

Errors of Commission: EU Accession and the struggle against corruption in Romania

by

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ABSTRACT

The dissertation explores corruption in Romania during its transition from communism to democracy as well as the European Union's (EU) efforts to curtail it and their consequences. It applies a theoretical framework that draws insight from three literatures: those relating to rent-seeking and corruption, the EU accession process and path-dependence. The dissertation demonstrates that corrupt practices in post-communist Romania are embedded in clientelistic structures originating in communist-era patron-client relations.

The dissertation examines the incentives and opportunities that underpin corruption and the mechanisms for curbing it in three distinct periods: post-transition, pre-EU and post- EU accession. In that process, the author identifies and analyzes the range of endogenous and exogenous factors that gave an impetus to anticorruption reforms.

The findings reveal that neither democratization nor marketization was able to undermine the persistent treatment of the state as the propertied possession of the political elite. The EU largely misunderstood corruption in Romania and underestimated the resourcefulness of a domestic elite determined to defend its privileges even after EU accession, while misconstruing the nature of the transition in Romania.

The dissertation highlights the importance of a better understanding of corruption in post-communist countries, and demonstrates the constraints and impact of EU Commission policies on the evolving Romanian polity. Parsimonious assumptions fail to encompass a path – dependent understanding of corruptive patterns. At the same time the dissertation brings to light the impact of multilevel governance on deep-seated patterns of political behavior. Without the

efforts of the EU, corruption would reign unchecked, yet even with the powerful incentives and sanctions wielded by the EU Commission, corrupt practices remain embedded in Romania.

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Abbreviations and Acronyms

ACR- Anti-Corruption Reporting Mechanism

ACA- Anti-Corruption Agency

ALDE- Alliance of Liberals and Democrats for Europe (European Parliament)

AMR- Association of Romanian Magistrates (Asociația Magistratilor din România)

ANAF- National Agency for Fiscal Administration (Agenția Națională de Administrare Fiscală)

ANI- National Integrity Agency (Agentia Nationala de Integritate)

ANRP- National Authority for Property Restitution (Autoritatea Nationala pentru Restituirea Proprietatilor)

ANV- Romanian Customs Authority (Autoritatea Națională a Vămirilor)

BEEPS- Business Environment and Enterprise Performance Survey

CC- Control of Corruption

CCR- Constitutional Court of Romania (Curtea Constituțională a României)

CCI -Control of Corruption Index

CDR- Romanian Democratic Convention (Convenția Democrată Română)

CEE- Central and Eastern Europe

CMR-Comprehensive Monitoring Report

CNA- National Audiovisual Council (Consiliul Național al Audiovizualului)

CNLO- National Company of Lignite Oltenia (Compania Nationala a Lignitului Oltenia)

CP- Centre Party (Finland)

CPC- Coalition for a Clean Press (Coaliția pentru o Presă Curată)

CPI- Corruption Perception Index

CPIB- Singapore's Corrupt Practices Investigation Bureau

CoE -Council of Europe

CPIA- Country Policy and Institutional Assessment

CFR- Romanian Railways (Căile Ferate Române)

CSM- Superior Council of Magistracy (Consiliul Superior al Magistraturii)

CVM- Cooperation and Verification Mechanism

DFDR- Democratic Forum of Germans in Romania (Forumul Democrat al Germanilor din România)

DGA-General Anti-Corruption Directorate (Direcția Generală Anticorupție)

DNA- National Anti-Corruption Directorate (Direcția Națională Anticorupție)

DREF- Disaster Relief Emergency Fund (Fondul de Urgență în caz de Dezastre)

DIICOT- Directorate for Investigating Organised Crime and Terrorism (Direcția de Investigare a Infrațiunilor de Criminalitate Organizată și Terorism)

EBRD- European Bank for Reconstruction and Development

ECHR- European Court of Human Rights

EC- European Community

ECR Group -European Conservatives and Reformists Group (European Parliament)

EIU-Economist Intelligence Unit

EF- Environmental Fund (Fondul pentru Mediu)

EG-EFA: The Greens-European Free Alliance (European Parliament)

ELDR- European Liberal Democrat and Reform Party

EOS- Executive Opinion Survey

EPP Group - European People's Party Group (European Parliament)

