



UNIUNEA EUROPEANĂ
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GUVERNUL ROMÂNIEI
Ministerul Dezvoltării Regionale
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INOVAȚIE ÎN ADMINISTRAȚIE



Instrumente Structurale
2007-2013

Corruption, Confiscation and Asset Recovery policy in Romania

- the assessment of an ongoing process -

draft report 2013



Centrul de
Resurse
Juridice

Introduction

Corruption is essentially a profit-driven crime that is way recovery of proceeds of corruption is essential in curbing it. Sentencing to prison may be ineffective once the corrupt individuals are left to secure or hide their corruption profits. So, a priority for a prosecutor investigating a corruption deal is to seize or freeze the criminal assets so that the confiscation order once issued to be swiftly enforced. Another reason in taking their profits out of their pockets is to deter the defendants in buying out their verdict, blackmailing, threatening the witnesses or undertaking other criminal activities. Once criminal assets are confiscated, another important issue is their disposal so that criminals are prevented in buying them back and the confiscated assets' disposal procedure does not give rise itself to other corrupt deals.

The asset recovery is a lengthy process that involves several domestic and international agencies. In this study, we give a general overview of asset recovery process in Romania and research in details the final court decisions in Romania that have allowed for compensations to the victims of corruption (especially public organisations) as this topic lacks data and it is not covered in official reports on corruption in Romania.

International context

The term 'corruption' has different meanings in different states and its definition depends on the context it is being used. Transparency International defined it in a wide sense as "the abuse of entrusted power for private gain"². In the present study, corruption will be mostly linked to final court decisions and recovery of assets.

The studies addressing the issue of corruption in the EU have shown the need for a joint effort of institutions and legislature altogether. The growing interest on corruption and its practices is due to the need to introduce more transparency and good governance into the European Union as well as to reduce the amounts lost annually because of corruption.

European Commission estimates that one percent of the EU GDP is lost annually to corruption³. At international level, studies suggest that corruption amounts up to 5% of world's GDP⁴. Given the estimated value of assets diverted by corruption or other related financial crimes, the magnitude of asset restitution becomes a key international indicator of progress against corruption.

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² Nicolae, Radu, *Coruptia si politicile anticoruptie*, Polirom, Iasi, 2010

³ COM(2011) 308 final - Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Fighting Corruption in the EU

⁴ World Bank and United Nations Office on Drugs and Crime, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan*, available at: <http://www.unodc.org/documents/corruption/StAR-Sept07-full.pdf>

Corruption triggers also serious collateral damages⁵ to societies, exceeding by far the value of assets involved in the corrupt transactions. Although prevention may prove to be more effective than asset recovery, asset restitution has the undisputed merit of repairing in some degree the damages caused by corruption and it can become a source of funding for development projects.

International organisations joined in the effort against corruption: in 1999, The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions came into force, adopted by The Organisation for Economic Co-operation and Development; in 2001, the Council of Europe developed GRECO (Group of States against Corruption) Review Mechanism; in 2003, the UN General Assembly adopted the Convention against Corruption (UNCAC). Chapter IV of the UNCAC focuses on asset recovery and provides tools for effectively fighting corruption.

Amongst the most effective international asset recovery initiatives are: United Nations Office on Drugs and Crime (UNODC), Stolen Asset Recovery Initiative (World Bank) (StAR), International Centre for Asset Recovery (ICAR), The International Association for Asset Recovery (IAAR), Organization for Economic Cooperation and Development (OECD), Transparency International (TI), Financial Action Task Force (FATF), Organization for Security and Co-operation in Europe (OSCE), U4 Anti-Corruption Resource Center (U4), UNCAC Conference of States Parties (UNCAC COSP).

Once the Stockholm Programme⁶ was adopted, the European Commission received a political mandate to measure efforts in the fight against corruption and to develop a comprehensive EU anti-corruption policy.

According to Special Eurobarometer 374 on Corruption⁷, the most likely institutions to be affected by corruption are related to law enforcement (e.g. tax administration, police, customs, and judiciary). Also, the study shows that Europeans think that corruption is a result of the close relationship between business and politics, of the lack of transparency in the way the public money is spent and the way political parties are funded. “The majority of Europeans continue to believe that corruption is a major problem in their countries. This proportion has dropped only slightly since 2009. Europeans are also more likely to think that levels of corruption have increased in the last three years, and only a small minority perceive the amount of corruption in their country to have decreased.

StAR (Stolen Asset Recovery Initiative) together with OECD Development Assistance Committee wrote in their *Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action* (2011) that “Much of the proceeds of corruption are laundered through the world’s financial centres. It is estimated that USD 20 billion to USD 40 billion are stolen annually from developing countries and hidden in financial centres, yet only USD 5 billion has been returned over the past 15 years”^{8 9}.

