

CONSIDERATIONS ON PUBLIC INTEGRITY STANDARDS FOR ROMANIAN MPs

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Abstract

The paper analyzes the implementation and effectiveness of public integrity standards within the Romanian Parliament, in the respect of the rule of law principle and in terms of the parliamentary mandate legitimacy. The subject is approached in the light of the recent European Commission Verification and Cooperation Mechanism (CVM) Reports on Romania, focusing on the legal framework for public integrity and high level corruption limitation measures. The study uses different perspectives: (1) an analysis of the legislation sufficiency regulating MPs incompatibilities and conflicts of interests, (2) the transparency level of parliamentary procedures concerning the termination of the parliamentary mandate, (3) and the legal framework's most important evolutions, in terms of MPs integrity standards. The study presents a critical overview of the recent amendments issued by MPs, in order to limit the impact of public integrity framework and to restrain the legal competences of the National Integrity Agency (NIA). The constitutional jurisprudence analysis brings an additional insight related to legislation stability and law implementation, in terms of the final court decisions enforcement. Recent CVM reports on Romania (European Commission, 2014, 2015, 2016, and 2017) emphasize that political will and political commitment are decisive for the success of implementation and irreversibility of curbing corruption public policies and strategies. The article also inquires the feasibility of the main priorities of National Anti-Corruption Strategy (NAS) (2016-2020), in terms of promoting legislation stability and adopting a codification of public integrity standards. The paper tries to evaluate the level of political commitment of the Parliament towards the enforcement of integrity legislation and irrevocability of anticorruption strategies and public policies. The conclusions propose legislative solutions in terms of raising public integrity standards. Also, the study assesses the viability of CVM removal hypothesis and inquires the possible consequences on rule of law guarantees of such a scenario.

Keywords: conflict of interest, CVM, incompatibility, public integrity, Romania.

1. Introduction

The European Commission's Verification and Cooperation Mechanism (CVM) Technical Report (2017) attests that Romania has a comprehensive integrity framework for public officials and an independent institution (National Integrity Agency, NIA) to help the application of these rules and to apply sanctions. In the same time, the recent CVM Reports (European Commission, 2014, 2015, 2016 and 2017) emphasize the difficulties in implementation of the final NIA reports and definitive courts decisions regarding incompatibilities and conflicts of interests concerning MPs. Several Constitutional Court decisions were adopted to clarify the application and interpretation of the public integrity legislative framework for MPs. The legal Statute of Deputies and Senators, revised thoroughly in 2013 and republished in 2015 was meant, theoretically, to clarify and enforce the specific legislation.

Regardless of these declared intentions, at the beginning of the most recent Parliament mandate (2016), some of the new mandates were validated with the infringement of public integrity legislation. NIA notified the Permanent Bureaus and Juridical Committees of the two Chambers, but the Chambers decided by vote to validate the illegal mandates, questioning the very principles of rule of law.

Moreover, the implementation of legal sanctions for incompatibilities and conflicts of interests were repeatedly challenged in Parliament, although provided by final courts decisions or Constitutional Court. The last CVM Report (European Commission, 2017, p. 13) and NAS (2016-2020) highlighted the need of stability and sustainability for public integrity legislation; also, some specific clarifications of legal norms (pinpointed by the jurisprudence of the High Court of Cassation and Justice) claim a codification of public integrity legislation. Instead of launching a draft Integrity Code in a transparent public debate, the Parliament is implementing a step by step strategy to indirectly weaken the integrity framework. Challenging continuously the integrity legislation, narrowing the situations of incompatibilities and questioning NIA legitimacy could be considered a proof of lacking political support towards curbing corruption strategies.

In these conditions, the removal of the CVM instrument could lead to important challenges for the rule of law in Romania. It is acknowledged that the fulfillment of CVM benchmarks does not imply the accomplishment of all rule of law principles, 'but merely the most important ones that refer to the good functioning of judicial, executive and legislative powers' (Carp, 2014, p. 7). The consequent question is related to the level of sustainability of strategies and public policies adopted under CVM and their continuity.