EU- European Union

FDSN- Democratic National Salvation Front (Frontul Democrat al Salvării Naționale)

FP- Property Fund (Fondul Proprietatea)

FOIA- Freedom of Information Act

GEO- Government Emergency Ordinance

GPO- General Prosecutor's Office

GRECO-Group of States against Corruption

ICAC- Independent Commission against Corruption

ICCJ- High Court of Cassation and Justice (Înalta Curte de Casație și Justiție)

ICRG- International Country Risk Guide

IEN- Independents for a Europe of Nations (European Parliament)

IMF- International Monetary Fund

IPP- Institute for Public Policy

ISC- Government Infrastructure Agency (Inspectoratul de Stat în Construcții)

IT- Information Technology

JTA- Justice and Truth Alliance (Alianța Dreptate și Adevăr)

KPK- Slovenia's anti-corruption agency

KNAB- Latvia's Corruption Prevention and Combating Bureau

LMR- Law on Ministerial Responsibility

LRCC-Local Research Correspondents

MEPs- Members of the European Parliament

MIA- Ministry of Administration and the Interior (Ministerul Afacerilor Interne)

MLA- Mutual Legal Assistance

MP-Member of Parliament

MP: People's Movement (Mișcarea Populară)

MS- Member State

NCAACOC- National Council for Action against Corruption and Organized Crime

NIC- National Integrity Council

NIT- Nations in Transit

NSF- National Salvation Front (Frontul Salvării Naționale)

OECD- Organization for Economic Cooperation and Development

OLAF -European Anti-Fraud Office

OSCE- Organization for Security and Co-operation in Europe

PC- Conservative Party (Partidul Conservator)

PCF- Party Campaign Financing Legislation

PD-I - Democratic Party (Italy)

PDL- Liberal Democratic Party (Partidul Democrat Liberal)

PHARE- Programme of Community aid to the countries of Central and Eastern Europe

PIF Convention - Convention on the Protection of the European Communities' financial interests

PIF Regulation – Regulation on the protection of the European Communities' financial interests

PLR- Liberal Reformist Party (Partidul Liberal Reformato)

PM -Prime Minister

PNA- National Anti-Corruption Prosecutor's Office (Parchetul National Anticoruptie)

PNGCD- New Generation Party – Christian Democratic (Partidul Noua Generație - Creștin Democrat)

PNL-National Liberal Party (Partidul National Liberal)

PNT- National Peasants' Party (Partidul Național Țărănesc)

PNT-CD- Christian-Democratic National Peasants' Party (Partidul Național Țărănesc Creștin Democrat)

PO- Civic Platform (Poland)

POR-Party of Regions (Ukraine)

PPDD- Dan Diaconescu's People's Party (Partidul Poporului - Dan Diaconescu)

PRM- Greater Romania Party (Partidul România Mare)

PS- Socialist Party (France)

PSD-Social Democratic Party (Partidul Social Democrat)

PUR- Romanian Humanist Party (Partidul Umanist din România)

PCR- Romanian Communist Party (Partidul Comunist Român)

RCSRSD- Romanian Cable System and Romanian Data System

SAR-Romanian Academic Society (Societatea Academica din România)

SF- State Farm

SIE- Romanian Foreign Intelligence Services (Serviciul de Informatii Externe)

SIPI- Intelligence and Internal Protection Service (Serviciul de Protecție Internă)

SOE- State Owned Enterprise

SOL- Statute of Limitation

SRI- Romanian Intelligence Service (Serviciul Român de Informații)

TI- Transparency International

TEU- Treaty on European Union

TFEU- Treaty on the Functioning of the European Union

UCLAF-Anti-Fraud Coordination Unit

UDMR: Democratic Union of Hungarians in Romania (Uniunea Democrată Maghiară din România)

UK- United Kingdom

UN-United Nations

UNCAC- United Nations Convention against Corruption

UNJR- National Union of Romanian Judges (Uniunea Națională a Judecătorilor din România)

UNPR- National Union for the Progress of Romania (Uniunea Națională pentru Progresul României)

US – United States

USKOK-Croatia's Bureau for Combating Corruption and Organised Crime

USL-Social Liberal Union (Uniunea Social Liberală)