⁵ Such damages could include the degradation of public institutions, the weakening of the private investment climate by increasing the cost of doing business, waste and inefficiency, inefficient talent and resource allocation, poor people exclusion from basic health and education.

⁶ Council of the European Union, The Stockholm Programme: An open and secure Europe serving and protecting citizens, 5731/10, Brussels, 3 March 2010

⁷ Special Eurobarometer 374: Corruption Report
http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

⁸ <http://www.oecd.org/dac/governance-development/49263968.pdf>

Among the key findings of the report are issues like the lack of data on international corruption and asset recovery cases or the fact that few donor countries have taken measures in order to trace, freeze and return the proceeds of corruption to a foreign jurisdiction. Based on the key findings and taking into consideration the particularity of asset recovery as a complex process of law enforcement, the recommendations were as follow:

- 1) Adopt and implement comprehensive strategic policies to combat corruption and recover assets.
- 2) Ensure that laws effectively target corruption and asset recovery, and provide the necessary powers to rapidly trace and freeze assets.
- 3) Implement institutional reforms that encourage the active pursuit of cases, build capacity, and improve trust and cooperation with foreign counterparts.
- 4) Ensure adequate funding for domestic law enforcement efforts and foster international cooperation in kleptocracy cases.
- 5) Collect statistics to measure results.”¹⁰

If we were to take a look at the *General observations on the availability of data*¹¹ from OECD DAC’s report, which involves an international component, we would find an amazing similarity with the current situation in Romania regarding the asset recovery process (not necessary with an international component) as it will be shown further on in this study. Aside from the international aspect, the gathering of data on asset recovery has a great importance for domestic decision making.

The asset recovery process needs:

1. Capacity building: the tracing, investigation, seizing and repatriating/re-using capacities have to be developed at national level. Building know-how and practical experience is also a key element.
2. Domestic interagency cooperation and coherent domestic legal framework

⁹ All monetary values have been converted to United States dollars using the approximate exchange rates as of March 2011.

¹⁰ Tracking Anti-corruption and Asset Recovery Commitments – © OECD, IBRD/World Bank, 2011, p. 13

¹¹ “Most countries acknowledged having difficulty in gathering data on asset recovery cases that involve an international component. A number of reasons were cited:

- Data on corruption and asset recovery cases are collected at the federal level, but not at the state/provincial/canton level. In some countries, the federal government was aware of asset returns – because they involved mutual legal assistance requests that went through federal authorities – but was not able to collect information on all asset tracing investigations and freezing orders, because these could be initiated by prosecutors and investigating magistrates at the state/provincial/canton level.
- Data on domestic and foreign cases, whether pertaining to corruption or asset recovery, are not counted separately.
- Data on money laundering offences do not distinguish the predicate offence of corruption.
- Data are difficult to collect because a number of different institutions are involved in investigating and prosecuting corruption (e.g. courts, prosecutors, police, anti-corruption agencies).
- Data on ongoing cases are sensitive and therefore cannot be universally provided. For example, freezing orders that have been issued without notice to the asset holder (ex parte orders) may not be shared where there is a risk that information may be leaked to the asset holder, leading to a subsequent dissipation of assets and destruction of evidence.”

3. Efficient strategies for tracing the assets and the capacity to act quickly to avoid their dissipation

Developments at the European Union level

Identifying and freezing the proceeds of corruption and organised crime is a strategic priority at the European Union level provided by the 2009 Stockholm Programme. Thus, there are more and more European initiatives and strategies in the area of asset recovery and corruption. One initiative propose a Directive on the confiscation and recovery of criminal assets, other established the EU anticorruption report from 2013. The overall aim of all these initiatives is to have a coordinated approach between Member States on confiscation and recovery of proceeds of crime in general, and corruption specifically because corruption and organized crime tend to have a transnational nature within the EU. Several studies report that four out of five EU citizens regard corruption as a serious problem in their Member State and an estimated 120 billion Euros per year is lost to corruption.