Has Romania consolidated the public integrity legislation and strategies or is it sliding back? GRECO last Report on Romania (2016) stresses that more effective preventive measures are still to be taken; also, developing integrity rules for MPs is still expected. The Report emphasizes the necessity to enforce ethics and preserve integrity for MPs: in incompatibility cases, court decisions are not complied with, proving a lack of effectiveness of the legislation. Also, the mechanisms to preserve integrity of

parliamentarians are transformed into an 'inconsistent legal framework and a lack of equilibrium' (GRECO, 2016, p. 5).

The success and effectiveness of curbing corruption strategies and public policies are related to political commitment (Johnston and Doig, 1999; Grindle, 2007; OECD, 2017). In the area of public integrity, conflicts of interests and incompatibility are indicators of lack of integrity and, consequently, of corruption (Nicholls QC *et al.*, 2011, p. 404).

Policy capture, as a form of corruption, can be enacted also by institutional actors such as Parliament, Government or Judiciary, which can pass regulations and norms in their own private interests (Popa, 2012, p. 33). The culture of integrity and accountability is a key-factor against policy capture; identifying and managing conflicts of interests is relevant to reduce capture risks (OECD, 2017, pp. 76-79). An effective limitation of state capture in Romania and Bulgaria was considered to be the combination of CVM incentives and internal ones, such as social mobilization and public pressure (since CVM is largely supported by civil society) (Dimitrova and Buzogany, 2014). In the same time, incomplete political and economic reforms tend to generate state capture (Popa, 2012, p. 77) and, in this respect, anticorruption legislation's stability and sustainability of reforms and strategies are contributing factors.

It was stated that only a conjugate action between CVM prescriptions and domestic commitment, such as political will and strong civil society, large citizen support for anticorruption reforms, can lead to the enforcement of the rule of law (Spendzharova and Vachudova, 2012). When political commitment lacks, the reforms can easily slide back. CVM removal and an unbalanced public integrity framework could weaken the position of civil society in holding political leaders accountable.

The study tries to evaluate the level of political commitment towards anticorruption reforms, in terms of a qualitative analysis of public integrity legislation for MPs and of Parliament's loyalty to the implementation and improvement of public integrity legislation.

2. Conflicts of interests and incompatibilities.

Legislative framework sufficiency analysis

Incompatibilities are instruments of protection for the independence of parliamentary mandate against the influence of private interests (Constantinescu *et al.*, 2004, p. 29; Constantinescu and Muraru, 1999, p. 91). General incompatibilities concerning MPs mandate are regulated at constitutional level by art. 71 from the fundamental law, implying that '(1) No one may be a Deputy and a Senator at the same time. (2) The capacity as a Deputy or Senator is incompatible with the exercise of any public office in authority, with the exception of Government membership. (3) Other incompatibilities shall be established by organic law'. The legal framework of incompatibilities is provided mainly by the legal Statute of MPs, Law no. 96/2006 and, other details are also regulated by Law no. 161/2003 concerning transparency in public dignities. The Rules of Procedures of the two Chambers also provide almost the same situations of incompatibilities, but not in an exhausting manner (see Curt, 2013, pp. 7-12).

According to the Constitution, incompatibilities for MPs lead to an *ex officio* termination of the mandate¹. Still, the procedure provided by Law no. 96/2006 is questionable: the Chamber will decide, by means of political vote, the termination of the mandate, even in cases of court final decisions or definitive NIA's Reports. The procedural norms lack clarity and are regulated slightly different by Law no. 161/2003 and the Rules of Procedure of Chambers. Also, Law no. 96/2006 stipulates in detail the procedure to be followed, providing complicated and temporized steps and, eventually, Chambers can override legality by a simple political vote, overlapping NIA prerogatives. According to Law no. 176/2010, the Agency (NIA) is the single competent and specialized national authority in the area of incompatibilities and conflicts of interests (Curt, 2013, pp. 14-19).

The Constitutional Court's jurisprudence and recent GRECO Report on Romania (2016, p. 19, pp. 48-49) claim a unification of integrity legislation for MPs, to enforce the rule of law. Ambiguous provisions, lax terms, excessive delays in attesting the termination of mandate, norms lacking clarity and predictability are subterfuges meant to draft ineffective mechanisms. After all, Chambers have the possibility to take a political decision for incompatibility cases infringing courts decisions (Curt, 2013, pp. 14-22).