VAT- Value Added Tax

WAZ- Westdeutsche Allgemeine Zeitung

WB- World Bank

WBI- World Bank Institute

WEF- World Economic Forum

WVS- World Values Survey

INTRODUCTION

The orthodoxy of the political economy literature posits that corruption represents the greatest obstacle to the progress of democracy, good governance, rule of law and economic development. Global and regional organizations have wholeheartedly embraced this wisdom. For instance, in the last two decades the International Monetary Fund and the World Bank viewed corruption as a disruptive phenomenon and have compelled the borrowing countries to tackle it with priority and diligence. According to Khan (2002), one of the most dramatic changes in the World Bank's approach to development over the last ten years has been its new commitment to improve governance by focusing on the fight against corruption in some of the poorest countries in the world.

Driven by evidence that corruption reduces growth and investment in developing countries, the World Bank (2009) officially stated that corruption "undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends" (Question 1). For numerous years, the problem of corruption was attached only to developing countries, while the European Union (EU) was regarded as an example of good governance and efficient anti-corruption practices. However, the recent Greek crisis has brought to the surface the pernicious corruption eroding the country's fiscal health. Overall, EU integration has served as an essential instrument for promoting democratic consolidation and anti-corruption institutional development. The fight against corruption, rent-seeking and clientelism was a significant component of the reform packages that acceding countries had to commit to in order to join the EU.

In Central and Eastern Europe, the will to tackle corruption was accompanied by the former's democratization efforts and the desire to join the EU. Nonetheless, the extent of corruption within the EU remained dramatic, causing a loss of 120bn euros annually to the EU economy (Santa and O'Donnell, 2014, par.1). Such figures raise serious doubts about the EU's capacity to combat corruption both within its institutions and its member states. Moreover, anti-corruption policies have become a major business of government. Unfortunately, this investment has had scarce success. Nevertheless, the search for effective policies against corruption consistently informs policy making around the world. Despite the multiplicity of cross-country data sources and the concomitant surge in the academic interest on the topic, surprisingly little of the resulting research has been broadly and systematically comparative and a comprehensive understanding of corruption's determinants is yet to come.

A large number of studies have focused on the determinants of corruption at the macro level, emphasizing variables that indicate a negative association between corruptive practices and a multitude of factors. As such countries exhibited lower levels of corruption if they had a long lasting democracy and open-market economy, higher shares of protestants (Treisman, 2000), an ethnically heterogeneous population (La Porta, Lopez-de-Silanes, Shleifer, & Vishny, 1999) and a higher share of women in Parliament (Dollar, Fisman, & Gatti, 2001). Others turned their attention to a micro-level approach, given the increasing availability of surveys conducted at the individual or household level. Within this literature cultural factors (Alesina & Glaeser, 2004; Fernández & Fogli, 2009) and monetary incentives (Torgler & Valev, 2006; Swamy, Lee, Azfar, & Knack, 1999) take the center stage. This type of regression analysis is premised on an essential cross-country similarity in corruption patterns and manifestations as it probes variation only in the matter of extent.

In the early years of modernization theory, corruption was generally condemned as a phenomenon incompatible with the norms of morality, and very few studies dealt with its precise causes, consequences and potential remedies. It was the revisionist literature that first recognized the potential positive consequences of corruption. These scholars reconceptualised corruptive practices by looking at them in terms of promising paths for circumventing government inefficiencies.

One of the most referenced authors of the revisionist generation, Joseph Nye (1967), considered corruption a vital source of capital formation, a spur for cutting red tape and a starting place in providing entry opportunities for minority group entrepreneurs. Similarly, Leff (1964) argued that in developing countries corruption served as a tool enabling entrepreneurs to sidestep an obstructive bureaucracy as well as a substitute for the protection of their property rights. Thus, it is not surprising that the rent-seeking literature reached its zenith in an era reigned by a frenzy for the virtues of the unregulated markets and sheer scepticism about the authoritative niche of the government in the economy. The term “rent” describes incomes (monopoly profit, subsidies, transfers) which are situated above the threshold an individual or firm would have received in a competitive market situation. Rent-seeking refers to all those activities that seek to create and maintain these rents. These activities may range from bribing or even coercion at one extreme, to perfectly legal political activities such as lobbying or advertising at the other. The competition for these privileges (rent-seeking), fuels “directly unproductive profit-seeking” activities and leads to the depletion of scarce resources. More precisely, under some specific assumptions, rent-seeking costs equal the amount of rent available (Krueger, 1974; Posner, 1975; Tullock, 1967). Since rents originate when the government restricts the unhindered operation of the market and rent-seeking costs are “directly related to the scope and range of governmental activity in the

economy and to the relative size of the public sector” (Buchanan, 1980, p. 9), the remedy of the rent literature was to shrink the role of the state and whenever possible to replace bureaucratic control by market mechanism.