At the EU level there are 4 Council Framework Decisions (FD) and one Council Decision on confiscation that harmonise confiscation laws between EU member states¹², enable mutual recognition of freezing and confiscation orders¹³ and facilitate the exchange of information and cooperation between Asset Recovery Offices¹⁴. Despite this legal background, the European Commission stressed out the insufficient recovery of criminal assets in the EU compared to the estimated revenues of organised criminal groups. Also, the amounts recovered annually in the Union cannot be fairly assessed because few member states maintain statistics on the amounts recovered annually from crime and corruption. Gaps have been identified at EU level between the estimated size of criminal profits in a country and the amounts confiscated, or between criminal convictions and number of cases when they have been followed up with effective confiscation¹⁵. Thus, there is currently a live debate at the EU level on the policy options available to consolidate asset recovery process. One option is to use better the existing laws on confiscation and mutual recognition by organizing implementation workshops. Other option is to provide mutual recognition of compensation orders and ensure the primacy of mutual recognition by suppressing the existing mutual legal assistance conventions. The

¹² Framework Decision 2005/212/JHA. Ordinary confiscation, including value confiscation, must be available for all crimes punishable by 1 year imprisonment. Extended confiscation must be available for certain serious offences, when "committed within the framework of a criminal organisation"; and Framework Decision 2001/500/JHA, which obliges Member States to enable confiscation, to allow value confiscation where the direct proceeds of crime cannot be seized and to ensure that requests from other Member States are treated with the same priority as domestic proceedings

¹³ Framework Decision 2003/577/JHA, which requires mutual recognition of freezing orders for a long list of crimes punishable by 3 years imprisonment, or if the 'dual criminality' principle is satisfied (i.e. for any offence punishable in both countries); and Framework Decision 2006/783/JHA, which mirrors these provisions for the mutual recognition of confiscation orders.

¹⁴ Council Decision 2007/845/JHA on the exchange of information and cooperation between Asset Recovery Offices.

¹⁵ COMMISSION STAFF WORKING PAPER accompanying document to the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on the freezing and confiscation of proceeds of crime in the European Union IMPACT ASSESSMENT {COM(2012) 85 final} {SWD(2012) 32 final}

third option is to provide for non-conviction based confiscation, third party confiscation, universal freezing and powers to realise frozen assets. The maximal legislative option (third option) has been recommended by European Commission in March 2012 but Britain announced in June that it would not accept the proceeds of crime directive because it could undermine domestic rules¹⁶.

Policy implementation and developments in Romania

After coming in 75th in 2011, on a corruption scale, Romania ranked 66th out of a total of 174 countries from around the world last year¹⁷. Even though this is an improvement, Romania is still one of the most corrupt countries in the European Union, the only ones that scored even poorer being Italy (72nd), Bulgaria (75th) and Greece (94th).

In 2004, the Ministry of Justice through the National Institute for Criminology published a study¹⁸ on corruption crimes from 1990 until 2004. The long period of time taken into consideration and the political context show the evolution of corruption having as a background profound legislative and institutional change. The analysis of date (recorded corruption crimes) has to be made in connection with the major events that occurred in a certain period of time. For example, between 1990 and 1993 the institutional involvement was very low but on the rise in the next few years. Moreover, some institutions went through restructuring. In the years to follow, bills were passed in order to better legislate actions of corruption (e.g. Law 78/2000 and 161/2003).

In 2002, the National Anticorruption Directorate was created and underwent a series of change in order to better fit what was requested of Romania for its integration in the EU. Moreover, another step in this way was adopting the 2001 – 2004 National Anticorruption Strategy. The latter had as a purpose to bring together all institutional efforts in order to better prevent and control corruption.

The above-mentioned study compiled data from three major institutions: General Inspectorate of Romanian Police, The General Prosecutors' Office attached to High Court of Cassation and Justice, and Ministry of Justice. The study underlined that the main problem when considering court orders as source for information is that their number does not even come close to the real number of acts of corruption.

When analyzing the evolution of the number of corruption crimes investigated by the police, the study reported two opposing tendencies: between 1991 and 1997 there was a rise with 30%, followed by a fall by 10% between 1999 and 2004.

National Institute for Criminology also reported in 2004 that the number of cases solved by the General Prosecutors' Office shows a rising trend from 1991 until 1997 (+ 28,7%), followed by a lowering one between 1998 and 2002 (-6,7%) and then going up again in 2003.