Conflicts of interests are not regulated at constitutional level, although the very essence of incompatibilities is the prevention of conflicts of interests; consequently, conflicts of interest do not lead to an *ex officio* termination of parliamentary mandate. Infra-constitutional legislation defines administrative conflicts of interests by means of Law no. 161/2003, art. 71 as 'the situation when a person holding a high official or public position has a personal financial interest, which could influence the objective performance of his/ her competencies, as provided by the Constitution and other legal norms'. Administrative conflicts of interests for MPs were stipulated specifically by Law no. 144/2007 (art. 39.1), abrogating previous provisions from Law no. 161/2003 with referral to deputies and senators. In 2010, these provisions were considered to be declared, indirectly, unconstitutional by Decision no. 415 from 14th of April 2010. Accordingly, between 2003 and 2007 the administrative conflicts of interests were applicable to MPs, but between 2007 and 2013 the civil normative situation was kind of

1 The termination of the parliamentary mandate occurs as follows: '(a) on the date stated for incompatibility resignation, submitted to the Standing Bureau of the Chamber the member of which is the deputy or the senator; (b) on the date established for the resolution of the Chamber the member of which is the deputy or the senator, and which determines the incompatibility; (c) on the date of the final and irrevocable decision of the Court through which the appeal to the National Integrity Agency report that established the incompatibility is rejected; (d) at the expiry of the 15 days period from the date of acknowledgement of the National Integrity Agency's evaluation report during which time the deputy or the senator may litigate in the administrative court. The acknowledgment is made by the deputy or the senator in question who addresses the report to the National Integrity Agency under signature of receipt or, if the receipt is declined, through plenary statement made by the chairman of the Chamber of which the senator or the deputy is member' (art. 7 of Law no. 96/2006).

confusing, since it lacked specific regulations concerning cases of administrative conflicts of interests for MPs (Constitutional Court Decision no. 619 from 11th of October 2016). Out of general provisions of conflicts of interests for public dignities only those related to financial interests were applicable to MPs (art. 70, Law no. 161/2003). Also, MPs and other officials are prohibited to issue administrative or legal acts or to participate in/or take a decision contrary to the general legal norms on conflicts of interests and incompatibilities; the breaching of such requirements constitutes a disciplinary offence, as long as it does not consist in a crime, provided by the Criminal Law (art. 25 of Law no. 176/2010). In 2013, Law no. 219 modifying the Statute of Deputies and Senators, introduced specific regulations regarding the administrative conflicts of interests for MPs, providing that ‘the deputy’s/ senator’s family members or his/ her in-laws up to the 3rd degree cannot be employed in parliamentary office’; the breach of this regulation is considered a disciplinary offence, sanctioned with the decrease of 10% of the parliamentary salary. Criminal conflicts of interests were regulated by the New Criminal Code in article 301, recently modified by Law no. 193/2017; the law abandons to use the term ‘conflicts of interest’ in the criminal legislation in order to have a clear distinction from administrative conflicts of interest (Constitutional Court Decision no. 619/2016). The modified art. 301 form is entitled ‘the misuse of public office in order to favor others’, and incriminates only some situations of economic conflicts of interest.

Although the Parliament adopted in October 2017 a Code of Conduct for Deputies and Senators, providing some preventive regulations for conflicts of interests, the new provisions do not follow all prescriptions of GRECO Report on Romania (2016, p. 5) (extent of the definition of conflict of interests not only to financial and personal interests; regulate the possibility to allow abstention from decision in conflicts of interests disclosed *ad hoc*). Similarly, the Code of Conduct does not regulate the recommendations of the recent CVM Report (November 2017, Technical Report, p. 6): ‘clear provisions on mutual respect between institutions and making clear that parliamentarians and the parliamentary process should respect the independence of the judiciary’. The Code only includes a general provision on the respect of separation of powers, but does not stipulate effective sanctions for breaches of separation of powers.