Levi (1988) frowns on that ideological predisposition, which takes the free market as the most efficient mechanism and discounts the role of the state. Her critique targets an approach that “does not treat the effects of government intervention as variable, sometimes reducing and sometimes stimulating social waste” (Levi, 1988, p. 24). Evans (1995) reiterates this set of arguments by highlighting the sinister ramifications of dismantling the state. The author’s starting premise is that states are not generic, they vary dramatically in their internal arrangements and different kinds of state structures create different capacities for action (Evans, 1995). Hence, he introduces two models, the predatory¹ and developmental² state (Evans, 1995). The former lacks the capacity to deter individual incumbents from pursuing their private goals in an environment where personal ties become the only source of cohesion. In such a regime, individual maximization by neo-utilitarian assumptions takes precedence over collective goals. Conversely, in the developmental model, the logic of “embedded autonomy” supports the establishment of novel state structures that wield a capacity to restrain rent-seeking tendencies.

Besides its ideological bias, the rent-seeking literature exhibits several other shortcomings. First, even if the bureaucracy is pared down to a minimalist role, it still retains the ultimate responsibility of providing the basic services to society, which in per se stimulate “rent havens”. Second, as Jomo and Gomez (1995) explain, by taking for granted the sole influence of the market on rent allocation, the rent literature disregards the possibility that “rent-seeking may,

¹ States extracting at the expense of society, undercutting development even in the narrow sense of capital accumulation

² States that have not only presided over industrial transformation but can be plausibly argued to have played a role in making it happen

in fact, not be very competitive- due to the clandestine, illegal, close, exclusive or protected nature of rent capture processes” (p. 3). Therefore, the allocation of rents inevitably implies the salience of politics. Indeed, the dynamics of governmental action may shed more light on these phenomena than the erroneous assumption of perfectly competitive markets for rent capture. A further distinction may be drawn between those competing for generalizable policy benefits or particularistic privileges.

In addition to this, Hutchcroft (1997) differentiates between beneficiaries of rents located in the state or those outside the state. The Philippines exemplifies the typical case of a predatory oligarchic patrimonialism or “booty capitalism”, where a powerful business elite can extract privileges from a large incoherent bureaucracy. The second type of patrimonial state structure, namely administrative patrimonialism is characterized by a reversed direction of rent extraction. In this system, the primary beneficiaries are members of a state bureaucracy. The suggestion is that economic expansion has a double-edged effect, consolidating patrimonialism at first, while setting the ground for substantive social change at the expense of the patrimonial administrative state itself. The patrimonial oligarchic state, is more reform-adverse than the patrimonial administrative state in two ways: first, bureaucratic incoherence and oligarchic power sabotage piecemeal reform; second, its configuration inhibits the rise of anti-patrimonial social forces. Economic growth in this form of polity tends merely to strengthen the oligarchic constituencies (Hutchcroft, 1998).³

In sum, both the omnipresence of the state as well as its withdrawal have been equally considered as preconditions for the emergence of corruptive practices. Scott (1972), for example,

³ According to Hutchcroft both systems lack certain attributes that Weber considered essential to the development of modern rational capitalism. Instead of a strong degree of calculability in the legal and administrative sphere, and a rational- legal political structure the Philippine political economy is characterized by political arbitrariness where the success of economic actors strongly depends on their political connections.

argues that “foremost among the structural factors that encourage corruption in new states is the tremendous relative importance of government in these nations as a provider of goods, services, and employment” (p. 12). Alternatively, Sun (2004) draws our attention to the possibility that the sources of black money may stem not only from government action and monopoly, but also from the latter’s retreat from public ownership. As China’s post-1992 experience demonstrates, the lessening of the State’s responsibilities and the parallel increasing ascendancy of market relations have created more lucrative rent-seeking opportunities.