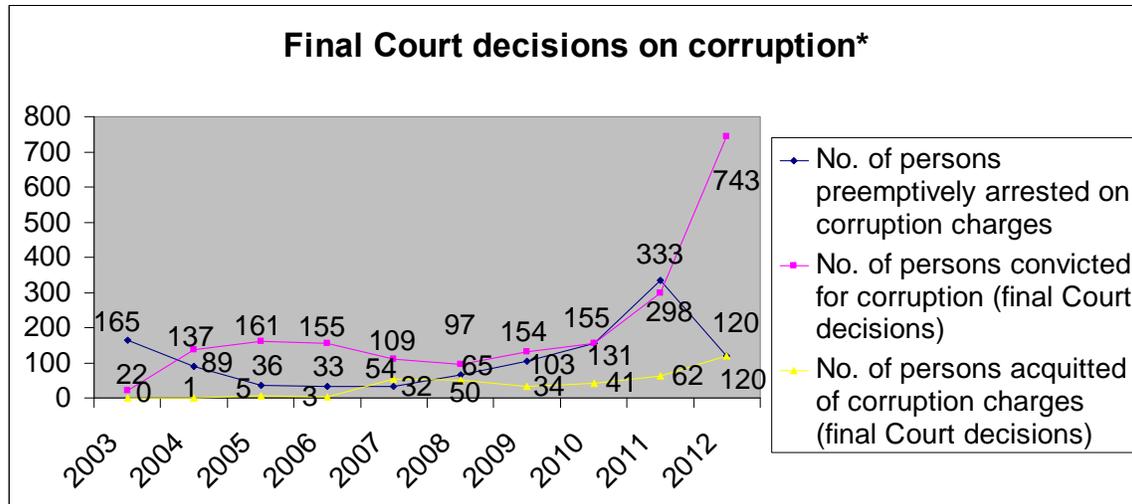
Romania is a country that has been struggling to overcome the defective system and rise to the expectations imposed by its statute as an EU member state. According to recent

¹⁶ 'Line in the sand' drawn as Government exercises EU 'opt out' from Lisbon Treaty, The Telegraph, by Christopher Hope, Senior Political Correspondent, June, 13, 2012.

¹⁷ Corruption Perceptions Index published by Transparency International: <http://www.transparency.org/cpi2012/results>

¹⁸ <http://www.criminologie.ro/SRCC/Lang/Romana/Study/Analiza%20datelor%20statistice%20privind%20infractiunile%20de%20coruptie.pdf>

statistics from National Anticorruption Directorate¹⁹, over the past ten years (2003-2012), 6609 people were sent to trail on corruption charges, out of which 15 were ministers/secretaries of state, 23 Parliament members and over 500 policemen. This ten years statistics shows that over 1131 persons have been pre-emptively arrested on corruption charges. During the last ten years of anticorruption work, 2007 persons have been finally convicted for corruption and 370 got acquitted. Two third of the persons officially charged of corruption are still awaiting a final court decision.



* Cases prosecuted by National Anticorruption Directorate (DNA) - medium and high level corruption.
Source: DNA annual reports

There must be said that there are not many if any national studies on the progress on recovery of assets from corruption. The only sources available are official annual activity reports and there are very few available instruments to verify the information. This lack of transparency on the assets actually recovered come from poor data collection systems and poor interagency cooperation and exchange of information. For instance, the 2012 Commission report stressed that:

“Dissuasiveness of judicial action also relies on the effective pursuit, seizure and confiscation of criminal assets. During 2008-2011, DNA estimated damages of €1.13 billion in cases that reached the courts. The prosecutors seized during the reference period assets worth €532 million. In 2011, DNA issued seizure orders for assets worth €212 million and effectively seized €167 million. In the same year, the courts ordered convicted defendants to pay €33.3 million in damages to public authorities and state owned companies. €14.7 million was voluntarily returned by defendants during investigations or trials, whilst a further €1.9 million have been returned to the bribe givers who denounced the bribery act.¹¹⁴ However aside from these compensations to civil parties, in corruption case the courts ordered the confiscation of just €320,000. Furthermore, no information is available on the amounts actually recovered by the fiscal authorities. Overall, the track record on asset recovery in the courts appears to fall short

¹⁹ DNA annual reports 2003 – 2013: www.pna.ro

*of expectations. Third-party confiscation remains problematic and with no common vision of practitioners of how to deal with it.*²⁰.

The increase in the anticorruption work will lead in the next period to the increase of confiscation orders. Thus, building the premises for their swift enforcement is of critical importance.

Romania tries to keep up with these developments but reform is incipient. The asset recovery agenda became a priority in the last two years because of the developments at the European level and because of the recommendations provided by European Commission to Romania in the framework of Cooperation and Verification Mechanism²¹. Romania has criminal confiscation (special/ordinary and extended) and civil forfeiture/non-conviction based confiscation regimes. The extended confiscation has been introduced recently in the Romanian legislation – Law no. 63 from April 17, 2012 – and there is no practice available.

Following the 2007 EU directive on Asset Recovery Offices, Romania established in January 2011 its own asset recovery office (ARO). Romanian ARO, officially named National Office for Crime Prevention and Cooperation with EU Asset Recovery Offices (ONPCCRCI), has been established within the Ministry of Justice by reorganization of the former Ministry of Justice' Direction for the relationship with the public prosecution and prevention of crime and corruption. The main role of Romanian ARO is to facilitate tracing and identification of criminal assets and other assets related to crimes that could be frozen, seized or confiscated.

