ANTI-CORRUPTION AGENCIES ON GOVERNMENT AGENDA: PROMISES AND PERFORMANCES

By

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Submitted to
Central European University
Department of Public Policy

In partial fulfillment of the requirements for the degree of Master of Arts

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Budapest, Hungary

2007

Executive Summary

In order to combat corruption the irreversible establishment of independent and effective anti-corruption agencies, at investigative and enforcement level is required. Moreover, to achieve this purpose a strong political commitment is needed. The 2007 European Commission Report (2007:5) argues that "Romania has stepped up efforts at the highest levels in the fight against corruption. While recognizing these efforts, much remains to be done ". In line with this statement, the thesis research question, i.e. *Are the Romanian Anti-Corruption Agencies politically independent?* received a negative answer. The findings of this thesis show that in the current form, the agencies have a legal design unsuited to properly fight corruption. Moreover, although the government has placed the fight against corruption as a priority on the national agenda, the success of anti-corruption agencies still depends upon the political will to further pursue the necessary steps to support the reforms and meet the social expectations.

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Introduction

Motto *"… in February 2006 the Senate tried to hinder National Department of Anti-corruption from investigating certain members of Parliament. There have been attempts in the Senate to change the procedures for selection and termination of high-level prosecutors. This would effectively undermine the responsibility of the system and diminish the operational capacity of the NDA"*

(European Commission's Monitoring Report from May 2006, p.8)

Political scandals connected with high corruption have proliferated throughout Europe in recent years. In Western Europe, Italian scandals have provided the most dramatic corruption cases and, the political class from Spain and France have also been damaged in terms of reputation and legitimacy. Furthermore, Eastern Europe and especially Romania do not fall far from this pattern; on the contrary, the countries from this region are confronted with failed reforms and corruption scandals. Nevertheless, European countries vary enormously in the extent to which politicians or public officials abuse their powers for private gain. Rapacious kleptocrats, for whom office is just an opportunity for illegal benefits, rule in many Eastern countries in which corruption has a particular virulence. In this context, of greater intellectual interest are those countries in which the government has taken up the challenge of reform to reduce the severity of corruption (Manion, 2004:1). How to accomplish the conversion from a widespread corruption to a clean government is both a formidable theoretical and practical challenge.

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Causal explanations of political corruption and governance abound in the literature, as well as studies about the effects upon outcomes such as economic growth, political equilibrium and social equality. Many scholars examine the problem of corruption in the context where this phenomenon is commonplace, by analyzing the mechanisms and the environment in which public officials and ordinary citizens make choices to transact corruptly (Manion, 2004:1). Other scholars (e.g. Meagher, 2005) choose to study anti-corruption policy instruments within a specific empirical and theoretical framework: among these, the anticorruption agencies receive the most prominent attention.

Generally speaking, in order to uncover public corruption, political executives (i.e. government ministers, prime-ministers, presidents) often respond by establishing anti-corruption mechanisms (e.g. special commissions) or anti-corruption agencies. In some countries these agencies are entrusted with enhanced investigatory powers, whereas in others, these institutions are facing limited independency and their credibility is undermined (Maor, 2004:2). Theoretical accounts have tended to revolve around the impact of anti-corruption agencies, the most relevant examples being the experiences of Hong-Kong and Singapore and the case of the Independent Commission against Corruption (ICAC) in New South Wales Australia. Insights gained from these attempts to understand the successes and the failures of anti-corruption agencies have contributed to the development of a theoretical and empirical background. Yet, nowhere in the literature is there a satisfactory approach that effectively addresses the case of anti-corruption agencies in Europe, even less in Eastern Europe.

This thesis aims to contribute towards filling this gap by assessing the Romanian attempts to combat political corruption through the establishment of two different anti-corruption

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agencies: the National Department of Anti-Corruption (NDA) and the National Integrity Agency (NIA). More specifically, the thesis ***research question*** is the following**: *Are the Romanian Anti-Corruption Agencies politically independent?*** In line with this research question the following hypothesis is investigated: *the anti-corruption agencies are targeted by Romanian political elites to undermine their powers in order to derail investigations.*

From a theoretical perspective, the nature of the research question requires several clarifications. Firstly, given the fact that the key question is whether the agencies are allowed by politicians to be independent and to carry out their tasks, one has to overcome the problematic concept of political interference. From a broader standpoint, this includes the Government and both ruling and opposition parties, and therefore, in order to clear away any conceptual difficulties, this thesis will regard political interference as a systematic effort (where occurs) of both political executives and political parties to reduce the agencies' independence.

Secondly, the primary function of an independent and separate agency is to provide centralized leadership in core areas of anti-corruption activity, which includes policy analysis and technical assistance, monitoring, investigation and prosecution (Meagher 2004:70). However, it should be noted that not all anti-corruption agencies have all these functions, and therefore, in order to asses their performance a specific evaluation framework will be developed. Thirdly, depending upon the research question answer, the thesis will discuss potential problems and solutions. Moreover, the answers' degree of certainty allows more interesting and quantifiable policy recommendations.

Corruption is not a unified phenomenon; it assumes different forms and patterns in different contexts. Multiple factors – political, administrative, economic, social and cultural

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might be responsible for corruption. In some countries the institutional arrangement provides strong support, whereas in others there is a weak political and administrative capacity to tackle corruption. In the latter, empowering anti-corruption agencies with enhanced independency and investigatory powers can make the difference between corruption as a fact of life and corruption as a way of life, between isolated occurrences, and institutionalized corruption (Sangita, 1995:67). In this broader context, ***what the thesis offers*** is not only a deep analysis of the Romanian anti-corruption agencies; it contributes to the specialized literature by building a theoretical model through which Eastern Europe understood to tackle corruption.

Regarding the ***methodology***, in order to identify the framework in which the research question can obtain the best answer, the thesis relies upon a literature review about corruption as a phenomenon and anti-corruption agencies as a solution. Furthermore, the thesis will include a detailed analysis of NDA and NIA legal framework: this approach assesses the applicability of the legal principles and the positive and negative consequences that might emerge from the implementation of these principles. Also, the study uses document analysis: by collecting data from official documents and newspaper articles, the research will portray the current state of anti-corruption agencies.

The aim of the ***first chapter*** is to classify the various forms of corruption in order to develop a lucrative definition. First, the overview of different definitions will locate corruption in a broader political and economic setting. The connection between corruption - strictly defined - and different anti-corruption strategies will also be addressed in the first part of the thesis. Secondly, the concept of anti-corruption agencies will be introduced, by discussing their history

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and functions. Moreover, in the final part, the first chapter will explore the relationship between anti-corruption agencies and political interferences.

In the ***second chapter*** the thesis will address such questions as how one can assess anti-corruption agencies' performance and what can be done in order to overcome any difficulties imposed by political and administrative will. The intention of this chapter is to evaluate the creation of the agencies separately from their subsequent operation and to asses the institutional arrangement which has lead to the formation of NDA and NIA. Thus, by looking at the legal framework and agencies' performance, the thesis proposes a framework which properly answers the research question.

Finally, ***the last chapter*** will look into the political factors that explain the research findings. While the answer associated with the research question will be readily identifiable, the focus will be upon understanding political interference in order to develop a set of policy recommendations in relation to the independence of Romanian anti-corruption agencies. The conclusion gives a summary of the analysis, provides an overview of the thesis findings implications and proposes topics for further research.

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Chapter 1: Corruption and Anti-Corruption Strategies: Introductory Remarks

Corruption is generally regarded as one of the most significant drawbacks to development. The theoretical literature shows that corruption is negatively correlated with economic outcomes and reduces growth by keeping private investment at low levels (Lederman, Loayza and Soares, 2005:1). Moreover, far from being eradicated, corruption has insinuated itself into the complex relations between state and market, endangering the mechanisms of political consensus formation and enhancing the crisis of political activism (Porta and Vannucci, 1999: 7).

