

PUBLIC PROCUREMENT CORRUPTION IN ROMANIA

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Journalism project uncovers public procurement fraud in Romania

Public procurement in Romania is a €17 billion market, but more than 60% of procedures are hit by complaints. A new project has highlighted fraud and irregularities in the system, and suggested how to improve the situation. EurActiv Romania reports.

According to official data, more than 19,000 tendering procedures were initiated last year on the communication platform used in the awarding process for public procurement contracts. Their total value was RON 74.6 billion (€16.9 billion), according to the latest Annual Report of the National Council for Solving Complaints (CNSC).

The CNSC deals with the complaints about the public procurement market. By way of comparison, €16.9 billion is more than double than the value of the European Structural Funds received by Romania in the last seven years.

The Romanian public procurement market is characterised by a great many

problems and irregularities, which is only partially reflected in official numbers. For example, CNSC made decisions on about 60% of cases, which means that almost two thirds of all procedures were subject to complaints.

Almost 40% of the complaints were about public procurement contracts financed by European Funds.

ilviu Popa, who works for CNSC, explained that the number of complaints influences the perception of private investors regarding the way that the government manages public money. Romanians are not “professional complainers”, but these numbers reflect vulnerabilities in the public procurement system, he argued.

Popa also stressed that Romania has a very competent system for solving complaints. But reform was still needed.

At the request of EurActiv.ro, Bogdan Paul Dobrin, president of the National Authority for Regulating and Monitoring Public Procurement (ANRMMP), provided information about the contract-awarding procedures.

The most frequent types of irregularities discovered include:

- using, in inappropriate circumstance, some awarding procedures which would normally be applied as exceptions;
- dividing a contract into several smaller contracts, to avoid going through procurement procedures;
- ignoring rules on publicity, especially those regarding the publication of the awarding notice in the period specified by law;
- inadequate and subjective use, during the evaluation of offers, of criteria included in the awarding documentation.

Corruption watchdog

The journalism project *dosareachizitiitii.hotnews.ro*, dubbed “The PP files”, was launched in April 2014, to raise awareness of public procurement corruption. Since

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its launch, it has already had success. After it exposed an apparently illegal, restrictive qualification requirement in a tender document, the Education Ministry was forced to revise down figures by almost ten times.

The platform was launched as part of the project “Fighting Public Procurement Criminality. An Operational Approach”, coordinated by Freedom House Romania Foundation, with important institutional partners in Romania, France and Germany.

It was developed in response to the

Romanian authorities’ need to implement EU recommendations in the field of fighting public procurement fraud, such as those of Fighting Corruption in the EU and the Commission report under the Cooperation and Verification Mechanism (CVM) of 8 February 2012.

So far, 17 cases of fraud and corruption have been covered by the project’s journalists, five of them having been closed after a final decision.

One case looks like a typical case of fraud by local authorities. Mircia Gutau, mayor of the city of Ramnicu Valcea, was

sentenced to two-and-a-half years prison. He bought playground equipment in Bulgaria for €9,000 and re-sold it to the local authorities for €30,000.

Another case concerned a land swoop, which, according to the prosecution, will lose the Baneasa airport in Bucharest €4 million. The case, which dragged on from January 2008 to March 2013, ended with the acquittal of all the defendants.

The website also offers a full overview of the judicial process, and describes the tricks and loopholes help the defendants escape from justice.

Fraud complainants in Romania face €100,000 bill

Romanian public procurement legislation was modified significantly this year by the government, which introduced restrictive conditions for lodging a complaint against suspected fraud. EurActiv Romania reports.



The government adopted the extremely controversial “guarantee of good conduct” for submitting complaints in June. It stipulates two major conditions. A would-be complainant must pay a guarantee of 1% of the estimated value of the public

procurement, up to maximum of €100,000. The law also demands the complainant proves a “legitimate interest” in the process.

The government justified the decision by saying there were too many complaints for the National Council for Solving Complaints (NCSC) to handle efficiently. The government also referred to the need for immediate new measures to make the procedure for the award of public contracts smoother and to protect contracting authorities against the submission of unfair complaints.

Another argument used by the government was the alleged abusive exercise of some economic operators, who have tried to delay the conclusion of a contract by repeatedly challenging the award procedure, despite their inability to fulfill the public contract.

The law has been widely criticised and reported to the European Commission, which is analysing it.

Lawyers and even the NCSC - the public body in charge - declared the law might violate important constitutional rights, like the right to petition and to submit complaints.

Lorand Lehel Bogdan, the president of NCSC told EurActiv.ro that the decision was taken without proper analysis and without consulting the NCSO. The amount requested from complainants was too large and the law restricted the rights of smaller companies, he added.