Currently, Romania has special, extended and civil confiscation regimes. The legal and institutional framework in these areas is relatively developed mostly because of the developments at the European level and because of the recommendations provided by the European Commission in the framework of Cooperation and Verification Mechanisms which led to reforms in the judicial system and the fight against corruption.

Regarding the legislation, there has been adopted a new criminal procedure code in 2010 and it is expected that in 2013 a new criminal code will enter into force. Other important laws are: Government Ordinance no. 14/2007 on regulating the modality and conditions for capitalizing the assets which have entered, according to the law, within the private property of the state, republished and Government Decision no. 731/2007 approving the methodological norms for applying the Government Ordinance no.14/2007; Law 63/2012 on modifying and completing the Criminal Code (it introduces the extended confiscation); Law 144/2007 regarding the National Agency for Fiscal Administration etc. Regarding the institutions, in this process of asset recovery, the Prosecution Office, ONPCCRCI, the Courts and ANAF are involved. The role of the prosecutors is to investigate the criminal activities, to freeze assets in order to ensure the possibility of confiscation, to represent the state in criminal lawsuits, to evaluate the damages and to request for confiscation. ONPCCRCI has the purpose of identifying the assets that are

²⁰ Technical Report accompanying the document REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism {COM(2012) 410 final} pp. 29-30

²¹ European Commission Decision no. C(2006) 6569 of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption

related to the crime and other assets that are likely to be frozen, seized or confiscated. The courts decide whether or not the confiscation measure should be taken. The final court decisions regarding confiscation, judicial fines, criminal fines and legal expenses owned to the state are sent to the competent regional branch of the national fiscal agency. National Agency for Fiscal Administration has the role to enforce the special confiscation orders.

In Romania, a criminal case has three major phases: the prosecution, the judgment and the enforcement of the final decision. In each phase several domestic agencies are involved. In a criminal case the parties are the defendant, the one accused of having committed a crime, and the injured party, the one who suffered a moral, material or physical harm. Legal persons may also face criminal liability.

Prosecution phase has the purpose of collecting the evidence in order to send the defendant to court. The activity is conducted by the criminal investigators and the prosecutor. The criminal investigators can be noticed by a complaint or they can initiate an ex-officio investigation if they found out in any way about a crime. The criminal investigators can be police officers from the Ministry of Domestic Affairs or special criminal investigators. For example, special criminal investigators are the officers nominated with this purpose by the commandants of military centres, the officers of border police and captains nominated by the Domestic Affairs Minister. These criminal investigators have a double subordination, administratively they report to the Ministry of Domestic Affairs but in their investigation work they report and are under the coordination of the Prosecutor's Office. For instance, only the Prosecutor's Office may allow a criminal investigator to pursue a case, to collect the necessary evidence, to search, and to reconstruct the scenario etc.

Within General Prosecutor's Office two autonomous structures, with separate budgets, have been established; National Anticorruption Directorate (DNA) and Directorate for Investigating Organized Crime and Terrorism (DIICOT). DNA is specialized in combating large and medium corruption, while DIICOT is specialized in combating and investigation of terrorist offenses and organized crime.

According to the Romanian Constitution, the Public Ministry (General Prosecutor's Office) represents, in the judicial system, the general interest of the society and defends the law order, as well as the rights of the citizens.

In order to find the truth, the criminal investigation authorities are compelled by law to collect all the evidences, whether they incriminate or not the defendant. The evidences must be legally administrated and they can consist in: declarations of the defendant or the other party or witnesses, documents, audio and video recordings, photos, legal and medical findings, expertise. The prosecutor has the duty to check and decide regarding the case in maximum 15 days from receiving the file sent from the criminal investigators²².

During prosecution, the judicial authorities are often put in the position of using preventive measures²³ such as preventive arrest, or protective measures in order to ensure effective investigation or the protection of third parties.

The preliminary investigations are not compulsory; they are carried out when there is not enough information regarding the crime²⁴. For instance, there can be monitored certain

²² Article 261 Criminal Procedure Code

²³ Article 136 Criminal Procedure Code

telephone and/or Internet conversations, there can be conducted only certain investigations or there can be involved undercover agents. The law states that undercover agents act according to a motivated authorization issued by the prosecutor. This authorization can be issued for a limited period of time, maximum 60 days and it can be prolonged with 30 days for well established reasons²⁵.

The precautionary measures can be taken to ensure the possibility of confiscation, as well to guarantee the payment of damages²⁶. These can be materialized in seizing/freezing of the criminal assets and they can be taken by the prosecutor or by the courts. In the first case it is enforced by the criminal investigators and in the second by the bailiff or National Agency for Fiscal Administration. The investigations may have as result stopping the criminal prosecution, starting the criminal prosecution, putting end to criminal prosecution or the indictment.