Furthermore, the literature on corruption has expanded rapidly due to the fact that this phenomenon has become a central problem of European economic environment and politics. The theoretical literature in political science, sociology and economics has made numerous attempts not only to define corruption but to shape and explain the patterns of this phenomenon. In this regard, it is important to understand both the determinants of corruption and the effects that they impose upon politics and more generally upon society (Lederman, Loayza and Soares, 2005:1).

The present chapter sets out an assessment framework by reviewing the theoretical work that has been undertaken in this field. The objective is to provide a structure for two distinct areas of analysis: the first one focuses upon the classical and modern notions of corruption, whereas the second gives particular attention to the literature which has as focal point the setup of different remedies against corruption (e.g. anti-corruption agencies). Finally, the third part

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analyses the relationship between politicians, political parties and their role in corrupt exchanges. This chapter, therefore, seeks to identify a design that is appropriate for the thesis empirical investigation, eliminating in this way any distortions and uncertainties in relation with the research question.

1.1. A Search for Definitions

The question what constitutes 'corruption' has long been a feature of conceptual and political debates. Classical conceptions of corruption with broader meaning have given way to modern definitions in which specific actions are measured with a diversity of standards. Nevertheless, the modern meaning of the term has not yet managed to settle the matter: the question what constitutes 'corruption' still promises scholarly debates and political disputes (Johnston, 1996:321).

At this point it is important to mention that the classical notion of corruption is centered upon the moral vitality of society at large, and for scholars such as Thucydides or Machiavelli (cited by Johnston, 1996:322) the term 'corruption' refer less to individual action and more to the distribution of power in society, to the relationship between leaders and followers and to the rulers' sources of power. In contrast, modern interpretations of corruption have become narrower while the scope of politics in contemporary society has broadened. As a result, for most participants in political life, corruption now refers to the actions of those holding public positions and (according to some definitions) of those who seek to influence them (Johnston, 1996:322).

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Much of the contemporary literature on corruption has followed Heidenheimer's distinction between public-office centered, public-interest centered and market-centered definitions of corruption (Heywood, 1997:342). The public office view of corruption is best exemplified by J.S. Nye (cited by Philip, 1997: 440):

> "Corruption is behavior which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private regarding influence. This includes such behavior as bribery (use of reward to pervert the judgments of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses)".

Nye explicitly excludes public interest from his definition in order to avoid confusing the phenomenon with its results. Others, however, have defined corruption precisely in terms of public interest. Carl Friedrich (cited by Philip, 1997: 440) argues that corruption emerges when a power-holder, e.g. an office holder or public manager, is by monetary or other illegal reward motivated to undertake actions which favors whoever provides the illegal payment and therefore does damage to public interest.

Finally, market-centered definitions can offer an alternative explanation for the incidence of corruption. In the view of Jacob van Klaveren, (cited by Philip, 1997:444) market-centered corruption means that an office-holder will use his or her authority to obtain illegal income from the public. In this regard, corruption refers to those civil servants who treat their offices as a business, seeking to maximize their income. The office then becomes a "maximizing unit". Nevertheless, as Mark Philip points out (Philip, 1997: 445), not all cases of income or interest maximizing need to be corrupt. Hence, one must address the construction of public-interest and public-office which are based on principles external to the market-model in order to be able to

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point out those cases of interest/income maximizing which are also politically corrupt. Moreover, the public-office and public-interest definitions are closely related. Public offices are generally perceived as structured through principles and values that demand all civil servants to be guided by considerations of the public interest (Philip, 1997: 445).

For the purpose of this thesis, corruption is defined as the use of public office for private gains but with the following determinants: firstly, even though the definition is apparently restricted to public-office, the thesis regards corruption as a phenomenon that damages both the public and private interest. Secondly, due to the specific profile of the Romanian anti-corruption agencies, the thesis focuses upon "controllable" corruption anywhere at administrative and political level. Thirdly, activities that are perceived as being corrupt but which are conducted by a single party without involving processes of negotiation with other external parties are excluded (Goudie and Stasavage, 1998: 116). Finally, corruption will be regarded as an activity which is not necessary limited to government officials or civil servants, e.g. an illegal benefit (personal and/or for the party) can be obtained indirectly through political negotiation at party level.

1.2. Revisiting Anti-Corruption Strategies

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When defining corruption as the abuse of public power for private gains, it should be noted that whatever the academic debates concerning this definition are, its manifestations range from the acceptance of money or other illegal payments for awarding contracts to pay-offs for legislative support or intervention in the justice process. Forms of corruption also include

overpricing, establishing non-existing projects or tax assessment frauds (United Nation, 1989:4 cited by Doing, 1995:152).

The extraction of illegal benefits by politicians and public officials through the abuse of their powers, and the exacerbation of such conducts have been documented in the literature on politics, modernization and economic development (see Huntington, 1968; Scott, 1972; Clapham, 1982; Clarke, 1983; Williams, 1987; Theobald, 1990). In line with this, combating corruption is perceived throughout the literature as crucially important: corrupt activities can potentially destroy all types of governmental policies and programs, hinder development and negatively impact individuals and social groups (United Nations, 1990, p.4 cited by Doing, 1995, 152).

Regarding the types of corruption control, Kate Gillespie and Gwenn Okruklik, in their article, *The Political Dimension of Corrupt Cleanups* (1991:6) have classified the measures of controlling corruption into the following. **Societal strategies** emphasize ethical norms, education and public vigilance. There is a general agreement among scholars that no cleanup measure can be effective if society as whole does not accept and promote certain standards of behavior regarding public property and fairness

Legal strategies and legal codes that prohibit corrupt activities are to be found in almost all countries. Generally speaking, public official's activities' are shaped through rules which encompass the collection of political founds, the acceptance of gifts, the disclosure of assets and liabilities and conflict of interest. However, legal sanctions are effective only in the presence of complementary strategies: increased penalties for corruption, the existence of independent auditing and investigative institutions, the existence of an independent justice system, and the

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determination of the government to curb corruption (Shackleton and McMullen cited by Gillespie and Okruklik, 1991:6).

Market strategies have been assessed by many scholars, and their argument is that corruption is enhanced by government intervention in economy and bureaucratic inertia. In these conditions, the outcome will be disequilibrium between supply and demand for goods and services, and the cases where demand surmounts supply are conducive to corrupt activity. The prescribed strategy in order to clean up corruption is to simply allow market forces to operate without governmental intervention.

Political strategies promote the elimination of corrupt activities by directing attention upon three concerns: authority, access to political process and administrative reforms. Regarding the authority, one tactic is to place key decision in the hands of committees instead of an individual. Moreover, opportunities to engage in corrupt activities would be diminished if all laws were made more precisely, allowing nothing to the discretion of authorities. According to Kate Gillespie and Gwenn Okruklik, another strategy to cleanup corruption concentrates upon maximizing public access to the decision-making process. Additionally, some scholars suggest that a substantial participation of citizens in the political processes prevents official agencies from becoming isolated and hence, reduces politicians' opportunities to raise or obtain illegal benefits. Finally, those who argue in favor of administrative reform emphasize the discouragement of corrupt behavior by increasing the benefits of non-corrupt conduct (e.g. increased salaries, pensions, training) and a mutual antagonistic surveillance between government agencies (Gillespie and Okruklik, 1991:8).

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As a part of political and legal strategies, the establishment of anti-corruption agencies has become one of the best known government responses in recent decades. The history of anti-corruption agencies starts in the early 1950s when Singapore created an anti-corruption commission and continued with the Hong Kong Bureau and the New South Wales Independent Commission. The fact that this type of institution is relatively new can be explained through the fact that corruption became broadly recognized as an important dysfunction of public administration only in the 20th century (Meagher, 2004:70). Furthermore, the literature regards the Hong Kong and the New South Wales anti-corruption agencies as successful examples for the establishment of strong, centralized agencies in the field.

