the other prosecutor's offices is the fact that DNA is a complex structure. The prosecutors of the National Anticorruption Department are supported in their activity of criminal investigation by police officers, and specialists in the economic, financial, banking, customs, IT fields. 145 prosecutors, 220 judicial police officers, 55 specialists, as well as 200 auxiliary, administrative and economic personnel are employed by DNA.

To be appointed in DNA, the prosecutors need to have at least 6 years of experience and a good reputation. They have an unlimited mandate in DNA. The police officers are seconded by order of the Ministry of Internal Affairs for 6 years that can be renewed. Once seconded, the police officers are paid by DNA, they work under the direct leadership and control of the DNA prosecutors and do not keep any link of command with the hierarchy in the Ministry of Internal Affairs. This way, working in mixt teams is insured and the risk of information leaking is minimized. The DNA specialists are also a very useful category of personnel in corruption investigations; they are highly-qualified people in fields such as economy, finances, banking, customs, IT etc., their task being to clarify the technical or economic details necessary to prosecutors in their criminal investigation activity. Prosecutors ask them to draft experts reports that can become pieces of evidence in the file (such as: the assessment of the damage caused as a result of the offence; the explanation of the fraud mechanism used in a public procurement or privatization procedure, the explanation of the financial circuit of the money laundering coming from bribery etc.).

3. The DNA's jurisdiction

DNA's jurisdiction does not cover the entire category of corruption offences but only those of high and medium level. The prosecutor's offices attached to tribunals are still in charge with the rest of corruption offences (the small corruption). Why this

separation and why was this a very good decision? In order to answer these questions, one should remember the strong critics addressed to Romania during the pre-accession negotiations since, at the time, prosecutors used to focus only on investigations related to small civil servants, the last links of sophisticated but undisclosed networks, the number of these files being large, but their relevance and impact upon the system being absolutely irrelevant. This has substantially changed since the specialized prosecutors have started investigating large and complex cases, related to civil servants in high positions, state dignitaries placed on top of the criminal pyramid, and the courts have started confirming the investigations of the anticorruption prosecutors, by ruling final conviction decisions.

The jurisdiction of DNA, as established by the law, is defined by three

- the public positions owned by the persons suspected to have committed a corruption offence;
- the value of the caused damage;
- the value of the given or received bribe.

Briefly, at present, DNA is competent to investigate and prosecute cases regarding the following categories of criminal offences:

- Bribery offences – if the value of the bribe is over 10.000 Euro;
- Offences assimilated to corruption, incriminated by the Law no. 78/2000, such as: establishing a diminished value of the assets of a company in way of privatization, using information obtained by virtue of the official position or duty in order to carry out financial operations incompatible with the position or duty, using the influence as leader of a political party, trade union, or a non-governmental organization, all these in order to obtain undue advantages – if the value of the damage caused is over 200.000 Euro;
- the same two categories of offences, regardless the value of the bribe or damage – but when they are committed by persons with certain high level public positions (*i.e.* Members of Parliament, Members of Government, generals, magistrates, prefects, mayors, police officers, directors of national companies etc.);
- Offences against the financial interests of the European Communities – regardless the value of the damage;
- Serious economic offences, such as abuse of office, diversion of public tenders, usurpation of functions – if the damage caused is over 1.000.000

One of the key factors of a successful activity of an anticorruption prosecution office is the inter-institutional cooperation, to be more precise – the support that the state institutions with attributions of control, audit, law enforcement and intelligence agencies have to give to the anticorruption prosecutors, by sending them all the data they have regarding the perpetration of the corruption offences, or other data that could help the investigation of this

Thus, according to the law, the state agencies with control attributions, intelligence services and police – are under the obligation to provide DNA with all the data and information they detain regarding the perpetration of corruption offences that fall under the DNA competence. Besides providing DNA with information regarding the perpetration of corruption offences, these state agencies, according to their competence, give also further assistance to the investigations carried out by DNA, following the prosecutors' request.

