

## **Specialization vs. hierarchy – pro and cons for establishment of specialized prosecution office for fight against corruption**

National Anticorruption Directorate (NAD) was created in Romania in 2002, at the beginning under the name of National Prosecutors Office against corruption. The law which created this institution was modified several times, modifications being generated by the need of improvements of the functionality of this institution.

At the beginning, as in the present, this organism has functioned in line with the others builds of the Prosecutors Offices, but in the present the prosecutors which functioned in NAD are assimilated and have the same salaries as the Prosecutors of the High Court.

The need of the establishment of a build like this was felt in Romania in the conditions of an alarming increase of the corruption phenomenon. This unwanted aspect was also influencing in a negative way the perspective of the adherence to the European Union of our country.

It must be underlined here that, at the macro level of the society, not the “big corruption” is the one that influences every day life of people, because this one is not only harder to perceive or to fight against it, but the “petty corruption” that ordinary people has to face every day - in the public institutions, no matter they belong to the town halls, police, justice, the health of education systems etc.

Besides, the need of a specialized structure belonging to the Prosecutors Office was felt recently also at the european level; in September this year took place in Vienna the first international conference of IACA (**The International Anti-Corruption Academy - IACA**) which is a joint initiative by the United Nations Office on Drugs and Crime (UNODC), the Republic of Austria, the European Anti-Fraud Office (OLAF) and other stakeholders. This is a pioneering institution that aims to overcome current shortcomings in knowledge and practice in the field of anti-corruption. In pursuing this aim, the Academy will function as an independent centre of excellence in the field of anti-corruption education, training, networking and cooperation, as well as academic research. It will take a holistic and inter-disciplinary, inter-regional, inter-cultural and inter-sectorial approach.

You can find here on this website more information about this institution: [www.iaca-info.org](http://www.iaca-info.org).

As a good point of the progresses that Romania has made in this field in the last years, the recent report of the European Committee appreciated the activity of the NAD, which cooperation with the others state's institutions is considered efficiently. In the official document of EC it is also mentioned that NAD has maintained stable the stages of investigations regarding the charges of corruption at the high levels and an important number of cases were sent to the Courts for being trialed.

The Mechanism of Cooperation and Verification (MCV) coordinated by the European Committee had a very positive influence upon the reform process of the judicial system in Romania. Twice in a year, Romania and Bulgaria also has to front a „photo” of their own image of the systems, photo made by an external supervisor. Many leaders of the civil society, NGO-s and also media has sustained the maintaining of MCV until all the conditionalities assumed by Romania in the moment it became a member of European Union would be accomplished.

Therefore, without MCV the role of the anti-corruption institutions would has been very much diminished and the reforme of the judicial system would has been decreased - being a very important aspect of the public agenda. There are changes in this field, but it is very important to create and maintain permanently an intensive internal pressure for keeping them, because the external pressure will not last forever.

The foundation of NAD was also favourable from the perspective of the fact that was capable if not to stop, but at least to reduce significantly the effects of the petty corruption, those ones who were tempted to take bribery for accomplish a duty task or not to accomplish it feeling a more and more acute reluctance in doing this. Also, it must be underlined the fact that, according to Romanian legislation, the bribed is also punished if he/she does not denounce the crime to the authorities, before it will be discovered. Instead, if the bribed denounced the crime to the authorities before this moment, he/she is not punished, so the number of the self-denunciations has increased significantly.

As a structure, NAD is leaded by a general prosecutor, who is not a subordinate of the General Prosecutor of Romania, but in a official report of duties, being only coordinated by the General Prosecutor of the State. Therefore, before them there are not the

specific connections of subordination which exist in the structure of the Public Ministry (Prosecutors Offices). The general prosecutor of NAD is independent in taking the decisions related to the institution which is leading, Romanian Constitution also stipulating (since 2003) that the prosecutors are independents in their activity. Theoretically, they are a part of the Executive Branch (the Government), being under the authority of the Minister of Justice.

NAD has 15 Territorial Services, at the level of each town where are functioning the Courts of Appeals. These services also have in their subordination territorial offices in several important towns.

National Department against Corruption has proved in several situations its efficacy also by investigating and prosecuting politicians. We can mention here one of the former prime-ministers of Romania, business men who, at least from a very powerful public semblance and perception, were influencing the political decisions, former ministers which after or during the investigations have resigned, magistrates of the High Court of Justice, mayors of very big or important towns, and also professors who were suspected by committing acts of fraud and corruption in order to facilitate the promotions of some students.

It is also real that, in the same time, until now just a few of these cases were finalized in the courts, some with convictions of the accused and some of them with the acquittal of them. Despite this, the investigations, prosecutions and some times even the preventive arrest during the trials of important judges or prosecutors and also of some members of the Government or Parliament have induced to the public opinion the feeling that finally justice has begun being efficiently, even when the accused are important people in the state who, until recently, were considered intangible.

In the same time, this could be the point from which could start the counterarguments regarding the necessity of creating some specialised structures which are functioning apparently to the edge of law, considering the fact that they are not subordinates as the rest of the prosecutors to the General Prosecutor of the republic. There also exists another type of perception, for instance that they are actioning sometimes under „political command”, as long as the chiefs prosecutors of NAD are appointed in this positions by the President of Romania, being recommended in the same time by the General Prosecutor of

Romania. This is the reason for, every time when the accused were politicians belonging to the former Government or in political opposition now, the NAD was always accused by the fact the accusation are just formal, political, meant to ruin their political career. The present Government is composed in a large majority by the politicians from the party that sustained the actual president of Romania in the election, in 2004 and 2009.

Another major criticize started even from the inside of the judicial system itself, especially from the judges. In order to become a judge to the Supreme Court in Romania a judge has to accomplish some criteria of seniority as a magistrate and to sustain a lot of difficult exams (in fact, three) from the first level to the highest level in the system. On the contrary, in order to become a prosecutor in NAD a prosecutor has to accomplish just two conditions: one – being magistrate for at least six years and two - to sustain an oral interview in front of a commission also formed only by prosecutors. This way of promoting in a function which is equal as position and salary with one of a prosecutor of the highest level was considered as being totally inequitable by the rest of the magistrates, who have constantly asked that the prosecutors (who are considered also being magistrates in Romania) to be treated similarly, no matter the special structure where they belong to.

In my opinion, I appreciate that such a problem could be easily and quickly solved by a very simple change of legislation, but at the moment when NAD was created it was a compulsory need of magistrates willing to accept that kind of provocation and the responsibility of such a difficult profession, which is neither comfortable, nor easy. This is because it has to be considered the complexity of this type of cases and also the quality and position of the accused, who are generally assisted by the lawyers with much notoriety and professional experience. The pressure on their shoulders is sometimes extremely high, speaking also from the point of view of the reactions in mass-media. In these circumstances, the lack of a qualified professional experience of some of them also affects the quality of the investigation, leading in the end in the courts from the part of the defendants' lawyers to invoke and for the Courts to accept procedural exceptions, which can lead to the acquittal of the defendants or to the delay of the trials.

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