The first model, the Hong Kong ICAC, has enjoyed since its creation in 1974, a continuous success. This agency controls corruption through the means of investigation, prevention and community relations. However, when first established, the ICAC had a limited effectiveness; nevertheless, the repatriation and the successful prosecution of Peter Godber (high police officer) increased the agency's credibility. From that moment, the ICAC has built an impressive record of investigations and convictions (Heilbrunn, 2004:3, 5). The second example, the New South Wales ICAC, was established in 1987, when the political leaders decided to create an agency similar to the Hong Kong model but with a crucial difference: the new agency emphasized prevention. After beginning its activity, the NWS ICAC managed to build the public trust through a mixed record of successful prosecutions; its major contribution is that, through prevention, it managed to change the norms of how business is conducted in the New South Wales (Heilbrunn, 2004:8, 9)

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Concerning what constitutes the activity of an anti-corruption agency, this thesis assumes the definition provided by Patrick Meagher (2004:70): the primary function of an independent and separate agency is to provide centralized leadership in core areas of anti-corruption activity. This includes policy analysis and technical assistance, monitoring, investigation and prosecution. Nevertheless, it should be noted that not all anti-corruption agencies have these functions: they might differ upon national characteristics (e.g. political system).

Furthermore, according to some scholars (e.g. S.N. Sangita), in developing countries the establishment of institutions designed to control corruption is often quite inadequate: sometimes these agencies are created in the absence of a clear understanding of the nature and causes of corruption. Likewise, where there is a lack of strong political and administrative will to effectively undertake corruption, the anti-corruption institutions are rather ineffective (Sangita, 1995:46).

1.3. The Political Dimension of Corruption: Parties and Their Role

In general, in any society, the individual political behavior and political outcomes are constrained by political institutions (Persson and Tabellini 2003 cited by Pande, 2007: 5). The structure for collective decision-making is provided through political institutions, which defines the context for public goods provision and resource distribution by the governments. In this framework, the democratic political process (i.e. elections) which gives citizens the ability to dismiss corrupt politicians represents an important potential constraint to corruption (Pande,

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2007: 5). However, aside this mechanism, the democratization must be supported through the existence of powerful institutions capable to fight corruption (Amundsen, 1999:21).

Political corruption (i.e. the misuse of public office for private gain) encountered at high institutional level is perceived in the literature as being far more damaging in democracies than in any other forms of political systems. The argument is that corruption is more detrimental to democracies than to non-democracies: by attacking some of the essential principles on which democracy rests, e.g. the equality of citizens before institutions or the openness of decision making, corruption contributes to the delegitimation of the political system in which it takes root (Heywood, 1997:340). What is worse, the elite and the political parties often choose to transform corruption into an established practice, guaranteeing at the same time the continuity of the system no matter the administrative changes. Therefore, it is important to pay particular attention to the specific mechanisms through which political elites and parties shape the rules of anti-corruption fight.

This thesis adopts Donatella de la Porta and Alberto Vannucci's approach (2000:26), which sustains that politicians involved in corrupt activities rarely hide their enterprises from their own party. As a consequence, parties play an important "hidden" role in organizing corrupt activities, i.e. the collection of bribes, by ensuring compliance through a widespread control of public administration. Besides framing corruption as "normal business", parties have the power to shape the fight against corruption (e.g. voting behavior). This raises a more specific question about the political will to engage in the institutional building of anti-corruption agencies. While the existence of free elections and a pluralistic system of representation are critical for the effective functioning of democracy, the key agents – political parties- have been increasingly

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implicated in corruption scandals in many Eastern countries (Pujas and Rhodes, 1998:18). Following these arguments, the thesis will explore in the third chapter the parties' role in the legal setup of anti-corruption agencies.

The establishment of good governance, the control of rent-seeking and corruption are widely accepted throughout the literature as critical elements in securing a stable economical development (Goudie and Stasavage, 1998:423). By reviewing the literature that has been undertaken in this field, this chapter sets out a framework within which the problem of corruption can be analyzed in the specific design of the research question. To sum up, the beginning of the chapter established the definition of corruption as the use of public office for private gains by critically assessing a number of different attempts to define this phenomenon. Furthermore, the second part explored different anti-corruption strategies, and in particular, the role of anti-corruption agencies. Finally, the chapter raised the readers' attention to political parties as potentially the most important political structures in determining the incidence of corruption within any democratic government.

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Chapter 2: The Anatomy of Anti-Corruption Agencies: Assessing their independency

Motto: *"Our people are good, and if the legislative system allows us to do the job, then, if there is something to discover, it will be discovered for sure"* (Doru Tulus, NDA prosecutor, Catavencu May 2007)

Nowadays, Romania appears to be the EU member most seriously affected by corruption. This phenomenon seems to be endemic in numerous sections of public life: police, customs authorities, judiciary and the health system. Worse, the fundamental democratic institutions are also perceived to be largely affected by corruption, e.g. the Parliament, the Government and its ministers. For instance, the 2006 Corruption Perception Index ranked Romania at position 84 (from 163 countries) with a score of 3.1[1] (Transparency International 2006 Perception Index).

Looking back, the origins of corruption can be traced in the delayed privatization and the belated administrative reform; moreover, many former officials of the communist regime are still active in the country's political life. This has led to a pattern in which petty corruption became grand corruption: ministries gave out contracts without tender, factories were bought at rock-bottom prices and politicians become wealthy within weeks (Sampson, 2005:123).

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[1] The Corruption Perception Index (CPI) was developed by Transparency International, and it is a measurement tool which compares disparate and distinct countries on the same scale: the higher is the score, the less corrupted a country (e.g. in 2006 Finland ranked the highest score, with an average of 9.6). Accordingly, the lower the score, the highest the corruption (e.g. in 2006 the lowest score was received by Haiti with 1.8). Although the CPI has been extensively criticized, it still remains a relevant instrument in raising awareness about corruption.

As a result, starting with the middle 90s, various groups emerged trying to build up strategies to fight corruption: citizens came together into groups, networks or coalitions, and the mass media played its role by uncovering different scandals, indentifying the guilty and drawing conclusions as to Romania's fate in Europe (Sampson, 2005:125). Nevertheless, it can be argued that aside the popular support, the fight against corruption was primarily pushed by the EU efforts to impose Romania to accomplish its commitments to the integration process. In this regard, the first model of a Romanian anti-corruption agency was established in 2002, by replacing the previous anti-corruption unit; the rationale behind this change was that the former was poorly equipped with power to tackle corruption. Moreover, the legislative arrangement drastically reduced the agency' independency and enhanced political interferences. By trying to solve these problems, the Government approved in 2002 an Emergency Ordinance, thus creating the National Anti-Corruption Prosecutors' Office (from 2004 - the National Department of Anti-corruption).

The second model of an anti-corruption agency - the National Integrity Agency - is presently just in its infancy. However, between July 2006, when the Government approved the draft law, and May 2007, when the final version was approved by the Parliament, the legal framework suffered many changes, and accordingly, the Agencies' powers have weakened.

Taking in consideration that the present thesis' research question addresses the political independency of the above mentioned agencies, this chapter begins by setting up a number of benchmarks against which institutional independence can be objectively tested. Furthermore, the following two sections describe what makes the Romanian agencies to succeed or fail in their

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mission, by applying the aforementioned criteria. Additionally, the last section assesses the agencies' independence upon the results obtained in the first two parts.

