

# **NATIONAL AGENCY FOR INTEGRITY**

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# The evolution of the wealth and interests declarations

## Wealth declarations

- *1990-1996*: there were no such declarations
- *1996-2003*: confidential (L. 115/1996)
- *2003-2004*: public (L. 161/2003)
- *2004-2005*: public ( G. E. O. 24/2004)
- *From 2005*: public (G. E. O. 14/2005)

## Interests declarations

- *1990-2003*: there were no such declarations
- *2003-2005*: public (L. 161/2003)
- *From 2005*: public (G. E. O. 14/2005)

# Legislative challenges

- **Illicit wealth vs. unjustified wealth**
- **Constitutional presumes – art. 44**
  - (8) The licitly acquired wealth can not be seized. The licit character of the acquisition is presumed.
  - (9) The goods that are destined to, used for or resulted from offences or contraventions can be seized only according to the law.
- **The burden of proof**
- **The seizure as sanction**

# Who will hand in the wealth/interests declarations ? (1)

- *The dignitaries*
  - The President of Romania
  - The members of the Parliament;
  - The ministers;
  - The secretaries of state etc.;
- *The consular and diplomatic personnel;*
- *Those assimilated to the dignitaries:*
  - The President of the Legislative Council;
  - The Ombudsman.
- *The elected persons of the local bodies:*
  - the mayors;
  - the local councilors;
  - the county councilors;

# Who will hand in the wealth/interests declarations ? (2)

- The magistrates:
  - the members of the SCM;
  - the judges and the prosecutors;
  - the magistrates-assistants;
  - the judicial assistants.
- The civil servants:
  - the prefects and the sub-prefects;
  - the other civil servants;
- The directors of the intelligence services: RIS, FIS, STS, GPS
- The members of the leading bodies of the enterprises with majoritary state capital : national companies and national societies etc.:
- The leading personnel of the state health and education system units and also the leading personnel of the religious cults and of the cult units:
- The personnel of the state banking system and of the institutions which are involved in the privatization process:

# *The present control procedure (1)*

## The inquiry commission

### Structure:

- 2 judges from the Court of Appeal/High Court of Cassation and Justice;
- 1 prosecutor from the prosecutor's office attached to the Court of Appeal;

### Organization:

- At the Court of Appeal level/a special committee for dignitaries at the High Court of Cassation and Justice;
- Has no own budget;
- Has no permanent activity;
- Has no own specialty personnel.

### Intimation procedure:

the request can be only made by:

- The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice;
- The general prosecutors of the Prosecutor's Offices attached to the Court of Appeal;
- The Minister of Justice;
- The chief prosecutor of the National Anti-Corruption Directorate;
- The leader of the authority/institution where the person performs his/her activity;
- The person himself/herself.

## *The present control procedure (2)*

- The notification shall include **solid grounds** that a person has acquired assets which could have not be acquired from the legal incomes or from other licit sources. Anonymous notifications are not taken into consideration.
- The control procedure is not public.
- On-the-spot inspections and expertise can be performed. Interim measures can be taken.
- The control is also extended to the spouse's wealth.
- 5 years utmost after the mandate expires.

## *The present control procedure (3)*

- **Decisions of the Inquiry Commission:**
  - ❖ Forwarding the case to the Court of Appeal/High Court of Cassation and Justice, which can pronounce a sentence, if the wealth has not a licit character;
  - ❖ Ceasing the case, if the wealth is justified (it can be challenged with appeal within 10 days);
  - ❖ Suspending the case and forwarding it to the competent prosecutor's office.

# *The present control procedure (4)*

- The court can decide:

- The seizure of the assets, if they were unjustifiably acquired.

**Art. (18) 1:** If it has been ascertained that the acquiring of certain determined assets or of a quota from an asset IS NOT JUSTIFIED, the Court of Appeal will rule either the seizure of the assets or of the quota, or the payment of an amount of money equal to the asset's value, established by the court on the basis of an expertise. In the case of the obligation to the payment of the equivalent value of the good, the Court will establish also the deadline for the payment.

- The sending of the case to the competent prosecutor's office;
- The closure of the case, if the source of the goods is justified
- Appeal: in 15 days from the communication, to the Supreme Court of Justice;
- Who can challenge the decision:
  - the interested parties;
  - The Ministry of Public Finances;
  - The prosecutor.