The second phase is the criminal proceedings that end with a judgment. After analysing all the evidences, the Court issue a decision regarding the confiscation, if this is the case. The special confiscation is a legal seizure without compensation allowed to the state. The assets that are subject to special confiscation are those used for crime or any economic advantage, *derived* from or obtained, directly or indirectly from criminal offences, if it is not used to compensate the damages incurred by the victims of crime²⁷. In this way, it is prevented a new crime. The law states which assets can be confiscated: the assets resulted from committing a crime, if they were the defendant's property or, if they belong to another person, only when that person knew about the purpose of using them; the assets produced, modified or adapted in order to commit a crime; the assets that were given to determine a person to commit a crime or to reward the criminal; the assets that cannot be owned according to the law. If the assets cannot be found, in their place there can be confiscated money or other assets in equivalent. There can also be confiscated assets and money resulted from the exploitation of the confiscated assets. The Court cannot decide the confiscation of the assets required for living or work.

Extended confiscation²⁸ is the confiscation of the assets that were not proven to have a direct connection with the crime, case in which the special confiscation would be taken. What is important in the extended confiscation is the value of the assets gained by a person, directly or with the help of others, value which is highly disproportioned with her licit income. In extended confiscation cases, there may be confiscated also assets transferred by the convicted person or a third person to a family member, the persons with whom the convicted person had established relationships similar to those between spouses or between parents and children, if they coexist with it, legal persons on which the convicted person is in control

During the criminal proceedings, there can also be introduced a civil action which has the purpose to make the defendant pay for the harm done. This can be in nature (reinstatement, return of the assets) or by paying damages. The law admits paying damages for material and moral harm.

²⁴ Article 224 Criminal Procedure Code

²⁵ Articles 224¹ – 224⁴ Criminal Procedure Code

²⁶ Article 163 Criminal Procedure Code

²⁷ Article 118 Criminal Code

²⁸ Article 118² Criminal Code

The Courts' decisions become enforceable on the day they are declared final, which starts the third phase: enforcement of the final decision. The final Court decision / an extract of the decision regarding special and extended confiscations, judicial fines, criminal fines and legal expenses own to the state, is sent by the enforcement Court (criminal enforcement office) to the competent regional General Directorate of Public Finance, which has to confirm is writing the receipt of the address.

Romania uses five main disposal methods: selling assets to the general public, transfer of assets to state institutions or local authorities, transfer of assets to other beneficiaries (churches, NGOs), destruction and restitution. The general deadline for disposal is 180 days with an average disposal time of 103 days.

Methodology and results

Taking into account the general overview previously discussed, we have considered relevant to focus our research on the recovery of damages by the victims of corruption. By final court decision, the victims of corruption (and crime in general) may receive compensations in order to cover the damages incurred.

Our study was conducted on 3 months duration, from January to March 2013, period in which we have developed specific activities for data and information collecting, required for the fundamentals of the study. We have proceeded to the analysis and processing of them in the intent of obtaining the exact parts which were missing from the official statistics so we could achieve new conclusions and propositions in the field of asset recovery.

Basically, the study was divided in two important parts. Firstly, we have collected data and information and secondly, we have processed and analysed them.

From the very beginning, it must be stated that there is no centralized database regarding the recovery of damages allowed by courts to the victims of corruption. The Ministry of Justice and the National Agency for Fiscal Administration have developed a data collection system for confiscated assets according to the provisions of confiscation orders issued by the criminal courts, but this system do not gather data regarding compensations allowed to victims of crime. In general, the victims of corruption are public authorities (central agencies and local governments) and the damages they incur as a result of corruption tend to be large.

For this study, we have selected **37 final court decisions** on corruption. In the studied decisions, the convictions were pronounced for various facts like forgery, offenses against the financial interests of the European Communities, bribery and abuse of administrative authority.²⁹

In order to select the decisions, we have referred to the National Anticorruption Directorate (NAD) website, the National Anticorruption Strategy 2012-2015 and NAD's reports from 2007 up to 2012. From the NAD annual reports we have observed variation in the number of final sentences in corruption cases as follows: 63 final court decisions in 2007, 63 in 2008, 81 in 2009, 85 in 2010, 158 in 2011 and 228 in 2012. Thereby, from the 678 total of final court decisions on corruption issued, we have identified on NAD

²⁹ Law 78/2000 on preventing, discovering and sanctioning corruption

website only 276 decisions partially published. As the total number of court decisions on corruption is relatively high, we have taken two selection criteria into account. Thus, in order to be further analysed, a final court decision had to satisfy the following criteria:

- be issued in the timeframe 2007-2012;
- allow compensation to civil parties (victims of corruption) reaching an amount of at least 10.000 euro or the equivalent of that amount in RON³⁰, or order special confiscation of at least 10.000 euro or the equivalent value of that amount in RON.