2.1. Setting Expectations: A Benchmark of Political Independency

Generally speaking, when political leaders propose to establish an anti-corruption agency, they often hide their real motives and expectations. Frequently, the ACAs that are put forward have insufficient powers, and usually there is a gap between what is expected from these agencies to achieve and what they really do. The explanation lies in the fact that politicians' rhetoric misleads the general public about the shape, powers and purpose of ACAs (Meagher, 2005:77); the challenge is rather to cut through the rhetoric and measure as precisely as possible the efficiency of ACAs actions upon the act of governance. Such goal can be attained only by analyzing the most essential mechanisms of the ACAs: their legal framework.

Furthermore, it is largely accepted that ACAs target combating and preventing corruption; in this context, the ACAs political independency is the most important strength in yielding positive results. The implication is clear: in the absence of political independency, politicians, parties and/or governments are able to frustrate investigations that threaten them, or alternatively, to press prosecutions against political opponents (Nelken and Levin, 1996: 12).

Throughout the word, the ACAs vary significantly in their functions and responsibilities; however, the *independency* arises from the appointment and removal of top officials, from fiscal autonomy, sometimes from outside accountability and in some cases from the agency's line of

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responsibilities. Correspondingly, in order to interpret the legislation of the two Romanian ACAs' – the National Department of Anti-Corruption and the National Integrity Agency – from the standpoint of political independency, the following benchmarks will be used (Pope, 1999 cited by Meagher, 2005:86):

- the quality of legal safeguards against the manipulation of the appointment process;
- the placement of the ACA in position where is not subject to political dictates;
- fiscal independency indicated either by the ability to propose a budget directly to the legislature, or by the ability to guarantee budgetary stability;

Obviously, the success of an ACA also depends on its coercive powers. These include strong research and prevention capabilities; the right to access documents; the power to monitor and freeze assets; the power to bring charges for suspected corruption; the ability to monitor tax returns, income and expenditure and the ability to protect witnesses and informants (Pope, 1999 cited by Meagher, 2005:86). The presence or absence of a comprehensive investigatory authority in the agencies' legislative framework plays a major role for the ACAs' mission, and therefore, it constitutes a meaningful indicator about their degree of independency, if there is any. Additionally, it is important to stress that the thesis refers the *financial and operational independency* as a part of *political independency*.

Furthermore, before proceeding to the ACAs' evaluation, two remarks must be made: first, there is a notable discrepancy between the Romanian agencies, that is, the National Department of Anti-Corruption activity started in 2002, whereas the National Integrity Agency will only begin to function from November 2007. Consequently, in the case of the NDA the methodology will also rely upon annual activity reports, whereas in the NIA's case, the analysis

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will be limited to its legislative framework. Second, it is relevant to mention that by assessing the legislative framework one can properly evaluate what solutions have been offered and what is the political willingness to combat corruption. As a result, this thesis can conclude not only upon political independency of the ACAs but also upon the quality of Romanian anti-corruption laws, e.g. if there are excessive rewriting or vexatious procedures that weaken the attempts to combat corruption (Nelken and Levin, 1996: 12).

2.2. National Department of Anti-Corruption: Challenges and Prospects

Beginning with the year 1997, both governmental and "independent" agencies were assigned to fight corruption. The first example of an articulated anti-corruption policy was the creation in 1997 by President Emil Constantinescu of a National Council for Action against Corruption and Organized Crime. However, this Council was abolished in September 1999 due to its lack of public findings and prosecutions. Furthermore, in 2002, the Parliament opted for an act through which the Anti-Corruption Section within the General Prosecutor's office was established. Nonetheless, the Section began to face problems due to both executive interference and a lack of political will to grant sufficient independence to pursue important corruption cases (Open Society Institute, 2002:466).

As a consequence, trying to solve these difficulties, the Romanian Government approved in 2002 an Emergency Ordinance transforming the Section into the National Anti-Corruption

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Prosecutors' Office. Nevertheless, during the years that followed, the initial Emergency Ordinance had incurred many amendments, either through laws or ordinances. In addition, the title of this particular institution had suffered modifications; from 2004 a new name was assigned: the National Department of Anti-Corruption (Open Society Institute, 2002:466).

Following the 2002 setup of the National Anti-Corruption Prosecutors' Office (here after, the National Department of Anti-Corruption), a series of institutional revisions were introduced. The most important adjustments[2] can be summarized as follows (Cospanaru *et al*, 2007: 19):

- The NDA became an autonomous structure in the framework of the Prosecutors' Office alongside the High Court of Cassation and Justice
- The Chief Prosecutor of NDA became subordinated to the General Prosecutor at the High Court of Cassation and Justice. Both of them are appointed on professional grounds for three years by the President.
- The NDA was transformed into a *second level budgetary* department, that is, with a distinct budget within the general budget of the Prosecutors' Office alongside the High Court of Cassation and Justice. The NDA budget is constituted from the state budget; however, the annual NDA budget can be supplemented through the Government decision.

Apart of these modifications, the key issue – the independence of the Department Chief – remains unsolved: as mentioned above, the NDA Chief Prosecutor remains subordinated to the General Prosecutors' Office within the High Court of Cassation and Justice. Furthermore,

[2] These modifications are introduced through Law no.54 from 2006 for the approval of Emergency Ordinance no. 134 from 2005 (initially rejected by the Parliament)

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according to the present legislative setup, the *NDA Chief Prosecutor* is appointed by the Romanian President at the proposal of the Justice Ministry; also within this procedure, the Superior Council of Magistracy[3] plays a consultative role. This appointment is done on professional grounds; nevertheless, the NDA chief prosecutor can be removed at the proposal of the Justice Ministry, with the agreement of both the Presidency and the Superior Council of Magistracy.

Furthermore, the thesis findings obtained by reviewing Emergency Ordinance no. 43 form 2002 (including all modifications) regarding the creation of the National Department of Anti-Corruption can be summarized as follows:

- Appointment of NDA prosecutors:

- The Chief Prosecutor of the NDA can appoint and dismiss prosecutors with the approval of the Superior Council of Magistracy (SCM); also he or she proposes to the Superior Council of Magistracy the naming or removal of senior prosecutors; in addition, the Justice Ministry can propose the dismissal of senior prosecutors to the Superior Council of Magistracy.
- The number of prosecutors and auxiliary personnel can be modified through a Government decision

- Case selection and coercive powers:

[3] Independent judicial body, in control of judge recruitment and advancement; provides check for most of the legislation

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- The prosecutors can start the legal proceedings (i.e. research and sanction) if the value of the offence is above 10,000 Euro. Also, they are entitled to investigate and prosecute corruption acts committed by MPs, members of the Government, state secretaries, judges, National Bank leading staff, police and army officers or members of the entire range of civil servants.
- By carrying out routine investigations and relaying on reports from supervising institutions, public administration and public, the prosecutors can apply the following measures: monitor the bank accounts, access personal documents or monitor, intercept and register personal communication (in the case of the later only with approval from a judge).
- When needed the NDA can engage in specific measures for protecting witnesses, experts and victims

    - Accountability:

- The Agency has the responsibility to elaborate an annual activity report, which is presented in the Parliament by the Justice Minister. The report has a formal character, is public, and it can be accessed from the agency's web-site
- There is strict responsibility of NDA officials to the Chief Prosecutor and to the General Prosecutor at the High Court of Cassation and Justice

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Having applied the established benchmarks to NDA's legal framework, the following section will analyze through the same method, the legal setup of the NIA. In addition, the obtained outcomes will be appraised in the last section of the chapter.