Analyzing the sufficiency of legislation we find that public integrity framework for MPs need unification and clarification, suggesting to have a unitary framework and a single formal regulation; procedures for attesting incompatibilities and conflicts of interests should be more transparent and flexible, accompanied by imperative terms; the law should provide expressly that Chambers cannot overlap NIA prerogatives or override courts decisions (NIA definitive reports) by means of political vote. Conflicts of interests for MPs should have a constitutional ground, once agreed, incompatibilities are regulated merely to prevent conflicts of interests; the definition of administrative conflicts of interest should be extended beyond financial interest.

3. Implementation of NIA Reports and final courts decisions

Between 2013 and 2017², NIA attested incompatibility for 54 deputies and senators, administrative conflicts of interests for 42 deputies and senators and suspicions of criminal conflicts of interests for 12 MPs. In 13 situations of incompatibilities, NIA Reports remained definitive by courts decisions, 25 files are still pending in courts, 14 NIA Reports were invalidated by courts of laws, and 2 cases were suspended in courts (NIA Reports for the years 2013, 2014, 2015, 2016 and 2017).

As for the enforcement of courts decisions and NIA definitive Reports, in 12 cases NIA Reports remained definitive after MPs mandate were completed at legal term; in 3 situations of incompatibilities, the Chambers decided, according to the law, the termination of the mandate, by dismissal; another NIA request is still pending in Senate and in another case, the former senator was dismissed by the disciplinary committee of the employing authority, at the moment the NIA Report was definitive. Another 3 cases of definitive incompatibility are more complex and worth a detailed analysis.

NIA established incompatibility for deputy U.F. on November 4, 2013; the High Court of Cassation and Justice attested definitively the NIA report (Decision no. 924 from 24th of March 2016). U.F. was in incompatibility during the exercise of a former mandate of local elected officials, since he held simultaneously the quality of administrator of several commercial companies. The person found in incompatibility or conflict of interests cannot exercise any public dignity for 3 years, from the moment the incompatibility is attested definitively (art. 25.2 of Law no. 176/2010); consequently, the parliamentary mandate is ceased *ex officio* on constitutional grounds (art. 71 of Constitution). On May 26, 2016 NIA asked the Chamber of Deputies to certify the termination of U.F. parliamentary mandate, but the Chamber of Deputies refused. Further on, Mureş Circumscription Electoral Bureau (where U.F. attempted to subscribe his candidacy for the new parliamentary elections) declined his candidacy, in application of art. 25.2 of Law no. 176/2010.

A rather bizarre case is the one of deputy R.P. attested to be in incompatibility by the NIA definitive Report, since during the exercise of the parliamentary mandate he also had the quality of an individual trader, breaching the provisions of art. 82.1 (l) of Law no. 161/2003. R.P did not contest the NIA Report, consequently NIA asked the Chamber of Deputies to certify the termination of the mandate. Since the Chamber of Deputies refused, in the first instance, to pursue the legal procedure, NIA had to apply the legal sanction for misdemeanor, for the members of the Judicial Committee of Chamber of Deputies, consisting in an individually monetary fine. Eventually, the Chamber of Deputies had to dismiss deputy R.P. on 9th of February 2015. Although the legal term to appeal NIA Report was exceeded, the Court of Appeal Bucharest

2 The study has chosen the interval 2013 to 2017, since in 2013 there was a substantial modification of the MPs Statute, and Law no. 96/2006 aimed to give unity and clarity to public integrity standards and parliamentary procedures for sanctioning incompatibility and conflicts of interests.

admitted R.P.'s contestation, and therefore the Parliament revoked its first decision, revalidating P.R.'s mandate, based on Court of Appeal decision, which was not yet definitive; by the moment the High Court of Cassation and Justice decision attested definitively the incompatibility, Deputy P.R. had completed his mandate at legal term (end of parliamentary legislature).