4. How does the DNA get notified?

In the daily activity of the National Anticorruption Department, the most frequent ways to notify the prosecutors about the perpetration of offences under the jurisdiction of this institution are as follows:

Notifications from citizens and legal persons:

- The complaint – a situation in which a person informs DNA, with regards to a damage that was caused to him/her as a result of an offence under the jurisdiction of the Department;

- The denouncement – a situation in which a person who holds pieces of information about the perpetration of corruption offences communicates them to DNA;

- Self-denouncement – a situation in which a person who committed a regards to a damage that was caused to him/her as a result of an offence under the jurisdiction of the Department of information about the perpetration of corruption offences communicates them to DNA corruption offence wishes to benefit of mitigating circumstances or exemption from criminal liability under the law, and notifies the judicial authority about the perpetration of the offence before the latter finds out about it from other sources.

Notifications from public authorities and institutions:

- Notifications received from authorities with control tasks, such as Control Bodies of ministries, as well as of the Prime Minister, the National Agency of Fiscal Administration, the Anti-fraud Department;

- Notifications received from police units;

- Notifications received from other prosecutor's offices;

- Notifications and reports received from services specialized in gathering information.

Ex officio notifications – as a result of the data/information obtained by prosecutors in their current activity or as a result of articles published.

5. Special investigation means

It is generally known that corrupt actions are among the most difficult to detect and prove, due to the secret pact that ties the corrupt and the corruptor, where, as a rule, both partners are happy with the result obtained and have no interest to denounce it, therefore many national legislations provide for special means that can be used in order to facilitate the carrying out of the anticorruption investigations. The Romanian Criminal Procedure Code stipulates a list of special investigative techniques that can be used by the prosecutors and investigators in order to gather evidence and identify perpetrators in cases regarding certain very serious criminal offences, among which corruption and corruption assimilated offences. These measures should be authorized by the judge of rights and freedoms. As a matter of consequence, an anticorruption investigation can use the following special methods:

- interception of communications;

- access to an IT system;

- video, audio, photo surveillance;

- locate and tracking through technical means;

- obtaining financial transactions data;

- seizing postal mailings;

- use of undercover investigators and collaborators;

- authorized participation to certain activities;

- controlled deliveries;
- obtaining of data generated by electronic communications public service providers.

6. The DNA's activity and results

The current year has been probably the most intense in its history and this thing will most likely be confirmed when it ends and the activity is reviewed and assessed. We will provide you with some figures relevant for this year's activity.

In the first 10 months of 2014, over 4000 files have been registered within DNA. The criminal investigation of corruption offences and offences assimilated to it has been conducted in these cases. These files are in different stages of the criminal proceedings.

Over 800 defendants have been indicted, among them being: 8 members of the Parliament (6 Deputies and 2 Senators), 1 State Secretary from the Ministry of Transport, 5 presidents and vice-presidents of national agencies, 1 President of the Romanian Chamber of Commerce, 1 army General, 1 Prefect and 1 Sub-Prefect of a county, 6 Presidents and 1 Vice-President of County Councils, 20 Judges (1 from the High Court of Cassation and Justice), 3 Chief Prosecutors, 3 Prosecutors, 21 mayors, 4 vice-mayors etc.

During the same period of time, when talking about indicted cases (some of them during the current year, but most of them sent to trial during the previous years), it is worth mentioning that final conviction decisions have been ruled against over 1000 defendants, at the end of the criminal proceedings. Among the people against whom such final conviction decisions have been ruled, there have been: the former Prime Minister of Romania, other 2 former ministers, 5 members of the Parliament (4 Deputies and 1 Senator), 2 Presidents of national agencies, 1 Prefect, 2 Sub-Prefects, 22 mayors, 6 judges and 9 prosecutors etc.

As in previous years, the convictions rate in DNA files is of over 90%, which in our opinion, is a very good success rate, one that can be compared to that of prosecutors from other European democratic states and also from the United States of America.

