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Whistleblowers in Romania: A Nice Try

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Romania is a country in transition. It is a country traveling from the ice age of democracy towards a destination which looks like democracy.

Radio whistle blowing during communism.

To better understand the quality of a regulatory mechanism like the "whistle blower", one should take a good look into the past in order to define the starting point: what a whistle blower was doing before the fall of the last communist dictator, Nicolae Ceausescu. The few persons having run the risk of condemning human rights violation had, as unique means of expressing themselves, Radio Free Europe - a radio station broadcasting in Romanian from Western Europe. The authors of the sent letters - obviously not mail-sent - to the address of this radio station, who clearly assumed their identity, became non-grata individuals for the communism regime. Paradoxically, the fact that their identity became public not only in Romania, but also in Western Europe, offered them a sort of immunity against harsh repressions, as Ceausescu's regime might have wanted to preserve its international image. They were strictly watched, possibly under severe house arrest, yet - and that was a peculiarity of the last two decades of communism - they were neither completely deprived of their freedom, nor were they physically abused. Nevertheless, the radio station journalists were physically attacked - victims of attacks committed by secret agents of the Romanian Securitate. The Institute for the Investigation of Communist Crimes in Romania filed penal complaints against five persons suspected of having committed terrorist activities: they are believed to have planned the attacks with explosive packages sent, in 1981, to Munich, to the addresses of three journalists working for Radio Free Europe. One of the suspects is Carlos, "The Jackal", who put into practice a plan conceived by the Romanian Securitate. Some of the suspects are still alive, some having prominent social statuses; one of them died, under suspicious circumstances, right after the fall of communism (1991) and after he had denounced himself and had related details about the attack. The denunciation of the abuses and of the human rights violations during the last communist decades was possible only outside Romania, with lesser risks for the whistle blowers than for the employed media channel.

The job hazards after communism, but before the bill being passed.

At the beginning of the nineties, after 50 years of compelled silence, the Romanians had a feast: there appeared some thousands newspapers, hundreds of radio stations and, until the end of the decade, tens of TV stations. The public discourse was extremely loaded with accusations: the media was eager to disclose as many deeds committed during communism as possible: the affiliation to the former Securitate and to the communist party apparatus were the most frequent ones; gradually, the present has gained ground against the past, as the contemporary corruption deeds have become the main subject, while many times the protagonists have remained the same - the former apparatchiks and Securitate agents being the category providing the chief beneficiaries of dubious privatizations and, some years later, the main Romanian billionaires. Since corruption implies the complicity of some public officials, the information within public institutions was crucial. Nevertheless, the transparency of such institutions remained reduced: the superiors actively discouraged, by means of internal order regulations, the employees' possibility to contact the media, whereas the employees inherited the defensive, obedient mentality, specific to the communist epoch. However, "inside" information got to the media, almost exclusively under the anonymity protection. A sensational exception, not only for the nineties, but also for the present, was the public appearance of captain Constantin Bucur - officer of the Romanian Intelligence Service (SRI) - who denounced, in 1996, during a press conference, the fact that SRI was illegally taping the phone conversations of businessmen, politicians and journalists, presenting, as evidence, several audio recordings. The officer was sued by the institution he accused, on the grounds of infringing the service secret. For a period, he had provided himself with immunity, by having become a Parliament member, for a party that had offered him this opportunity. Today, captain Bucur, retired because of health reasons, is still waiting, together with some of the persons the phones of whom had been taped, for the ruling of the European Court for Human Rights - body which was informed upon the facts some years ago. Within the

context of that decade, Bucur's initiative was an exception. The characteristic feature of both institutions and public officials is still the phobia towards transparency.

The transparency honeymoon: the pre-adherence to the European Union epoch.