2.3. National Agency of Integrity: Questioning the Capacity to Take Action

The origin of the NIA can be identified in the Romanian commitment to fully combat endemic corruption, a commitment assumed in the process of European Integration. After 1 January 2007, when Romania became an EU member, the establishment of the NIA was mainly driven by the pressure that the European Union will enforce the safeguard clause (i.e. non-recognition of Romanian judicial decisions in the EU), in case in which the Romanian authorities do not comply with their previous allegiances. As a consequence, the country Senate adopted on 9 May 2007 the Law on the establishment, organizing and functioning of the National Integrity Agency. The authorities from Bucharest have to make quick steps toward implementing a fully operational Agency as an integrated mechanism for verifying declarations and conflict of interests (Cospanaru *et al*, 2007: 37).

Before proceeding to the assessment of the NIA, three remarks must be stated: first and most importantly, the evaluation of this agency is limited to its legal framework. At this point, the Agency has neither engaged in its public role, nor does it have employees. Nevertheless, the assessment criterion developed in the first part of this chapter will be applied in order to identify

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the potential effectiveness and independency of the Agency. Second, is noteworthy that at the European level there is no unitary model of public policy for the control of conflicts of interest, incompatibilities and wealth verification (Cospanaru *et al*, 2007: 38). In these circumstances a state should identify the needs to respond corruption by building a proper public policy; consequently, the legal framework should be an instrument of that public policy. Even if is a part of the 2005-2007 National Anti-Corruption Strategy, the NIA law stands alone, without being backed up by any public policy. Last, the initial draft law sent to Parliament for debate in July 2006 had incurred numerous amendments, and many articles were revised; therefore, the Agency's design became very different from the initial one.

Furthermore, the results obtained by reviewing Law no.144 from 2007 and analyzing the data from newspaper articles and official documents (e.g. the Transparency International 2007 Country Report) can be summarized as follows:

- Appointment:

- The appointment of NIA members (both senior officials and integrity agents) is under the Senate control;
- The Integrity Council – an oversight body composed by members from each political party, from the public administration (6), legal system(1) and civil society (1) is appointed and controlled by the Senate

- Fiscal independency:

- The Agency is a first-level budgetary institution. The budget project is conceived by the NIAs President and approved by the Government as a part of the annual state budget. As

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a result, this agency has both the ability to propose a budget directly to the legislature, and to guarantee budgetary stability

- Case selection and coercive powers:

- If an integrity agent discovers that there is a bigger difference than 10,000 Euro between the public officials' assets statement and intimation, only then can he or she proceed to verify the notification.
- The agency can verify public officials' assets during their mandate, not after. As a consequence, if one is not discovered during his mandate, he cannot suffer penalties after finishing the mandate or quitting the job.
- If the NIA agents conclude that a public official is in a conflict of interest, they cannot issue sanctions; they are bounded to send notification to the responsible institutions (e.g. local or central authorities)
- Even if the Criminal Law prohibits civil servants taking decisions in favor of their blood relatives, the NIA law selects only those cases in which first grade relatives are involved.

- Accountability:

- The NIA officials are accountable towards the Integrity Council. This oversight body elaborates an annual activity report, which eventually goes to the Senate.

Also, the NIA law establishes the legal framework in which an agent can carry out his duties, without defining what is a conflict of interest or the incompatibilities in public office. In this regard, the actual legal framework remains vague and incomplete; for instance, the Law

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from 2003 about the necessary measures that must be enforced for accomplishing transparency in public office, states that the mandate of local or county council members found to be incompatible with their public positions can be ended through a Prefect decision. Another law from 2004 establishes that in the case of local public offices, the incompatibilities can be judged through local and county council decisions. Therefore, there is a conflict between institutions and between laws, a conflict which is maintained through the NIA law. Finally, the Commission which has to verify public officials' assets will be dissolved after the NIA law is published in the Official Monitor. However, the NIA will start to engage in specific activities only after six moths after the law is published (Academia Catavencu, May 2007:15).

2.4. Political Independency of the Romanian Anti-Corruption Agencies: Conclusion

Along with the specialized literature, this thesis argues that the institutional independence of the anti-corruption agencies is a fundamental milestone for their efficiency. Ideally, this type of agency should have a design which enables the overall institutional capacity to prevent corruption: the control over its members' appointment, an independent budget, the access to all public databases in all domains and enhanced investigative powers

The legislative review of the Romanian ACAs analyzed the mode and the circumstances in which political independency is part of the institutional framework. The evaluation was based upon the following main benchmarks: the appointment of senior officials, coercive powers,

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fiscal independency, and the placement of the ACA in a position where it is not subject to political dictates. Table 1 and 2 summarizes the main findings:

Table 1: Comparing Anti-Corruption Agencies

Indicator	***Anti-Corruption Agencies***	
Independency:	The National Department of Anti-Corruption	The National Integrity Agency
In the appointment or removal of Agency's President/Chief Prosecutor	**None.** The Chief Prosecutor is appointed by the Presidency upon the recommendation of Justice Ministry (which also can propose the removal to the Romanian Presidency)	**None.** The President and the Vice-President are appointed by the Senate. The removal can be done at the Integrity Council proposal
In the appointment or removal of senior officials	**Limited** between the NDA's Chief Prosecutor and the Superior Council of Magistracy.	**Limited** between the Agency's President and Senate
From political interferences	**Moderate.** The number of prosecutors can be changed through Government decision - If the Presidency agrees, then the Chief Prosecutor can be removed	**None.** Not only in the case of senior officials, but also in the case of the integrity agents the formal approval of Senate is needed -In the Integrity Council each political party can appoint one person, whereas the civil society just one. Moreover, this Council is controlled by the Senate
Fiscal independency	**Moderate.** The Agency is a second level budgetary department	**Full.** The agency is a first level budgetary institution

Table 2 Related indicators

	Accountability	The officials of the NIA are accountable to the Integrity Council (which is controlled by the Senate)
Coercive powers	**High level** of coercive power	**Low level** of coercive power

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	– the prosecutors have enhanced investigatory powers	– an integrity agent cannot issue sanctions, just notifications
Performance	In 2006, 7 parliamentarians, 1 Minister, 2 state secretaries and 5 high ranked officials were prosecuted and brought to trial Overall, from the 360 defendants brought to trial, 149 had leading position[4]	The agency did not yet start its activity

Tables 1 and Table 2 show that the two Agencies significantly vary in their degree of independency. The assessment of the National Department of Anti-Corruption legal framework displayed that it lacks *de facto* independence. The Chief Prosecutor who heads the NDA is appointed by the Romanian Presidency; he is subordinated to the General Prosecutor Office at the High Court of Cassation and Justice. However, along with extensive coercive powers and some fiscal independency, the NDA has a moderate degree of structural autonomy in carrying out specific activities.

Furthermore, according to the 2006 activity report, the NDA prosecutors managed to charge over 1,000 defendants from whom 149 had important leading positions (including seven MPs, one minister and two state secretaries). In comparison with the outcomes of NDA's 2005 activity (774 defendants, from whom only one was parliamentarian), the 2006 data suggest that the Agency managed to improve its performance of uncovering high-level corruption cases. It

[4] From the 2006 NDA activity report

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can be argued that up to the point when the NDA started to investigate high-officials, the agency did not encountered interference in its activity. Nevertheless, the 2006 and 2007 indictments brought important political retaliations (Freedom House, 2007:457).

The explanation lies in the fact that the legislative attributes of the NDA play an important role for political interferences: for instance, the Justice Minister can propose the dismissal of senior prosecutors to the SCM. In April 2007, the Minister of Justice attempted to dismiss a senior NDA prosecutor. During the follow-up, the media revealed that the NDA prosecutor investigated a local businessman and political party member tightly connected with the Government and, in particular, with the Justice Minister. As a result, the SCM postponed its decision. Subsequently, from this case it becomes obvious that prosecutors depend on the ability of agency to limit the political interference and therefore, the formal independence of the NDA should be enhanced in order to enable prosecutors to elude intricacy in their activities.