# *NAI's Structure (1)*

- Leadership: **President and Vice-president**
- **Appointed** by the President of Romania **at the proposal of the National Council for Integrity** for **one 4-year mandate**;
- **On competition basis**: organized by the NCI – written examination + interview in front of the NCI;
- They have no operative attributions;
- **Dismissal for**: managerial incapacity, ascertained by an external independent audit;
- **NAI's Personnel**:
- Integrity inspectors – economics or law degree;
- Civil servants;
- Personnel hired on the basis of an employment contract.

## *NAI's Structure (2)*

- own budget;
- unique structure;
- legal personality;
- permanent activity.

# *National Council for Integrity (1)*

## **Structure:**

- **one member** appointed by **each parliamentary group**; in case that the groups are organized in both Chambers of the Parliament, the two groups will appoint one single member;
- **2 judges** from the **High Court of Cassation and Justice**;
- **2 representatives** of the **Government**;
- **1 representative** of **National Union of The County Councils**;
- **1 representative** of the **Association of the Cities**;
- **1 representative** of the **Association of the Towns**;
- **1 representative** of the **Association of the Communes**;
- **1 representative** of the **high civil servants** and **1 representative** of the **civil servants**;
- **2 representatives** of the **civil society** (they have **no right to vote**)

# *National Council for Integrity (2)*

- **One 3-year mandate**
- **Attributions/structure:**
  - **Public sessions;**
  - **Convocation: the NCI's president, the NAI's president, at least 3 members;**
  - **Quorum:**
    - **at least 2/3 of the members with the right to vote;**
    - **decisions: simple majority of the members which have the right to vote.**
- **Proposes to the President of Romania the appointment and the dismissal of the NAI's president and vice-president;**
- **Approves the contest's regulation;**
- **Analyses the annual audit report;**
- **Drafts recommendations regarding the N. A. I.'s strategy**

# *The conflict of interests*

## *Law nr. 161/2003*

### **Definition**

- **Patrimonial interest;**
- **For civil servants / dignitaries;**
- **For husband / wife;**
- **For 1<sup>st</sup> degree relatives.**

**The control procedure for **authority** public functions in the central and local administration**

- **Notification to the Prime-Minister's Control Body;**
- **Decision of the Prime-Minister – measures which are to be taken;**
- **Contestation to the Bucharest Court of Appeal;**
- **Can be challenged with appeal;**
- **3-years decay from any function / dignity**

# *The conflict of interests*

## *NAI*

### **Definition:**

- The person issues an act, makes a decision or participates at issuing of an act or at making of a decision in which he/she has a personal interest that can influence the impartial exercise of the dignity, position or activity.

### **Personal interest:**

- any patrimonial/non-patrimonial, direct/indirect advantage for himself/herself, for the spouse, for a relative or in-law up to the 3<sup>rd</sup> degree, for a person with whom the civil servant, the dignitary etc. was in business/employment relationships in the last 5 years or he/she has benefited of services or uses of any kind

# The control procedure

- **Notification:**
  - any person, including the “whistle-blowers”;
- **The preliminary verification:** verifying the notification
  - 60 days for the wealth control and for the conflict of interests;
  - 30 days for the incompatibilities.
- **Only the public data are verified.**
- **Decisions:** - ceasing the notification;
  - beginning the control/verification.

# The control procedure

- **The control/verification**
  - ❖ **Witness' hearings;**
  - ❖ **Expertise;**
  - ❖ **Fiscal and banking documents.**
- **Decisions:**
  - ❖ **Ascertaining that the acquiring of the wealth or of a part of it can not be reasonably justified;**
  - ❖ **Forwarding the case to the Prosecutor's Office; the procedure continues;**
  - ❖ **Ceasing the case.**
- **The finding is open to attack at the Court.**

# The control procedure

- **The NAI's definitive ascertaining act is sent to the Disciplinary Committee/competent body;**
- **The disciplinary sanction provided by the law is applied;**
- **The sanction can be challenged before the Court.**

# *Sanctions*

## Disciplinary:

- the ones provided by the law, including the dismissal;
- decaying from the position/dignity for 3 years, excepting the elective functions.

## Other sanctions:

- fine for not handing in/delayed handing-in of the declarations;
- beginning the control for not handing-in the declarations.