The most fortunate period for the institutional reform with a view to increasing transparency and promoting the means needed to fight corruption was that between the adhering negotiations starting moment (Helsinki, 1999) and the proper adherence (January, 1, 2007). The institutions reform, closely connected to the general target - corruption fighting - was one of the most ardent chapters of the process meant to "turn Romania into an European country". The enthusiasm of the authorities was obvious especially in the case of redefining the normative framework. Hence, the "transparency" bills have been passed: the free access to information bill, the decisional transparency bill ("sunshine law") and the integrity warning bill ("whistle blower", 2004). In 2007, three years after they had been passed, several NGOs (Transparency International - Romania (TI-R), Pro Democracy Association, Center for Juridical Resources, Concept) initiated a vast campaign of evaluating the quality of "whistle blower" bill implementation. The manner in which the bill is formally put into practice was tested, as well as the penetration level of the spirit of the law in the institution functioning. The procedure had in view both the central administration - the ministries - and the local one - city halls and prefect's offices in several counties.

Inertia beats fiesta

The conclusions of these inquiries bring up important discrepancies between expectations and accomplishments.

The ministries - mediocre students.

We are going to illustrate this assertion by quoting some of the conclusions of the TI-R report on the ministries. The first ascertainment does not concern the integrity warning bill, but a bill which was used as a working tool: the free access to information bill. Requesting information on the integrity warning bill being put into practice was done on the basis of the free access to information bill. This one is three years older and it has come as a surprise for the inquirers when they have found out that there still are ministries disregarding the bill being put into operation: out of the 15 ministries the request for information was sent to, the Foreign Affairs Ministry and the Finances Ministry simply ignored the questions forwarded by TI-R. From the responding ministries, three have not even formally put the "whistle blower" bill into practice: it compels the public institutions to modify their internal order regulations with a view to harmonize them with the legal provisions. The National Defense Ministry responded that it had no competences in modifying its internal order norms, although the existing norms were approved of by a Minister's Decree - therefore, within the area of the ministry competences. The Ministry of Interior and Administration has stated that there is no need to modify the regulations since the integrity warning bill is directly applicable; the remaining ministries, having exceeding the deadline stipulated by the bill for regulations modifying. As an end of this ministries analysis, it is worth mentioning the champion of lack of transparency: the Ministry of Economy and Commerce. This ministry did not respond to the written request, forwarded on the basis of the free access to information bill; but, over the phone and asked why no information was sent on interior regulations having been modified in order to ascertain the fact whether they were consistent with the whistle blower bill, a ministry official harshly answered: "the organization and functioning regulation is strictly secret!"

Local level - "between ignorance and bill ignoring"

The inquiry carried out by the NGOs group also included the local public administration. Seven of the existing 40 counties were scrutinized in this analysis. Here are some of the conclusions. The public institutions do not observe the law - the interior regulations have not been modified; the public officials are

not familiar with the law whatsoever, while those who found out about its existence consider it to be inapplicable as they say that the promised protection cannot be granted; the general fear of repercussions for one's attempt to draw attention to violations of the law committed in the institution could not be diminished. This was a characteristic feature for most of the analyzed counties (Dambovita, Constanta, Gorj etc.). Nevertheless, a conclusion saying that the law is inefficient is a static photograph of the phenomenon. The fact that there were also identified examples of good practice has made the diagnosis more complete: the law is inefficient in the absence of certain conditions favoring its being implemented. In one of the counties (Galati) the city hall and the prefect's office introduced vast parts of the law within their internal regulations; another public institution was prompt to do the same when requested to provide the information upon the law being put into practice stage. The study we quote from also carried out certain estimations of the public officials' integrity state - there were followed possible cases of interests conflicts involving decision making persons working in those public institutions. By comparing the inquiry results in two counties - Vrancea and Galati - we might intuit the existence of a certain relationship between the corruption level and the quality of implementing the integrity warning bill. In Vrancea - leading county of the corruption cases discovered during the last years - there were found out 7 cases of incompatibility of some public officials (their interests conflicts violate the legal provisions) and tens of other interests conflicts situations (members of the local council who are share holders in companies having contracts with the respective public institution); in Galati county there was found only one incompatible public official and another in an interests conflict which does not reach the incompatibility level. While in the most corrupt county the whistle blower bill is not put into practice, the other county is an example of success. To conclude, we may speak about greater chances of the law there where corruption represents an exception, in contrast with the situation of administrative structures which became captive to the corruption phenomenon.