In a specialised publication for the

procurement market, professor and lawyer Angelica Rosu argued that the new tough requirements could have violated the Romanian constitution and EU law, causing the state more problems than it solved.

Representatives from the National Public Procurement Experts Association (ANSA), and other lawyers, have debated the issue. They agree that access to justice is restricted by the price of the guarantee. SMEs also don’t get the 50% discount they do in other similar legislation.

VassLawyers, a law firm representing several companies in the IT, construction, infrastructure, utilities, medical and defence sectors, as well as of a number of NGOs, last July lodged a complaint with the European Commission on the new legal provisions. They, “violate fundamental European principles regarding remedies in public procurement, such as the principles of effectiveness and comparability remedies, free access to remedies and to the free movement of goods and services.”

According to VassLawyers’ official statement, the complaint violates “fundamental European principles regarding remedies in public procurement, such as the principles of effectiveness and comparability remedies, free access to remedies and to the free movement of goods and services.”

The Commission hasn’t made its reaction public yet. It is highly likely that the next report under the Cooperation and Verification Mechanism (CVM), due in January 2015, will touch upon the issue.

Romanian civil society requests public tenders oversight

Public procurement should be monitored in real time by civil society, in order to detect violations, the director of Freedom House Romania has recommended.



Horia Georgescu

According to Cristina Guseth, director of Freedom House Romania, 80% of public procurement in the country is fraudulent, flawed or manipulated. She adds that the figure is more a perception than a result of measurement.

Guseth gave as an example the monitoring made by Freedom House with the Romanian Ministry of Education, where it was found that for the purchase of electronic textbooks, the turnover threshold of companies who could participate in the tender was set at excessively high levels, in order to make sure that specific companies would qualify.

Following the intervention by Freedom House and the press, the turnover thresholds have been reduced at one tenth of the initial

figure.

Other monitored cases reveal the excessive length of the fraud lawsuits, but also shows samples of especially obvious forms of public funds theft, including not organizing tenders, a practice widely spread in previous years. The verdicts are still pending for a series of cases, in which consecutive postponements made the process take too long.

One of the cases has been delayed seven years. There have been 2518 days since the file Maria Lili Schutz, with an estimated prejudice of €5 million, was sent to court. In December 2007, Schutz, a former county counsellor, was charged with having acquired two agriculture hothouses owned by the state, in Oradea and Codlea Brasov, at very low prices, in exchange for a large investment, which has never been made.

Another example: five and a half years (1994 days) have passed since file “Mugurel Surupaceanu” was sent to court”. In 2007, the Turceni Energy Plant bought an old forest tractor at four times the normal price from a company controlled by the former national MP Mugurel Surupaceanu, the prejudice being estimated by the prosecutors at around €200.000.

“Romania is to be monitored to curb such anti-competitive practices”, says Guseth, who made reference to an agreement between ANRMAR, Romania’s Public Procurement Authority, and the country’s Competition Council, to which civil society should be associated.

“As long as monitoring is made by the state, its credibility remains very low, because it would be similar to if I was monitoring myself and checking on me”, she said.

In recent years, the European Commission Cooperation and Verification Mechanism reports (see background) and the 2014 Anti-corruption report applicable for the entire EU specify that fraud and conflict of interest mar Romania’s public procurement procedures.

To respond to the challenge, Romania has put in place an information system which is now in its pilot phase and will be operational by mid-2015.

Called “Prevent”, the system is designed to prevent conflicts of interest in real time, in all the phases of the procurement system.

Horia Georgescu, President of the National Integrity Agency (ANI) which together with ANRMAR is responsible for the project, told EurActiv Romania that all the civil servants involved in procurement procedures, and the management of European funds, will introduce relevant personal details in the electronic system, which will be integrated with the existing Electronic System for Public Procurement.

Civil servants will fill in a form with key information meant to track down any possible conflict of interests. The system will automatically analyse and detect the problems and issue on spot a warning to the contracting authorities.

Georgescu also mentioned that ANI will also publish online “in real time” statistical data related to the issued warnings and suspected irregularities.

He also said that the CVM mechanism has defined an important mission for Romanian authorities: to ensure the ex-ante control of activities with a high corruption potential, and that the “Prevent” system responded to this mission.

Maya Teodoriu, State Secretary at the Romania Ministry of Justice, said that “Prevent” was the most important response of the Romanian authorities to the European Commission reports.

Besides this initiative, the Ministry of Justice implemented a series of projects with European funds dedicated to the training of government employees and of the justice professionals in the area of discovering and treating fraud related to the public procurement system, Teodoriu said.