The same phenomenon is pertinent to the transitional experience of the former socialist countries in Central Eastern Europe, where the shift from state to private ownership has been accompanied by soaring corruption and clientelism, even though, in the early 1990s, when the privatization process began, only few authors warned about such a risk. For instance, Stark (1990) recognized that the Hungarian spontaneous privatization showed that the economy was not transitioning from "plan to market" but instead from "plan to clan" (p. 351). He called on the necessity of diversifying the research on the issue by concentrating more on social groups and the ability of their networks to impede or facilitate marketization (Stark, 1990). This statement embodied a criticism of a prevailing approach dealing exclusively with the institutional features of the economy. Instead, privatization had to be conceptualized as a path-dependent and network focused process, so, an appropriate institutional and legal framework was a necessary but not sufficient condition in order to create clans for markets (Stark, 1990).

Treisman (2000) relies on cross-country evidence to argue that perceived corruption levels in the former post-communist countries do not exhibit any significant path-dependent attributes. His line of reasoning seems to suggest that the dramatic institutional changes in the region have not been conducive to the emergence of new and distinct patterns of corruption.

Similarly, Guillermo O'Donnell (1993) subscribes to the idea that "recent typologies of the new democracies based on characteristics of the preceding authoritarian regime and/or on the modalities of the first transition have little predictive power concerning what happens after the first democratically elected government has been installed" (p. 1356). It constitutes a parsimonious assumption about the inconsequentiality of the socialist system for the variation in the forms of corruption that may easily invite disagreement and criticism. Unfortunately, conclusions about the region that are solely based on n-country, cross-section regression analysis concentrating only on broad regularities often overlook much of the nuance of individual country experiences.

Jowitt (1996) suggests that quite the reverse is true and in order for us to understand the present political system's malady, "one must start with the type of regime that dominated the area for nearly half a century in Eastern Europe and three-quarters of a century in Russia" (p. 409). Moreover, I also concur with Barnes (2003) that both the context of state-economy relations nearing the regime's breakdown and the ensuing governments' choices over the control of the state assets' transfer to the private sector are important variables in explaining how the new institutional setting generated new opportunities for corruption.

According to Iancu (2009), post-communist transition in Romania was marked by a "violent uprising, followed by a long period of social convulsion and rule by well-consolidated post-communist elites" (p. 193) in which institution building was determined by the desire to preserve post-communist power configurations. While the 1989 Romanian revolution led to the fall of Dictator Nicolae Ceausescu, it failed to bring about the radical break from the past that many Romanians have longed for. It remains an undeniable fact that the main beneficiaries of the regime "change" was a small political elite consisting of communist era secret police members

and upper echelons of the Romanian Communist Party (PCR). This nomenklatura formed the National Salvation Front (NSF) led by Ion Iliescu, a famous PCR elite who served as Minister of Youth and Secretary under Ceausescu. The NSF won the elections in 1990/1992 gaining access to valuable political and economic capital that further solidified its position. A delayed privatization process facilitated rent-seeking by the post-communist elite that took control of the legislature and proliferated its network to preserve or enhance its communist era influence. The events following shortly the transition as well as the country's communist heritage were not inconsequential to Romania's corruptive patterns.

Twenty-five years later, despite Romania's EU membership, corruption has remained a salient and omnipresent topic. In November 2015, Romanian Prime Minister (PM) Victor Ponta resigned in the midst of corruption scandals following a Bucharest nightclub fire's break out causing the death of 30 people and injuring more than 130. The tragedy was largely seen as a result of inadequate enforcement of safety regulations, and sparked outrage which manifested in a protest of more than 12,000 people marching in the capital. The lack of regulatory enforcement and the proffering of bribes in exchange for operating permits prompted anger toward authorities and calls for political change. Culminating in the resignation of embattled PM Ponta, the tragedy and popular protest it sparked are seen as a consequence of poor low-level governance and endemic corruption in Bucharest and beyond.