NIA attested the incompatibility of deputy R.S. on 12th of March 2014 (definitive under Decision no. 3006 from 3rd of November 2016 of High Court of Cassation and Justice); incompatibility resided in exerting, during the exercise of parliamentary mandate, also the quality of individual trader, breaching the provisions of art. 82.1 (l) from Law no. 161/2003. On the 8th of November 2016, the NIA asked the Chamber of Deputies to ascribe to final court decision and acknowledge the termination of the parliamentary mandate. On the 28th of November 2016 the deputy was dismissed, in application of art. 25.2 of the Law no. 176/2010, with the interdiction to exert a public dignity for 3 years. Despite this, on the 21st of December 2016, the new Parliament validated the parliamentary mandate for deputy R.S. Consequently, on the 24th of February 2017, the NIA asked the Parliament to comply with provisions of art. 25.2 of Law no. 176/2010, but the request is still pending in Parliament.

Between 2013 and 2017, from 42 cases on administrative conflicts of interests attested by NIA, 17 cases were certified as definitive by courts of law, and other 25 are still pending in judicial procedures. In 12 situations, the final court decisions remained definitive only after parliamentarians completed their mandate at legal term. In 4 cases, the Parliament has applied the disciplinary sanction of diminishing with 10% the salaries for 3 months.

In one situation, the NIA report in the case of conflict of interest of deputy C.R, remained definitive on the 8th of March 2017 (Decision of High Court of Cassation and Justice); consequently, NIA asked the Chamber of Deputies to put into effect the disciplinary sanction, but the Chamber refused.

Similarly, the lack of enforcement of the final judicial decisions occurred also in cases of definitive conflicts of interest of MPs. On the 27th of March 2013, NIA certified a conflict of interest for deputy C.S. (Decision no. 3760 of High Court of Cassation and Justice, definitive on the 24th of November 2015). Deputy C.S. was found in conflict of interest since during the previous mandate (of the local elected officials) has breached the provisions of art. 47.1 of Law no. 215/2011 on local public administration and Law no. 393/2004 regarding the Statute of the local elected officials. The Chamber of Deputies has put into effect the disciplinary sanction, diminishing salary with 10% during 3 months. Simultaneously, the legal interdiction to exert public dignities for 3 years, were applicable, as well. Despite this, after the parliamentary elections in 2016, the mandate of deputy C.S. was validated by the Chamber of Deputies. On the 24th of February 2017, NIA requested the Parliament to put into effect the legal provisions of art. 25.2 of Law no. 176/2010 and to attest the termination of the parliamentary mandate for deputy C.S. NIA request has not been solved yet by the Chamber of Deputies.

From a total number of 12 criminal conflicts of interests, the courts of law pronounced 6 convictions for criminal conflicts of interests, 4 are still in prosecution procedures, and for 2 MPs there were final decisions not to prosecute.

In conclusion, we must observe that the final court decisions attesting incompatibility for MPs are often not enforced, and MPs refuse to resign. Parliamentary procedures tend to overlap NIA's legal prerogatives, provide lax terms and postpone the termination of mandates. Chambers refuse to apply the interdiction to exercise a public dignity (practically, the most important sanction for conflicts of interests and incompatibilities). In the same manner, the refuse to implement courts decisions diminishes public trust and confidence in justice.

4. Public integrity legal framework sustainability. Legislative proposals amending the public integrity framework pursue to undermine NIA's legitimacy

In 2010, NIA legal framework was declared unconstitutional; the new Law no. 176/2010 was adopted by the Parliament only after several months of legislative vacuum and under the pressure of CVM recommendations. Although all CVM Reports (2013-2017) and EU Anticorruption Report (2014, p. 8) recommended Romania to strengthen and ensure the sustainability of public integrity legal framework, during recent years, the legislative proposals of MPs constantly challenged the legitimacy of NIA, restricting its competencies and reducing the situations legally regulated as incompatibilities.

In April 2017, in spite of the express opposition of NIA, the Parliament adopted Law no. 87 from the 2nd of May 2017. The law modifies legal incompatibilities for MPs, members of Government, prefects and vice-prefects, local public officials and civil servants³. In the motivation of the law, the need of 'clarification' of incompatibility regulations regarding the quality of MPs and any position in commercial companies was pinpointed. It was stated that incompatibilities could arise only in the moment when the commercial activities are effectively exercised, and not by the simple fact of detaining both qualities. The new approach of the law is, obviously, in contradiction with the High Court of Cassation and Justice and Constitutional Court jurisprudence (Decision no. 876 from 28th of June 2011, Constitutional Court; Decision no. 972 from 21st of November 2012, Constitutional Court; Decision 3104 from 26th of June 2011, High Court of Cassation and Justice, Decision no. 792 from 14th February 2013, High Court of Cassation and Justice; Decision no. 3506 from 14th September 2012, High Court of Cassation and Justice).