“In that sense, it was only natural for us to enter in partnership with civil society organisations, and I will mention the name of Freedom House Romania, for a program to the benefit of judges, prosecutors, policemen, experts, which I would call a success story, because it has put together the national experience with the good European practices and the perspective of European solutions to the problems”, Teodoriu told EurActiv.

Romanian anti-corruption chief: Fraud often begins when tenders are written

Often those who write the technical specifications of tenders play a key role in the corruption schemes for public procurement, the Chief Prosecutor of the Anti-Corruption Directorate of Romania (DNA) Laura Codruța Kövesi told EurActiv Romania.



Laura Codruța Kövesi took the post of Chief Prosecutor of DNA in October 2006, being the first woman to be appointed at this post. At the age of 33 in 2006, she is also one of the youngest Prosecutors-General that Romania has had. Before her position as Prosecutor-General, Kövesi was the head of the Department of Investigation of Organized Crime and Terrorism Offences (DIICOT) branch in Sibiu County, responsible for the fight against organised crime and terrorism. She spoke to EurActiv Romania's Ioana Morovan and Ramona Diaconu.

In 2014, there were 568 cases of public procurement infringements in the public procurement registered at the DNA. In the same period of time, 93 persons were indicted in 17 of these cases. Are there any conclusions to be drawn on the basis of this statistic data? What is the typology of the public procurement investigations?

Public procurement fraud is more frequent in the field of national funds, while the EU funds are better protected by the Law 78/2000 on preventing, discovering and sanctioning of corruption acts, which has specific provisions for most irregularities in that area. There is no such criminalization for national funds, so prosecutors usually use a very general text – the abuse in office, which doesn't cover all types of fraud.

Most often, the defrauding process is initiated in the phase of the estimation of the value of the contract to be awarded. For instance, due to a fraudulent agreement between the contracting authority and the company supposed to win the tender, complex and high-value works are mentioned in the general estimate of the call for services. Subsequently, the winner will bid these works to a very small value and submit a financial proposal considerably better than the other bidders, who will use market values. After awarding the contract, the authority will waive the high value works, and the winner will be able to finalize the contract at a profitable value.

Could you give us some relevant examples of trends, compared to last year, regarding the evolution of corruption cases in the public procurements field?

Fraud in the public procurement field has become more and more complex, and the defrauding mechanisms are even more sophisticated.

The moment when a fraud takes place has often switched from the phase of selecting the offer, to the phase of writing the technical specifications.

What is new in the DNA's techniques and procedures linked to those files and the relevant legislative potential changes?

The investigation of fraud committed in public procurements procedures exceeds "the borders" of the regulatory framework in this field. DNA aims at making a complex analysis of the phenomenon. This implies several elements. One is specific checks at the stage of granting the necessary funds for the procurement, that is, the budget justification, the funds granting, preventive control. A second element is specific checks linked to the granting procedures. And a third element are specific checks linked to the implementation of the contracts. This means analysis drawn up in the fields of accountancy and fiscal issues, products counterfeiting, evaluation of the movable and immovable goods, and last, but not least, verifying of the discipline and quality in the field of construction.

The number of cases involving public procurement fraud is not very high. What are the main reasons?

We feel that more than 500 cases involving public procurement in less than a year is high enough for a structure with around 100 prosecutors, whose competence also involve other types of criminality, mainly high level corruption. You have to keep in mind that DNA's competence is limited to a specific number of cases, involving high level officials or significant damages, while all the other cases fall within the competence of the regular prosecutor's offices. More successful investigations would require more notifications from the regulating authorities. The contracting authorities also should conduct more internal checks in order to identify suspicions of fraud, otherwise it is difficult to expect prosecutors to identify by themselves all the irregularities.

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Shall the Law 78/2000 on preventing, discovering and sanctioning of corruption acts be extended to the field of the nationally funded procurements?

DNA has repeatedly asked the Ministry of Justice to initiate a legislative amendment that would criminalize the most serious irregularities concerning public procurement in a similar way to those involving European funds. Although a project was drafted in 2012 with the involvement of all the relevant actors, it is still to be adopted.

What other improvements in legislation would you feel the need to adopt, in order to give the DNA the necessary tools to fight corruption?

DNA has sent to the Romanian Parliament, who is discussing an amendment to the Criminal Procedure Code, several proposals for extending the investigative tools it can use. Maybe the most important would be the ability to close plea agreements with defendants who admit their guilt and are willing to cooperate with the prosecutors. At the moment, those provisions are applicable only for the less serious crimes, not for corruption.