Another problematic aspect is that the NDA's legal framework is unclear to some extent: for instance, although the agency has the possibility to solely decide how to use its budget, the Government is allowed to decide upon the number of NDA prosecutors (art. 27, Emergency Ordinance No.43/ 2002). Consequently, the opportunity to "punish" the prosecutors for being too successful is in the Government courtyard. Overall, it can be argued that although the NDA has extensive coercive powers and has managed to increase the number of corruption cases investigated, *de jure*, the agency does not have the necessary independency to tackle big corruption cases.

In the case of the second Romanian anti-corruption agency, the political independency is absent. From the analysis it is evident that it is not only that the senior officials are appointed by

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the Senate, but also the oversight body – the Integrity Council – is controlled by the same legislative institution. In addition, the selection procedure for the Integrity Council is not transparent. This has generated a situation in which political parties proposed candidates who did not comply with the NIA's integrity requirements. For example, one opposition party proposed a former member of the Government accused of corruption for the Integrity Council. However, up to now, the process of selection is not finished and the outcomes are unknown (Cotidianul, June 2007). Furthermore, it is not only that the Senate appoints and controls the Integrity Council, but also this legislative body appoint both integrity agents and senior officials.

To sum up, it can be argued that none of the two agencies is immune to political interferences. In contrast with the NDA's legal framework, the NIA does not enjoy any political independency. In structural and functional terms, the NDA has the authority to undertake investigations and to directly prosecute, whereas the NIA has limited authority to engage in investigation. Without any doubt, these background conditions will impose constrains upon the activity of both agencies and, therefore, the legislative arrangement should be changed in order to enable the NIA and the NDA to pursue their purposes.

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Chapter 3: Political Will and the War Declared on Corruption: What is the Reality?

The first coherent step of the anti-corruption fight was the establishment of the National Department of Anti-Corruption in 2002, followed by the creation of another ACA, the National Integrity Agency, in 2006. The critical review of their independency showed that neither NDA nor NIA are outside political interferences and therefore the thesis research question: ***Are the Romanian Anti-Corruption Agencies politically independent?*** received a negative answer. The analysis developed in the second chapter illustrated that although the NDA is in a better position than the NIA, benefiting from a partial autonomy (e.g. less involvement of political institutions in the appointment of regular prosecutors versus the Senate approval for the appointment of all integrity agents; extensive coercive powers versus weak coercive powers), both of them are potential subject to political influences.

As the central issue in the Romanian fight against corruption is the ACAs lack of political independency, in order to develop policy recommendations, the issue of political interference should be first understood. Consequently, this chapter interprets the negative research question result, by focusing upon the role of political actors in the establishment of the Romanian ACAs. More specifically, the first section analyses the "input" which led to the creation of the ACAs

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weak legal framework that is, the political will, whereas the second part, looks at the political attempts to influence the fight against corruption and tests the thesis hypothesis (that the anti-corruption agencies are targeted by political elites to undermine their powers in order to derail investigations). Finally, the last section develops recommendations regarding the ACAs political independency.

3.1. Developing Anti-Corruption Agencies: the Political Will of Parties in Governance

Reform efforts often collapse due to inadequate strategies, failure to implement administrative reorganization (e.g. smaller number of ministries), lack of knowledge about the appropriate tools to establish systemic change and most importantly, political resistance (World Bank, 1994: 100, 103 cited by Kpundeh, 2006:92). Obviously, in many countries anti-corruption strategies, programs and institutions have failed due to the fact that the rulers did not instigate corruption-curtailing mechanisms against their private interests (Amundsen, 1999:24). Therefore, without any doubt, the success of anti-corruption programs depends on the political will committed to support the necessary efforts to take action.

The concept of "political will" refers to the demonstrated support of political actors to attack the causes and effects of corruption at a systemic level (Kpundeh, 2006:92). Even though the determination to fight corruption is not only a problem of political leaders, this thesis will only refer to those political actors who have played a relevant role in shaping the legal

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framework of the two Romanian ACAs. However, for the purpose of understanding the political will behind their legal setup, it is necessarily to obtain a proper image about the Romanian type of corruption.

In her article "Political Will in Fighting Corruption" (2006:97), Kpundeh classifies corruption as follows:

- *Incidental:* corruption is the exception rather the rule; it is characterized by petty bribery and involves individuals or small groups.

- *Systematic:* corruption involves large gains, which often are subject of popular scandals; it originates with high-level officials and politicians, as well as junior level managers. Reforms have little impact in curbing malfeasance.

- *Systemic:* corruption is institutionalized; unlike systematic corruption, it involves all levels of employment; discrimination is exercised in favor of the ruling parties.

Using the above typology, the evidence strongly suggests that the Romanian corruption is a *systematic phenomenon.* For instance, prior to the 2004 elections, the Coalition for a Clean Government (CCG) comprising several Romanian NGOs, published a report showing that 153 party candidates were either accused by corruption allegations, conflict of interest or collaboration with the former secret police (Global Integrity Report, 2006:6). Unfortunately, many of these candidates won a seat in the Romanian Parliament. Another report, published in June 2007 at the CCG initiative, argues that the politicians continue to undermine the reform efforts, either by changing the laws or trying to influence administrative decisions (CCG, 2007:17).

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Additionally, in the *systematic corruption* "the reforms are not systematic, but merely a set of political maneuvers to quiet dissatisfied public and international community" (Kpundeh, 2006:97). In this regard, the most relevant example is the bill which created the National Integrity Agency. The law was primarily required by the European Union which wanted the new members to tackle corruption in a systematic manner. Moreover, the EU has threatened action, such as not recognizing Romanian courts' decisions in the rest of the Union, if the country failed to curb widespread corruption (Herald Tribune, May 2007). Nevertheless, the newborn Agency has a serious weakness: it is not independent, but subordinated to the Parliament that it is supposed to investigate.

It can be argued that in the case of the National Integrity Agency the political will was superficial: not only did all parties within the Senate created a tight controlled and weak institution, but they have also adopted a law which does fully mandates integrity agents to employ anti-corruption actions (in a press release from May 2007, Transparency International notes that the adoption of the NIA does not represent a complete fulfillment of the commitment assumed by the Romanian Government).

The reasons for the lack of political will to support a strong anti-corruption agency, can be identified on the one hand, in Romanian politicians' belief that taking meaningful measures against corruption may result in their loss of office and, therefore, they had the necessary incentives to block the reforms (at the time of passing the NIA bill, many parliamentarians were either being investigated by the NDA, or were involved in corruption scandals). Moreover, if the anti-corruption agencies are established only as a response to the international demands, the policymakers ignore domestic requests and enact minimal reforms to satisfy external agents

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(Heilbrunn, 2004:1, 19). On the other hand, the reason why political parties clearly favored a law which enabled them to control the appointment of the NIA staff can be explained through the desire to guarantee protection for party members.

What is more, the political will manifested over the years in structuring the legislative framework of the National Department of Anti-Corruption illustrates a limited desire of political parties, government and political leaders to support a strong anti-corruption agency. Between 2002 and 2006, the Agency did not manage to produce relevant outcomes - for instance, in 2005 only one member of the parliament was investigated (Justice Ministry Report, 2006:1) in the context of mass-media booming with scandals about high-ranked politicians.

The absence of political will in the case of the NDA legal framework can be best illustrated through the Senate vote on 9 February 2006 which rejected Emergency Ordinance no.134 from 2005. At the time of the vote, the NDA was a separate institution from the General Prosecutor's Office; moreover, in 2005 the Constitutional Court decided that the NDA cannot anymore investigate senators and deputies, and, therefore, it concluded that only the General Prosecutor's Office can prosecute parliamentarians. This created a potential situation in which a highly prepared institution to fight corruption (the NDA) was unable to pursue its objectives, whereas the General Prosecutor Office was unable to engage in investigating parliamentarians due to the absence of expertise, manpower and logistics (Ziua, February 2006).