As to the typology of the corruption offences and of those assimilated to corruption, which have been investigated by the DNA prosecutors, it is noteworthy that files revealing fraud and corruption situations from different areas of economic and political life have been opened.

Thus, DNA prosecutors have started criminal investigations in cases dealing with the illegal granting of contracts from public funds, or their execution under preferential conditions, either by involving national public funds or European funds. Criminal liabilities have been recorded to all the decision making levels, from civil servants with competence in the public procurement field, to managers of institutions, of public agencies, to representatives of local authorities (mayors, presidents of councils) – when it involved procurement from local funds – and up to ministers and state secretaries who protected these criminal networks, in favor of approved natural persons or private companies and at the expense of the state budget. There have been situations when the value of the damages was of tens of millions of Euro, and that of the undue benefits was also worth millions of Euro.

The seriousness of these facts is obvious, and they lead not only to the impoverishment of the state and local communities (many times, the projects fraudulently won by companies without economic potential are not executed or are executed poorly),

but such facts also cause the distortion of competition and discourage the investors, either Romanian or foreign.

Many cases, especially those involving the investigation of representatives of local authorities, the so-called local barons, or managers of state agencies, have dealt with offences of taking and giving bribe or abuse of office regarding the restitutions of properties that had been nationalized by the communist regime (forests, plots of land, houses etc.) or the payment of compensations for the properties which could no longer be restituted in kind given the fact that, either the people requesting the restitution or the compensation were not entitled to it, or the compensations were highly over-evaluated. Furthermore, several of the investigated files were related to the deliberate under-evaluation of the assets belonging to the public fund, during their privatization process or their sale in favor of certain people, or by conditioning the issuing of certain authorizations in exchange for the payment of the bribe.

Using pieces of information not meant for publicity by the civil servants who had access to them by virtue of their position and for their own interest was also an area of interest for DNA's investigations. DNA intervened in situations in which the very issuing of pieces of legislation or their content were subject to fraudulent transactions conducted by high ranked officials from the Executive or the Parliament, in order to favor certain people, groups of people or certain companies. This type of offences is particularly dangerous because it undermines the Rule of Law in the most direct way, through the so-called „state capture” – a form of political corruption in which restricted private interests influence the decision-making process of the state for their own personal gain, by using different occult methods.

We also investigated, and these cases were the very first in the Romanian jurisprudence, cases in which leaders of political parties – some at the central level, some at local level – were indicted for offences related to the illegally financing of political parties or electoral campaigns.

The members of the Parliament prosecuted by DNA are a special category, for several reasons. Generally speaking, they have been investigated by the Department for having committed corruption offences or abuse of office committed in their former capacities, usually as mayors, council presidents or managers of national companies. In other cases, their capacity as leaders of a trade union or a party organization, which allowed them to use their influence to receive undue benefits, was relevant from the point of view of the constitutive elements of the offence. In all situations though, their capacity as members of the Parliament was relevant from the procedural point of view. As it has already been mentioned, the parliamentarians can only be tried by the High Court of Cassation and Justice, and their capacity as members of the Parliament raises a procedural impediment (or a protection measure, depending on the viewer's perspective) when it is mandatory to take measures for deprivation of liberty or house search, respectively it is necessary to receive the approval of the Chamber to which the parliamentarian belongs.

Besides, there are also procedural impediments when talking about the criminal investigation of ministers and former ministers, investigations conducted for acts committed during their mandates. Thus, for the criminal investigation of such people, it is necessary to request the approval of the Romanian President or of the Chamber to which the Minister belongs, if he/she is a parliamentarian as well. More than once, our requests addressed to the Chambers of the Parliament, in order to allow DNA to conduct the criminal investigations against a Minister have been denied, and it has happened

regardless of the political party to which the respective minister belonged (from the Governing party or from the opposition ones).