Whistle blower - a necessary sacrifice?

The generalized fear of self public exposure while attempting to signal presupposed law violations can be explained by taking into account the long tradition of absolute obedience. In the authoritarian society, as we illustrated above, such kind of gestures turned one, in the most fortunate case, into a social pariah. After the fall of communism, the institutional reaction towards the whistle blowers is still dreaded, even if the consequences level is not necessarily generalized - as in the case of the intelligence officer who saved himself by getting a parliamentary status. Therefore, fear is the main reason for discouraging the whistle blower. Nevertheless, there is a positive reason for encouraging such a behavior: the desire to put an end to law violations; and we should take it into consideration. The righteous motivation is, after all, the main driving force behind such an action. The idea that, by denouncing a law violation, one might stop a bad-doer represents a priority, as risks estimation - that is the fear - coming in secondly on the way of taking the decision of getting public or not. Well, supposing that the righteous person is stronger than the fearful one and he gets public accusing his bosses/co-workers of corruption deeds, what will happen to the righteous motivation if he discovers that his sacrifice has had no effect whatsoever? In Romania during the last several years, an important campaign has been carried on in order to promote the efficiency of the institutions that should instrument the fight against corruption. For instance, there was set up a specialized department of the anti-corruption prosecutor (Anti-Corruption National Department - DNA) and, more recently, an institution intended to penalize the public officials who violate the integrity rules: the Integrity National Agency (ANI). An ANI prerogative is to verify whether the public officials have correctly filled in their assets and interests statements and whether the stated assets can be justified by their transparent incomes. Both institutions have been, ever since they were just projects, targets of permanent attempts to their efficiency being neutralized by means of intervening in the law on the basis of which they function. There has recently occurred one of the latest attempts to modify the mechanism of replacing the DNA head, by trying to shift this decision to the level of institutions that have been hostile towards corruption exposure. We would like to exemplify the motivation idea for the whistle blower by presenting a recent case involving ANI itself. This institution - with an inquiry mission - is supervised by a kind of Managing Council - The Integrity National Council (CNI). Recently, ANI has finalized its first inquiry on a politician's assets and has notified the court, requesting the confiscation of about 4 million Euros - a sum which cannot be

justified by the statement of the respective politician. One of the ANI officials came forward, a few weeks ago, and denounced the fact that a Council member threatened him and asked him to give up the inquiry of the politician. He added that the respective person is, at the same time, employed as the politician's lawyer in a current penal law suit. The influencing attempt and the interests conflict of the Council member have been analyzed by his co-workers; to the general surprise, despite the evidences, the Council has not succeeded to express a conclusion upon the respective person's deeds; it has only decided to send to the Upper Chamber of the Parliament - the Senate - a report of the situation, thus delegating the ruling to the parliamentary level. The Senate is the legislative body, authorized by law, to decide in the case of CNI members; the senators have not succeeded to rule either: they have decided to send back the task to the Council which should debate the situation and present the Senate with the conclusion and the suggestions for possible measures. Behind this tennis match with the decision ball, we can read the effects of 4 million Euros the earning and the spending of which the politician cannot explain. What does a person experience, when she/he has taken the risk of denouncing a superior, as the authorities cannot react to the reported facts? Which could be the consequences of the result of this match for the potential whistle blowers? Strengthening the process of corruption exposure, especially strengthening the whistle blowers' motivation, primarily depends, as this analysis shows, upon the promptness and quality of the consequences following the corruption deeds denunciation. The protection - provided, for the time being, only formally by the special bill - is just a factor of motivation strengthening.

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