In these circumstances, the proposed Emergency Ordinance 134 changed the structure of the NDA by integrating this agency in the General Prosecutor's Office, enhanced the coercive power of anti-corruption prosecutors and enlarged the type of offences which could be investigated. In addition, these modifications have been demanded by the European Union, as a

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sine qua non condition of the accession process. However, the representatives of the legislative authority demonstrated once again their resistance to any change, and their lack of political will to support the fight against corruption when the Senate voted on 9 February 2006 for the rejection of Emergency Ordinance no. 134 (Cospanaru *et al*, 2007: 19).

By dismissing this draft law, the Senate has effectively removed the NDA's competence to investigate acts of grand corruption. Nevertheless, the final decision belonged to the Romanian President who could either enact the Constitutional Court's verdict to forbid the NDA to prosecute parliamentarians, or resend the Emergency Ordinance to the Senate. The Romanian President, Traian Basescu, announced that in accordance with the Constitution, he will request the Parliament to reconsider its decision (Justice Ministry Report, 2006:2). After extensive consultations between political parties and the Presidency, on March 2, 2006, the Law no. 54 for the approval of Emergency Ordinance no.134 from 2005 received a positive vote in the Senate.

Although at the end of the day, the NDA Ordinance was approved, it can be argued that political leaders and parties agreed to sustain the law only by being pressured by the EU and civil society. Moreover, during the process of consultations, the international community continuously demanded that the Parliament enact the NDA law. For instance, in a press release, the US embassy declares that it is worried about the possibility of the NDA to be no longer capable to fight against big corruption: "We ask the Government and the Romanian Parliament to take any necessary measures for assuring a continuous fight against big corruption" (Azi, February 2006).

To sum up, it can be asserted that the anti-corruption reforms assumed by the Romanian political elites are intentionally superficial, designed only to satisfy the international community

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and until this point, the political will has hidden behind a façade of apparent efforts to tackle corruption.

3.2. The Enemy Within: Politics and Politicians

> *"Before 2004 the Justice was under political influence and now we have the opposite situation…how can one talk about reforms failure when a Member of the Government is prosecuted and suspended by the President? Therefore, the Justice functions correctly and independently and is free from any political influence"*
>
> Romanian Prime Minister Calin Popescu Tariceanu, Juridice , June 2007

Making Romania achieve its objective to join the European Union was a remarkable accomplishment. While those actors responsible for the positive changes in the fight against corruption were the European Union, the international community and the Romanian civil society, the political elites played a partisan role, either trying to weaken the ACAs (the NDA's case) or tightly control them (the NIA's case). At this point, in order to test the hypothesis (that the anti-corruption agencies are targeted by political elites to undermine their powers in order to derail investigations) the thesis' choice is to analyze the political willing to further sustain the ACAs' activities.

The hypothesis is tested by investigating some of the major political events which occurred from 2006 onwards, and had a direct impact upon the way in which the anti-corruption fight was played out. Starting with the 2004 elections, Romania was characterized by a weak government and an unstable political alliance. In addition, the political arena was marked by acrid infighting which often paralyzed the government and eventually led the Democratic Party -

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one of major Romanian parties with a strong anti-corruption platform - to abandon the governance coalition (The Economist, 2007).

The breaking point came when the Liberal Party discharged three Government members, including the independent justice minister, Monica Macovei. Her efforts to reform the legal system and to reduce the political interferences won her few friends among the elite. During her mandate, many high-ranked officials began to be investigated by the NDA and, therefore, she was seen both by the civil society and EU officials as the main engine of the anti-corruption reforms. Nevertheless, before being dismissed, she received a non-confidence vote in the Senate and many parliamentarians requested her removal from the Government (The Economist, 2007).

The dismissal of Ms. Monica Macovei it is an example of political resistance to change, and more importantly, it illustrates the failure of political elites to sustain anti-corruption efforts. What is worse, in this case, the political parties, both from the government and the opposition, requested Macovei's removal; one explanation lies in the fact that the most essential aspect of her anti-corruption program was the creation of the National Integrity Agency. While the parties publicly supported this project, a political battle raged over details. On the one hand, Macovei proposed an agency which was independent and empowered to verify official declarations of the assets and interests of thousands of public officials. On the other hand, many parliamentarians did not want the agency to have this kind of authority, arguing that it would become a political weapon of the party in power (Herald Tribune, May 2007). It can be asserted that in this case, by removing the main reformer from the Government, the political elites were able to impose their alternative of a weak anti-corruption agency.

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The above example is followed by one in which political actors directly tried to derail the NDA's investigations. In April 2007, the new Justice Minister took a controversial decision by calling the removal of a senior prosecutor, citing his inefficiency. In fact, Doru Tulus, has been considered by some European and Romanian officials the most successful prosecutor in investigating politicians (CCG, 2007:11, 12)[5]. After the Justice Minister's decision, 40 anti-corruption prosecutors wrote a protest letter, arguing that "the minister lacks the necessary expertise to decide on a prosecutor's professional abilities" (Herald Tribune, May 2007). However, to replace Tulus, the minister needed the approval of the Superior Council of Magistracy, which decided to postpone its verdict. Furthermore, during this period, many EU officials argued that would be a mistake to dismiss Doru Tulus, and they warned the political class to avoid doing the same with the NDA Chief Prosecutor. Also, in a press release, Transparency International argues that "There are no grounds for dismissing Doru Tulus and revoking a prosecutor isn't possible without first analyzing a situation and discussing the matter with him" (News, 2007).

These examples illustrate that the thesis hypothesis is correct: the political elite aim either at undermining the agencies' power (the NIA's case) or derailing investigations (the NDA's case). Furthermore, although they succeeded in stripping the NIA's power and endorsing a weak version, the NDA's quality and quantity of nonpartisan allegations of high-level corruption continued to increase in 2006 (Freedom House, 2007:457). However, it should be noted that even with a strong civil society, free press and a strong advocating international community, the danger of political interferences remains as long as the agencies independency is not enhanced.

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[5] As leading senior prosecutor, he investigated most of the high-official corruption cases (e.g. the case of the former prime-minister)

3.3. Dealing with Anti-Corruption Agencies: the Next Steps

In line with the specialized literature (Meagher, 2005; Amundsen, 1999), this thesis considers that the anti-corruption agencies need to pursue objectives that go beyond government leadership and legislation, due to the fact that often officials are likely to be the part of the problem than a source of solutions (Bhargava and Bolongaita, 2004 cited by McCusker, 2006:16). Actually, several countries have opted for establishing independent anticorruption commissions or agencies. However, few of them are successful: among these the most cited success stories are Hong Kong Independent Commission against Corruption (ICAC), Singapore's Corrupt Practices Investigations Bureau (CPIB), and the New South Wales' Independent Commission against Corruption (ICAC) (UNDP, 2005:5).

Political independency is an important variable which affects the overall performance of the ACAs. There is no set of formula for ensuring that independence: in some countries the ACAs report directly to the Parliament whereas in others, independency means guaranteed budgets and de-politicization of the personnel (Heller, 2006:11). As a consequence, the establishment of the ACA's should be based on the assessment of the local political system and on the country's priorities and needs (UNDP, 2005:5).

The thesis showed that in Romania, corruption is a phenomenon that still touches all public spheres. Moreover, in the last years a number of high-ranked public officials and prominent politicians were subject of investigations (e.g. former Prime-Minister Adrian

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Nastase), but few of these cases reached the Romanian Courts. Nevertheless, not one of the high level politicians that have been prosecuted saw jail time (Global Integrity Report, 2006:2).