Ironically, repeated calls for Ponta's resignation throughout the years were largely ignored by the PM. His plagiarized doctoral dissertation (Schiermeier, 2012) and the Romanian Parliament's recent decision on Ponta's immunity exposed how anti-corruption institutional development continued to be offset by political manoeuvres. Following the favourable immunity vote for Ponta, Andrei Taranu, Deputy Dean of the Political Science University in Bucharest

summed up the dynamics behind the political struggle in one powerful statement, stating that “I expect Ponta to hang on to power for as long as he can -- otherwise he and his party will lose everything” (Timu & Vilcu, 2015, para. 4). The logic of a zero sum game incorporated in Taranu’s statement excellently captures Romanian politics’ peculiar nature, specifically political parties’ relationship to the post-communist state. Kopecký (2008) suggests that it is impossible to understand the nature and functioning of post-communist political parties if their relationship with the state is overlooked. Accordingly, “the relatively weak states inherited from the communist period offer parties and elites opportunities for various forms of rent-seeking within state institutions” (Kopecký, 2008, preface). Given the above mentioned, it is puzzling why the EU choose to ignore the unsettled institutional environment that allowed the post-communist elite to loot state resources and abuse their position of power through designing weak supervisory organs.

The dissertation will present the reasons underpinning the European Union's failure to challenge Romania’s deep-rooted corruption and dismantle patron-client relations. More specifically, the research question focuses on how patterns of clientelism in the communist period merged into new forms of clientelistic patronage during the transitional opacity experienced in the 1990s as well as corruption’s consolidation as a form of particularism preceding and following the country’s EU membership.

From a methodological standpoint, the five chapters will emphasize the importance of contextualizing corruption by analyzing its evolution in a post-communist context and avoiding a parsimonious approach in which corruption is treated as an abstract phenomenon. Moreover it will identify corrupt transactions’ clientelistic nature at the same time as it will stress the

importance of understanding it as a path-dependent process of the reconfiguration of power relations that accompanied the transition from communism.

I will argue that the EU should have developed a much better understanding of Romania's corruptive practices as opposed to neglecting the dramatic institutional changes that have accompanied the transition and their significant path-dependent characteristics. Parsimonious assumptions about the inconsequentiality of the communist system for the variation in the forms of corruption as well as the EU's naiveté in ignoring the implications of Romania's post-communist institutional context have hindered EU rule transfer and allowed for clientelistic networks to survive. Brussels' approach to Romania's difficult accession case was deficient. This became especially evident in the post-accession phase, when Romania's political elite revealed profound cynicism and indifference about the recommendations outlined in the European Commission's post-accession monitoring mechanism. Thus, a consensus prevailed that state oversight institutions and EU backed anti-corruption agencies should have their mandates curtailed to allow the political elite to retain opportunities for illicit enrichment. The fight against corruption consolidated and even nurtured clientelistic ties, a puzzling phenomenon that demands a thorough, path-dependent analysis.

The objective of my dissertation is to explore the reasons underpinning Romania's corruption in a systematic and comprehensive fashion. In order to accomplish my goal, I will utilize a theoretical framework that draws insight from three literatures: those relating to rent-seeking and corruption, the EU accession process and path-dependence. Cross-fertilization between these frameworks has been fairly limited in the past. The argument I will advance is premised on the assumption that corrupt practices in post-communist societies are embedded in clientelistic structures. The dissertation will identify the particularistic nature of Romania's

corruption, without overlooking the importance of the specificity of clientelistic structures in which these processes are embedded. Therefore, the explanation of these practices calls for an investigation on how old communist patron-client relations have been reshaped or how additional patronage relations have been created during and after the transition.

From a methodological standpoint, the dissertation will examine the incentives and opportunities that determine the reach and gravity of corruption as a phenomenon, while accounting for controlling mechanisms that may be just as critical in curbing it. After examining the changing incentives and opportunities during the three periods under investigation (post-transition, pre-accession, post accession), I will identify and analyze the range of factors that contributed to the promotion and prioritization of anticorruption reforms. I will separate these factors as sets of endogenous and exogenous pressures, the first being generated by the domestic activism against corruption and the second by the external thrust coming from the European Union. In probing the effectiveness of the domestic pressures, my research will focus on both state (specialized anticorruption bodies, the judicial system) and non-state actors (the media), their distinct functions as well as their interaction. Likewise, I will also take into consideration the potential influence of the electoral system in preserving and reinvigorating the dominance of corrupt elites. In terms of exogenous pressures, I will regard the influence of the EU in this realm as the most significant and far-reaching. Therefore, my work will focus primarily on the EU's accession process as an essential instrument for promoting anticorruption institutional development. What actual leverage did the EU really enjoy vis-a-vis Romania and in what circumstances? Was conditionality seen as a means to an end (achieving membership); or was there also some element of commitment by the acceding member state? Did the formal regulations adopted on the anti-corruption front change long-run informal codes of behaviour or

did domestic actors revisit old patterns of conduct the moment the country acceded? Is post-accession conditionality effective in curbing domestic corruption?