Logically, incompatibility arises in the moment of simply holding both qualities, the exercise thereof bringing the conflict of interest itself. The Constitutional Court

3 It is worth to be mentioned that the advisory point of view of the Government (2015) (without opposing expressly to the will of Parliament) emphasizes that the Parliament should be aware of recommendations of CVM Report (the next two advisory points of view of Government - 2016, 2017- were negative).

and High Court of Cassation and Justice case law states that the incompatibility legal framework aims to prevent potential conflicts of interests, and in the same time, to value the public interest and the rule of law principles. The very philosophy of regulation of incompatibility does not intend to simply sanction a proper activity (in our case the mere 'exercise' of an activity), but mainly to prevent the situations of dangerous intersections between public interest and personal interests, in the name of transparency and legality of public decisional processes. Moreover, constant jurisprudence of High Court of Cassation and Justice emphasizes the importance of public accountability of high officials, whom must act with diligence and unquestionably demonstrate the determination to clearly delimitate their own private interests from public interest, materialized in an expressed choice between two incompatible qualities. According to the High Court of Cassation and Justice jurisprudence, it is of less importance whether the public official develops effectively any activities based on incompatible qualities or gains any pecuniary benefits. Incompatibility resides merely in simply detaining the two incongruous qualities, potentially issuing a conflict of interests. Holding simultaneously both qualities is, in essence, able to influence or to alter public officials' free will. Practically speaking, this 'clarification' has no special merit but bringing more confusion: theoretically, an MP could legally (from now on) hold a leading position in a private commercial company (provided by Law no. 31/1990) and exercise his/her prerogatives by interposed persons, accordingly following his/hers own private interests, with the consent of the law. Consequently, MPs will be more exposed to potential conflicts of interests.

Although the first draft of the legislative proposal referred only to MPs, the final form of the Law no. 87/2017 extends the provision to members of Government, prefects and vice-prefects, local officials and civil servants. Consecutive question arises relative to several litigations pending, based on the former regulation.

As described above, article 301 of the Criminal Code was recently modified by the Law no. 193/2017; the law abandons to use the term 'conflicts of interest' in criminal legislation in order to have a clear distinction from administrative conflicts of interest (Constitutional Court Decision no. 619/2016). Modified art. 301 form is entitled 'the misuse of public office in order to favor others', but incriminates only some situations of economic conflicts of interest. In the same logic, MPs adopted in December 2013 a modification to the Criminal Code in order to limit the application of penal conflicts of interest relative to public elected officials as 'public civil servants'; it was declared unconstitutional by Decision no. 2 and Decision no. 3 from 15th of January 2014 of the Constitutional Court.

In 2016 the Parliament tried to adopt an 'interpretative law' (Law proposal no. 247/2016) to MPs Statute Law no. 96/2006, in order to give an 'interpretation' to the article defining as administrative conflict of interests in the employment of MPs relatives in their own parliamentary office, practically a decriminalization of the same crime provided, at that moment, by Criminal Code; the Constitutional Court declared the provisions unconstitutional (Curt, 2016, p. 60).

Constitutional Court Decision no. 418 from 3rd of July 2014 gave the legal interpretation to art. 25 from Law no. 176/2010, which establishes that the breach of incompatibilities and conflicts of interest legislation is sanctioned with the interdiction to exert a public function for 3 years. In the interpretation of the law, the Constitutional Court decided that the interdiction is applicable to all public dignities. Still, at the beginning of 2017, 3 distinctive legislative proposals trying to alter the interpretation of the Constitutional Court were initiated by the Parliament (CVM technical document 2017, p. 24). In December, 2017, the Parliament adopted an important amendment to the Law no. 176/2010, concerning the integrity in public function and the organization of NIA. The text infringes the rule of law principle and non-retroactivity of the civil law principle: the amendment annuls *ex tunc* all integrity interdictions, in cases of conflicts of interest for parliamentarians, applied from 2007 to 2013.