Furthermore, rather than sustaining the creation of independent and powerful anti-corruption agencies, the political elites tried over the years to increase their control over the ACAs, to weaken them, or worse, to interfere in the agencies activity (Doru Tulus' case). Undoubtedly, in Romania, the success of anti-corruption fight heavily depends on ACAs independence to carry out their tasks. Based on the assessment of ACAs independency and on the evaluation of the political will to further support the anti-corruption efforts, the thesis proposes the following policy recommendations:

Regarding the National Integrity Agency

Appointment:

- The Senate approval for the appointment of integrity agents must be removed. This category of employees is hired through open contest oversized by the Integrity Council; by eliminating the Senate control over NIA's officials the independency of the agency is enhanced.
- The number of civil society's representatives in the Integrity Council must increase (presently, the civil society has only one representative). Moreover, the permanent control exercised by the Senate over the Integrity Council must be removed, thus eliminating the danger of political interferences with the Council's activities. Regarding the appointment of its members, all stakeholders (political

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parties, NGOs, public administration) must be allowed to freely choose its spokesperson, without the Senate interference through the appointment procedure.

Coercive powers:

- Having an agency that simply defers cases of conflict of interest to the responsible bodies (e.g. Prefectures, central or local authorities) is pointless. Two Romanian NGO's – the Institute for Public Policies and the Center for Legal Resources – proved that the existing control bodies are highly ineffective or do not act at all. Therefore, the Agency's investigative power must be in the form of administrative ruling received by the superior of the investigated official for sanctioning (Freedom House, 2007:458).
- The Agency must be empowered to verify public officials' assets not only during their mandates, but also after five years they leave the public positions.

Legal framework

- The actual legal framework regarding the conflict of interest and incompatibilities must be harmonized with the NIA's law, thus clearly stating the exact legal circumstances in which the Agency can carry out the specific activities

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Regarding the National Department of Anti-Corruption

Appointment

- In order to avoid interferences with the NDA's activity and decisional power, the NDA Chief Prosecutor should gain full independency from the General Prosecutor.
- The procedure of removing senior prosecutors must be changed: it is recommendable a shared responsibility between the Ministry of Justice and the NDA Chief Prosecutor. In this regard, the cases in which the Justice Ministry solely decides the dismissal of senior prosecutors is avoided.
- The Government should not be able to change the number of the NDA prosecutors. This decision must belong to the NDA Chief Prosecutor at the request of leading senior prosecutors.

Legal framework

- In the actual legal framework, the prosecutors' cases can be removed or reallocated through hierarchical decision which often can postpone or derail investigation. In order to enhance the prosecutors' independency, the

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reallocation/removal of the cases must be done only in special conditions (such as inability to work, or conflict of interest).

Finally, a fundamental issue that affects the legal framework of both agencies is the practice of excessive rewriting through Government Ordinances. These types of ordinances immediately come into effect and are retrospectively approved by the Parliament (Open Society Institute, 2002:488). In the recent years, all Governments have extensively used ordinances, and therefore the legal framework tends to be vague and incomplete (e.g. the laws regarding the conflict of interest).As a result, the legislative process that designs the anti-corruption framework should not be limited to the Government initiative.

To conclude, it is essential to mention that in the case of the NDA the political interferences can be easier avoided than in the case of the NIA. In addition, it can be argued that until the legal framework of the National Integrity Agency remains the same, this agency will not be able to play any relevant role in the fight against corruption.

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Conclusion

The anti-corruption agencies are part of broader strategies (e.g. social, legal or/and political) that together can reduce the overall corruption in a country. Within these strategies, the anti-corruption agencies play an absolutely crucial role in the way in which the anti-corruption fight is played out. How a government is able to enact the ACAs legal framework depends upon its capacity to implement controversial reforms, and many governments fail in their efforts to do so (Heilbrunn, 2004:15).

The first key variable that explains ACAs' efficiency to combat corruption is the independence from any political interference. In Romania, due to the high level of corruption, the success of ACAs is directly related to their degree of political autonomy (Kpundeh, 2006:105). In line with this argument, the *research question* of the thesis: *are the Romanian Anti-Corruption Agencies politically independent?* received a negative answer. Consequently, in their current form, the agencies have a legal design unsuited to properly fight corruption. Clearly, the need of independent anti-corruption agencies is greater than ever, and, therefore, the success of the Romanian case depends on the modification of the status-quo. More explicitly, due to the fact that none of the ACAs are completely immune to political interferences, this thesis proposed a design that can increase their capability to diminish corruption: enhanced political

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independency through the modification of the mechanisms regarding the appointment procedure, the coercive powers and the legal framework.

The second key variable is the political commitment to draft new laws that establish credible enforcement bodies that have the capacity to control venality (Heilbrunn, 2004:15). The thesis has highlighted that the Romanian political elites and parties were reluctant to support a strong legislative framework for the two anti-corruption agencies. On the contrary, the political arrangements that have lead to the ACAs establishment are intentionally superficial, designed only to satisfy the international community and, up to this point, the political will has hidden behind a façade of apparent efforts to tackle corruption.

The third key variable is that instead of frustrating ACAs' activities, the political will should further sustain the agencies' efforts to fight corruption. However, as the thesis demonstrated, the Romanian politicians are largely unwilling of providing systematic support for the anti-corruption agencies. Even more, the qualitative analysis regarding the 2006-2007 main political events indicates that the ACAs are targeted by politicians either to derail investigations or to weaken them.

The implications of the research findings can be summarized as follows: firstly, it is important to recognize the fundamental role of the political will in the progress of Romanian anti-corruption efforts (McCusker, 2006:28). Therefore, if the political commitment remains limited to rhetoric, the future prevention of corrupt practices will be delayed. Secondly, even if the NDA has started to make some progresses, for the time being, the domestic polls show that citizens are still disappointed by the anti-corruption results (Freedom House, 2006:458). Consequently, it is vitally important that the media and the civil society continue to pressure the

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government in regard with the anti-corruption efforts. Otherwise, the lack of real progress will enhance the overall corruption level. Finally, if the institutional design of the Romanian anti-corruption agencies remains unchanged, the politicians will further try to pursue their own private interest by manipulating the weaknesses of ACAs legal framework. Furthermore, there are three possible steps through which these difficulties can be surmounted[6]:

- *Agenda-setting:* the government should place the anti-corruption fight as the top priority on the national agenda.

- *Decision-making:* the government, the political parties and the civil society should come to an agreement regarding the functions and the independency of the anti-corruption agencies. In addition to this, political leaders need to shift their responses from the demand of the EU to enact anti-corruption policies to the domestic demands.

- *Implementation:* beyond recognizing corruption as an economical, social and political problem, the Romanian government needs to ensure the permanent development of the appropriate anti-corruption reform: strengthened political independency for the ACAs, a clearer anti-corruption legal framework, enhanced investigatory authority for the integrity agents and an improved relationship between political actors and ACAs.

Moreover, it can be argued that although the government already has placed the fight against corruption as a priority on the national agenda, the success of anti-corruption agencies

[6] Adapted from Tay & Seda 2003, cited by McCusker, 2006:29

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still depends upon the political will to further pursue the necessary steps to support the reforms and meet the social expectations.

Overall, this thesis has raised attention to the political independency of the Romanian anti-corruption agencies as the most important variable affecting the ACAs performance. Moreover, this thesis has explored the political commitment to put structures in place and arm them with the capacity to effectively accomplish their goals (McCusker, 2006:28). The future research could explore the accountability mechanisms and the complementary conditions and/or institutions that could enhance the agencies' performance. Discussion about the ACAs resources should be also encouraged. Finally, the results of this study should help in designing a better functional framework for the National Integrity Agency and the National Department of Anti-Corruption.

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