How important is the field of public procurements from the perspective of the Cooperation and Verification Mechanism, which still applies to Romania?

In the last few years, the European Commission paid a lot of attention to the area of public procurement in the CVM reports. That helped a lot, because it helped the Romanian authorities become aware of the size of the problem and forced them into cooperating in order to identify solutions. Fixing the system will require a complex set of measures, because criminal investigations alone are not a panacea if all the other factors are still there.

Confiscation of criminal profits reluctantly applied in Romania

The European Commission considers confiscation a strategic priority in the fight against organised crime and corruption. However, Bucharest is still hesitant to introduce this practice. EurActiv Romania reports.

Experts from older EU members have emphasised to their Romanian counterparts the benefits of introducing extended confiscation of goods originating from criminal activities in their countries.

At a conference in Bucharest, Sara Panelli, a prosecutor from Turin, Régis Pierre, a magistrate at the Division of Criminal Affairs and Pardon within the French Ministry of Justice, and Teresa de Almeida, from the Lisbon Prosecutors Office, highlighted the benefits of extended confiscation of goods since the practice was introduced in their countries. The conference was organized within the project "Fighting Public Procurement Criminality- An Operational Approach", coordinated by Freedom House Romania, with partner organisations.

The confiscation of goods originating from criminal activities was decided by Romania's Constitutional Court in 2012. However, it hasn't produced many results yet, and specialists say it could produce results only if the current legislative framework remains in place and is applied with good will.

One of the first cases in which prosecutors asked for the extended confiscation of goods is the case of former senator of the Conservative Party Dan

Voiculescu, who was imprisoned for 10 years, by the Appeal Court of Bucharest. The sentence imposed a €60 million fine, which was related to the fraudulent privatization of the Food Research Institute. The judicial process lasted 2238 days (six years) since the start of the criminal investigation.

A notorious case

This case was highly controversial because the seized Voiculescu assets included the building where television stations Antena 1 and Antena 3 are broadcasting. They are among the main TV stations in Romania, the first one a general broadcaster, the second an all-news channel.

Extended confiscation is expected to have great impact in Romania also in the cases of fraudulent public procurement. However, a Decision of the Constitutional Court states that the extended confiscation will apply in Romania only to assets acquired after the year 2012, when the new legislation was adopted.

Simona-Maya Teodoroiu, secretary of state of the Ministry of Justice told EurActiv Romania that the extended confiscation was constantly required by the national judicial professionals in criminal law. It was not something required at European level. It has been constantly required internally, as a prior necessity, she argued.

Extended confiscation was introduced in Romanian Criminal Law in 2012 via modification and completion of the New Criminal Romanian Code and through a special law regarding the Criminal Code. Apart from the extended confiscation, applicable after 17 April 2012, the national legislation has provisions on special confiscation, but the process enounced difficulties, as the possessed goods are often registered in a third party's name.

Speaking at a seminar on extended confiscation, Judge Camelia David Bogdan, at the Appeals Court in Bucharest, said that those who commit crimes which generate profits are interested in introducing those acquisitions in the civil circuit.

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In her words, not just “white collars” engage in such behaviour. Even petty offenders are inclined to put what they took in the name of another person, in order to reduce the danger of being caught,” Camelia David Bogdan said.

The confiscation applies in Romania based on a criminal decision, civil decision, or based on the Law of 2007 regarding the setting up of the National Integrity Agency (ANI). The method of extended confiscation is mentioned by the judicial professionals as one of the most efficient methods to fight against economic criminality.

Extended confiscation represents the confiscation of goods obtained through crimes, without being necessary to prove the links between the crime and the seized possessions. The goods can be seized also in the case they are transferred to a family member.

A verdict can include extended confiscation if the offender is convicted for a minimum five years in prison, if the value of the possessions surpasses their legal income,

and if the court is certain that the respective goods come from severe crimes.

According to the law adopted in 2012, the prosecutor has to provide evidence that the offender was involved in serious crimes, like organized crime. This type of punishment applies only in the cases of serious crimes, and exclusively to a convicted person, not to contravene the right of property, as defined by the Romanian Constitution.

Only in the public procurement field, the overall direct costs of corruption in public procurement for five sectors studied in eight member states (France, Hungary, Italy, Lithuania, the Netherlands, Poland, Romania and Spain) was estimated at 1.4 to 2.2 billion euros, according to a report published last year by PriceWaterhouseCoopers.

Katharina Vierlich, representing DG Internal Market and Services at the European Commission, said that in the field of public procurement, criminals were often “learning the rules like a pro, to break them like an artist”.



Katharina Vierlich

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