Other legislative proposals adopted by MPs reduce public integrity standards for local elected officials: a law modifying the incompatibilities for mayors and presidents of county councils was adopted in 2015 to eliminate the situations of incompatibilities of the position of local public elected officials and the one of member of intercommunity associations board (at that moment, several files related to breaches of this incompatibility rule were instrumented by NIA) (Curt, 2015, pp. 73-74). Similar amendments to the law concerning the ban of public local elected officials to be a member of supervisory boards of state-owned companies at local level were eliminated under the Law no. 128/2017; in 2014, another modification of the Law no. 215/2001 concerning local public administration limits the area of conflicts of interests for local public elected officials, introducing the delegation of attributions of mayors and vice-mayors (Curt, 2014, pp. 60-61).

All the modifications adopted in recent years are challenging continuously the public integrity framework. In the same way, the feasibility of National Anti-Corruption Strategy (2016-2020) priorities are questioned: the stability of the integrity legal framework and the need for codification of the integrity framework. The lack of transparency and predictability of legislative processes, inexistence of proper debates and consultations with stakeholders and competent authorities during decision-making process discredit the political commitment towards anticorruption public policies and strategies, in terms of sustainability and irrevocability of the legal framework. Nonetheless, the very essence of the rule of law is threatened.

5. Constitutional Court decisions' impact on the public integrity framework sustainability

The amendments adopted in 2013 to modify the Statute of Deputies and Senators regulates, at infra-constitutional level, the rule of law principle and separations of power, stipulating the *ex officio* termination of parliamentary mandate for cases of incompatibility. The modification was adopted as consequence of the Constitutional Court Decision no. 972 from 21st of November 2012, deciding upon the constitutional legal dispute between the legislative and the judiciary. The Senate refused to en-

force the final decision of the High Court of Cassation and Justice; although being in an incompatibility situation, senator M.D. refused to resign. The Senate refused the solution of the Juridical Committee – to take act of the termination of the senatorial mandate, refusing to comply with the court's decision and putting into question rule of law principles (Curt, 2013, pp. 14-19). President of Superior Council of Magistracy notified Constitutional Court. Constitutional Court decided the Senate has breached the constitutional provisions of separation of powers and supremacy of law principles, simultaneously with principles of administration of justice.

Another legal dispute of constitutional nature between the Senate and the Superior Council of Magistracy was solved in 2013 by the Constitutional Court (Decision no. 460 from 13th of November 2013), in a case of incompatibility of senator A.M. The Senate refused, similarly, to put into force the decision of the High Court of Cassation and Justice, arguing that the incompatibility case was established relative to the exercise of A.M.'s previous mandate, as local official. The legal sanction for incompatibility is provided by law: the person declared in incompatibility during an elected public office is banned to 'exert the same office for 3 years from the moment of termination of the public mandate'. The Senate stated that the case of A.M. is not covered by the legal sanction, since he was in the exercise of a local public office and not in a parliamentary mandate. In the first instance, the Constitutional Court decided that the Parliament should intervene to give a clear and predictable interpretation to the legal provision, since the same text was referred to constitutional control several times (Decision no. 663 from 26th of June 2012, Decision no. 203 from 29th of April 2013 and further, Decision no. 481 from 21st of November 2013, Decision no. 483 from 21st of November 2013, Decision no. 481 from 3rd of July 2014). Since the Parliament ignored the need to clarify the confusion related to different interpretations of the text, the Constitutional Court issued Decision no. 418 from 3rd of July 2014. The decision stated clearly that the purpose of the legal sanction is to provide integrity standards and transparency for all public offices, and to curb corruption. The Court concluded that the ban to exercise any public office for 3 years is a sanction for incompatibility, applicable to all public offices and dignities, regardless of the nature of the mandate in exercise. The interdiction is not infringing the constitutional right to be elected, and is compatible to appreciation of the state to establish legal restrictions to the exercise of certain rights and freedoms (Curt, 2014, pp. 12-14). Only this interpretation is able to assure dissuasiveness to legal sanction, since lack of integrity in the exercise of any public dignity means absence of accountability, transparency and fairness, as well as of the founding principles of good governance.