It has to be mentioned that court decisions are public information which should be published on the NAD website³¹.

Subsequently, the selected courts decisions were centralized and classified according to the year of issue, the court which has issued them, the public authority (authorities) that incurred damages and received compensations, and also the amounts under consideration, all of these for a more facile way of data management. After the raw database was established, we have passed to the next step, namely formulating and sending the public information requests³².

Thereby, in legal terms, the information requests were sent to the courts that have issued the decisions. The courts were asked to submit copies of the selected decisions. All courts sent the requested information.

After that, a new series of public information requests were sent to the public authorities identified as the beneficiaries of compensations, as well as to the General Directions of Public Finances (regional offices of National Agency for Fiscal Administration), which enforces the special confiscation by equivalent, to solicit information regarding the enforcement of the court decisions, the amounts actually recovered and the remaining sums at the date of the requests.

These requests were sent to the following courts: High Court of Cassation and Justice, Bucharest Court of Appeal, Cluj Court of Appeal, Pitești Court of Appeal, Constanța Court of Appeal, Târgu Mureș Court of Appeal, Galați Court of Appeal, Alba Iulia Court of Appeal, Ploiești Court of Appeal and Bucharest Municipal Court. The second type of requests was sent to the following public institutions: National Agency for Fiscal Administration, Ministry of Regional Development and Public Administration, Ministry of Agriculture and Rural Development, Baia Mare Municipality, Authority for State Assets Recovery (AVAS), Ministry of Public Finance - PHARE Payments and Contracts office, Payment and Intervention Agency for Agriculture – Harghita County, Payment Agency for Rural Development and Fisheries, National Agency for Employment – Neamt County, Cluj Clinic Hospital, and National Agency for Community Programs for Education and Professional Development. Most of public institutions (9 out of 11) responded to our letters, either in the legal term of 10 working days from the date of the request, or in 30 days in case of complex requests. Nevertheless, only 7 out of 9 institutions sent the requested sums actually recovered. Ministry of Agriculture and Rural Development responded that it could not identify the court order. Payment Agency for Rural Development and Fisheries confirmed that the amounts allowed by one court decision were received and the second court order was only partially enforced but for

³⁰ Romanian national currency, the equivalent of approximately 0.23 EUR at the current exchange rate

³¹ Measure established by National Anticorruption Strategy 2008-2010

³² Under the Romanian Freedom of Information Act

exact amounts it advised the Centre to ask the National Agency for Fiscal Administration for data.

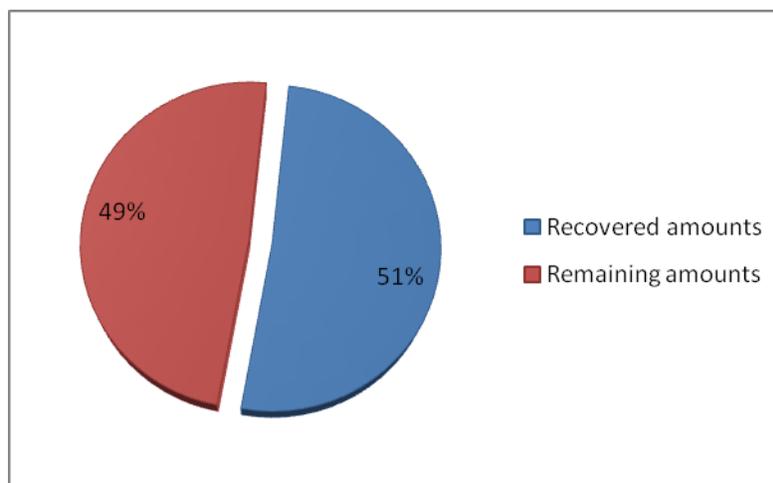
National Agency for Fiscal Administration refused to send the Centre any data regarding their nineteen court decisions in which they were part and build their arguments on fiscal secrecy. Thus, the Centre filed a complaint illustrating that the requested information cannot be considered fiscal secrecy because the identify of the persons involved, the nature and the amount of liabilities are already known through the court decisions and point 11.1 in the Government decision no. 1050/2004 is not relevant in this case. Nevertheless, ANAF maintained their initial arguments.

Thus, for only 10 out of 37 court decisions, the Centre was able to establish the sums actually recovered.

The information was sent to the Centre by e-mail, fax or post, and after receiving the replies, they were centralized and then verified, especially regarding the consistency of information collected from different sources.