DNA has also sent to trial judges, prosecutors, police officers, most of the time indicted for taking or requesting bribe in order to solve judicial procedures in a favorable manner to the person paying the bribe or to exercise their influence for.

7. International Evaluations

DNA's activity was constantly followed and appraised by the European institutions in charge with monitoring Romania, and this is to be found in every Report on Progress in Romania under the Co-operation and Verification Mechanism. "The professionalism and objectivity of DNA investigations" are highly appreciated. Moreover, in 2014, the European Commission issued the Anticorruption Report of the European Union, a first report of this kind ever drafted at EU level, in which the Union intends to provide an overall image upon the status of corruption, as well as upon the anticorruption measures and policies applicable in every member state. This report highlights DNA as one of the examples of good practice at EU's level. Furthermore, the Euro-barometer survey taken into consideration by the report indicates that the level of trust of the Romanian population in the chances of the anticorruption investigations to discourage corruption exceeds the European average (Ro 34%, UE average).

8. Pillars securing the DNA's success

There is a series of pillars securing DNA's success; pillars that can prove in time to be solid or fragile, according to the political will to keep the pace of the fight against corruption.

A first important element is the complex structure that DNA is provided with by law. Police officers paid from DNA's budget work together with the prosecutors and they are exclusively coordinated by DNA prosecutors (they don't receive orders from their former superiors). DNA prosecutors also work with specialists in the fields of economy, finances, banking, IT etc., who contribute to the clarification of technical, economic details that are necessary to prosecutors in their criminal investigation activity. This activity is conducted in complex teams, which leads to a higher celerity, guaranteeing at the same time the necessary level of confidentiality.

Another advantage is represented by the fact that we enjoy an increasingly higher level of trust from the citizens, and it also helps a lot when it comes to denouncements regarding the perpetration of offences investigated by DNA. The number of notifications received by DNA in 2014 indicates that it has doubled compared to 2013.

The most important aspect for DNA to continue to accomplish its mission is *to maintain the stability of the legislative and institutional framework in terms of combating corruption*. With regards to DNA, we take into account, on the one hand, the legislation ensuring its structure and competences, its financial and human resources, as well as its independence as an institution; on the other hand, the criminal legislation and the procedural criminal legislation providing the prosecutors with the necessary instruments to take action against complex forms of criminality.

In this regard, we can trust the fact that this institution will continue to exist and will accomplish its mission for as long as there are no significant changes in the legislative framework that could limit its jurisdiction, its tasks, its organizational

structure, or that could sink into irrelevance the work of the anticorruption prosecutors through initiatives, such as the one for adopting a law for amnesty and pardoning that can set free the people convicted for corruption offences. It is the right of any state to enact, at certain periods of time, acts of clemency, but they have to address very well balanced criminal policy reasons. At this moment, when corruption in Romania continues to be at an alarming level, such a measure could have a negative impact, the message it transmits to society would be completely disheartening.

Along the years, there have been other legislative initiatives or projects, which were not put into practice and which could have led to a limited capacity of the anticorruption agents to take action. We recall the December 2013 moment, when amendments of the Criminal Code were adopted that were eliminating members of the Parliament from the definition of categories of people who could be held liable for corruption and abuse of office, while the local elected people were eliminated from the category of those who could be sanctioned for conflict of interests. Such measures, once entered into force, would have been in gross conflict with the anticorruption conventions adopted at the international level. Fortunately, following the alarm signal raised by the judicial institutions and the anticorruption agencies, by the European Commission and the civil society engaged in the fight against corruption, this law did not enter into force and was declared unconstitutional.

As a conclusion, the irreversibility of the progress achieved up to the present moment and the continuation of the fight against corruption depends significantly on the political will of our governing people, to approach corruption through a coherent ensemble of public policies that are equally related to the prevention and the fight against corruption. At the same time, we need the support of citizens to refuse to tolerate corruption, to notify us about corruption deeds when they encounter them, and to wish to be our partners in the efforts to create a clean economic and political environment in Romania.