Another significant decision of the Constitutional Court was adopted on 11th of October 2016; Decision no. 619 attested the unconstitutionality of a so-called 'interpretative' law, concerning the Legal Statute of MPs aiming to clarify the distinction between administrative conflicts of interests and criminal ones, but drafted as a retroactive decriminalization of criminal conflicts of interests committed by MPs, during 2007-2013 (for hiring relatives and spouses in parliamentary offices). The Court no-

tices that decriminalization of facts and acts which could affect the rule of law institutions, democracy, citizen rights, equity and social justice must be made only under a strict constitutional control, and only by means of substantial criminal legislation.

The analysis of constitutional jurisprudence highlights the essential role of Constitutional Court in underpinning the implementation and stability of public integrity legislation, as well as the enforcement of final court judgments and NIA reports.

6. Conclusions

Recent CVM Reports (January 2017, November 2017) represent an analysis of Romania's last 10 years evolution in affirming independence of justice and curbing corruption (judicial processes, integrity framework and the National Integrity Agency, tackling high-level corruption, tackling corruption at all levels). CVM Reports are highlighting the most important accomplishments, but nevertheless, are pointing out consistent steps that still have to be followed. Some Romanian public officials are claiming for the removal of CVM. EU officials are bringing into discussion the 12 key recommendations (European Commission, November 2017) yet to be pursued to lead to the potential closing of individual benchmarks. Romania has proven its capacity in following the most important steps in accomplishing CVM benchmarks; referring to the second benchmark, the last CVM Report notes: integrity legal framework is comprehensive and the National Integrity Agency is an established institution, with a consistent track record (European Commission, January 2017, p. 12). But, the Parliament 'should be transparent in its decision-making with regard to the follow-up to final and irrevocable decisions on incompatibilities, conflicts of interests and unjustified wealth against its members' (European Commission, November 2017, p. 16) and should ensure transparency and proper consultations with the relevant authorities and stakeholders in decision-making and legislative processes on corruption and integrity laws (European Commission, November 2017, p. 10).

In terms of key factors to anticorruption reforms effectiveness, political commitment is one of the most important. In order to evaluate political commitment, the study referred to integrity standards of MPs and Parliament's dedication to the improvement and implementation of integrity legislation. A qualitative analysis of public integrity legislation for MPs highlights the insufficiency and lack of clarity of the legislation. Conflicts of interests are not properly defined; the regulation of integrity standards is lacking unity and coherence. The trend to 'amend' integrity and anticorruption framework is increasing in the Parliament tending to limit incompatibility cases and to diminish NIA prerogatives. Deficiency in the enforcement of the courts decisions and delayed application of legislation prove the lack of sustainability of integrity public policies and strategies, with negative impact on rule of law. The Code of Conduct for MPs is only formally adopted, ignoring the recommendation of 2017 CVM Reports to stipulate the principle of judiciary independence and mutual respect between institutions; political attacks on magistrates are also threatening the irreversibility of anticorruption public policies. The main priorities of the National Anticor-

ruption Strategy aim to foster prevention and education, in terms of raising the level of awareness and improving general public acceptance towards integrity standards; nonetheless, the institutional response of the Parliament is discouraging.

On the other hand, Romania is missing authentic internal mechanisms of screening anticorruption public policies and strategies' implementation. The efficiency of such internal instruments depends *sine qua non* on political accountability and commitment to rule of law principles.

Romania could formally fulfill the 12 recommendations of recent CVM Reports, but would it be a sign of an effective limitation of state capture? In the literature (Dimitrova and Buzogany, 2014; Popa, 2012) it was stressed that partial reforms tend to generate state capture; in the same time, CVM incentives combined with civil society mobilization could lead to diminishing effects of state capture. As the above analysis concludes, Romania is still dealing with sufficiency and sustainability of legislation, efficiency of democratic institutions and lack of political commitment. Recently, there were several moments when the Romanian civil society has proved to be strong enough to deal with the absence of political accountability, but public pressure against legislative authority should not be the unique solution. Besides a strong civil society mobilization, Romania needs a functional and effective democratic institutional framework in order to afford to renounce to CVM.

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