Besides the above-mentioned research, other sources of data have been consulted in order to grasp a better overview of the asset recovery process in Romania. Thus, data on asset recovery were compiled from the National Anticorruption Strategy 2012-2015, National Anticorruption Department reports from 2007 up to 2012, General Prosecutor annual reports.

Based on the data collected from our research of 10 final court decisions, in the 2007-2012 period compensations or special confiscations worth 1,012,901.11 EUR³³ were granted/ordered, of which 519,041.52 EUR were recovered, and 493,859.56 EUR are still remaining to be recovered. Information is better illustrated in the attached chart.



To reach these results, we initially reported to a sample of 37 final corruption sentences which have been pronounced by 10 courts, in the time period previously mentioned. And also, the compensations and the special confiscations were pronounced to the benefit of

³³ For the currency conversion it was used the exchange rate from the date in which the decisions were issued

11 public institutions. All these 11 public organisations incurred damages from corruption and they were civil parties in the criminal proceedings.

As the asset recovery has become a priority in the last years in Romania due to Cooperation and Verification Mechanisms, the level of assets seized or frozen by the Prosecutor's Office improved - the value of seizure/frozen orders by prosecutors in 2011, worth 1,024,979,707 LEI (238,367,373 euro), up by 175.8% compared to 2010 and by 352.1% compared to 2009³⁴.

From this point the situation becomes blurred in Romania as the available statistics are incomplete. The exact number of confiscation orders in criminal cases (issued by Courts) is publicly unknown. One reliable data on confiscation orders are those provided by the National Anticorruption Directorate in their 2011 annual report. The data refer only to the criminal cases investigated by DNA (especially corruption cases). According to their statistics, in 2011, the Criminal Courts issued 165 decisions regarding special confiscation, civil compensations to victims and restitutions to victims. Nevertheless, the report does not specify separately the number of decisions on special confiscation apart from the rest because it is likely that not all the decisions have included special confiscation orders. DNA report mentions that the total value of special confiscation orders was of 1.350.000 lei (approximately 320.000 Euro).

Nevertheless, these amounts are not satisfactory when compared with the estimated value of petty corruption market in Romania which is 480 million euro annually³⁵.

Conclusions and further themes of research and action

The gaps between the amounts lost annually to corruption and those actually recovered mentioned at the EU level can be easily seen also in Romania. That is why the new Romanian National Anticorruption Strategy 2012-2015 sets asset recovery as a major objective. Corruption will continue to pay off as long as criminals are left to enjoy their profits.

Our research points that, in Romania:

- the public data on asset recovery are scarce and only recently the Ministry of Justice and ANAF have begun the development of a database on amounts recovered from final criminal court decisions;
- there is no centralized database regarding the recovery of damages allowed by courts to the victims of corruption;
- public institutions are reluctant in giving information on the enforcement of criminal court decisions;

The next step is to look to what happens with the assets (including money) that are confiscated from corruption and organised crime? In Romania all confiscated money goes to the state budget. Depending on their kind, the assets (cars, real-estate) are sold to

³⁴ General Prosecutors' 2011 Report, p. 54

³⁵ According to the research of the Directorate for Governmental Strategies in 2011, about 20% of people recognized that they had to give money, services or gifts (bribes) outside legal fees to get a problem solved. Another study in 2010 on petty calculated that a person gives an average annual bribes of 574 lei. If we calculate that we may fairly estimate that euro 480 million is lost each year through lower corruption.

the general public, transferred to state institutions, local authorities or other beneficiaries (such as churches, NGOs).

At the EU level the question is how this money may be reinvested in communities and in crime prevention. Based on the interesting examples of civil society actively engaging in the combating of serious and organised crime, a European Parliament study³⁶ recommends an European Directive aiming at the establishment of coherent and transparent procedures in the Member States, requiring an option for socially re-using confiscated criminal assets and civil society being able to make suggestions as to specific projects of social relevance that should be considered for such funds. In this framework, Romania may adopt a public policy directing a fraction of the total amount of confiscated assets for social purposes and /or civil society projects and/or law enforcement purposes (ex. projects in the public interest for assisting whistleblowers, drug addicts, financing schools, assistance to young unemployed people etc).

Assets recovery approach is still insufficiently implemented by the state and inadequately understood by the society (including journalists, civil society or academics). The public discussion in Romania is focused on the years of imprisonment one gets for corruption or organised crime and less on the recovery of criminal assets, the actual confiscation of proceeds or the social re-use of confiscated assets.

This change of focus in criminal policy is demanded also by the business sector. American Chamber of Commerce in Romania launched in 2013 their Priorities for Romania report by highlighting that, in the fight against corruption, imprisonment is less effective than penalty and asset recovery.

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