Statistics show that EU induced anti-corruption measures have become more effective since Romania's accession. Despite some political attempts over the years to dismantle Romania's Anti-Corruption Agency (ACA), the National Anti-Corruption Directorate (DNA) continues to be the leading institution for investigating and prosecuting high-level corruption. Its performance throughout the years has shown consistent signs of improvement in the number of indictments and investigations carried out against high-profile offenders. In 2014, in contrast to 2013, the number of indictments increased by 17.41%, while the number of defendants sent to trial through an indictment rose by 8.76% (National Anticorruption Directorate, 2014i).

Nonetheless, progress in the prosecution and trial of high-level corruption cases failed to translate to lower perception rates. It is puzzling that anti-corruption measures seem to be quite effective in terms of higher prosecution and conviction rates, but public perception of corruption signals a stagnation or worse, deterioration, of the overall situation. This discrepancy sheds light on the ACA's difficulties to eradicate corruptive practices while at the same time it begs the question of how to conceptualize the true nature of Romania's corruption.

First of all, the research process must rely on a clear definition of corruption. In order to successfully curb corruption we must first understand how it truly works. According to Mungiu-Pippidi (2005), in some countries,

Governments pretend to govern, and citizens pretend to follow, but, in practice, informal economies thrive, taxes are only partially collected, policies, whether good or bad, are seldom implemented and an informal order balances the formal one, rendering statistics a poor instrument in describing the society. Such countries seem to resist 'modernization'

despite successive government pledges and decades of modernization policies. They do not develop modern bureaucracies. Their peasants do not turn into citizens but remain dependent on local power holders. Their politics remains confined to networks of clients and do not open to the entire society. (p. 49)

In such “neo-traditionalist” countries, corruption does not constitute an exception but becomes the norm. Thus, setting its conceptual boundaries with reference to the post-communist context proves to be a difficult task.

While several authors have endeavoured to conceptualize it, corruption is still a fuzzy and compound concept accounting for a wide range of complex phenomena. Rose- Ackerman (1999) and Kaufmann (1997) viewed corruption as an act of public office abuse for private gains. Nye (1967) underscored the psychological dimension of the corrupt officeholder by synthesizing the concept in terms of a “behaviour which deviates from the formal duties of a public role because of private- regarding, wealth or status gains” (p. 416). Yet, in spite of their differences all definitions have subscribed to a common theme, a neglect and mistreatment of the public (office, trust, resources, influence) to service the private (self-gain, profit, interest, advantage).

The underlying assumption behind these definitions is a strict division between the public and the private sphere. However, this presumption cannot be applied to post-communist countries, especially in the pre- and post-transition period. Mungiu-Pippidi (2006) integrates this public-private entanglement into the post-communist context by distinguishing between political systems based on universalism or particularism. She defines the former as a system in which power is evenly distributed, where the distinction between the public and the private is firm and corruption is socially reprimanded (Mungiu-Pippidi, 2006). In contrast, a particularistic state is

characterized by a concentration of power in the hands of a small elite, a hazy boundary between the public and the private and the enshrinement of corrupt practices as informal norms (Mungiu-Pippidi, 2006). In a state where access to public goods is universal, the term corruption usually designates individual cases of integrity infringement. In the former, corruption actually means “particularism—a mode of social organization characterized by the regular distribution of public goods on a non-universalistic basis that mirrors the vicious distribution of power within such societies” (Mungiu-Pippidi, 2006, p. 87). Transition societies fall in-between these two cases, having reached a stage commonly identified as “competitive particularism” (Mungiu-Pippidi, 2006, p. 89). In this intermediate stage, the in-depth analysis of patron-client exchanges is far more enlightening than any index in understanding the true nature of corruption (Mungiu-Pippidi, 2006).

Thus, the dissertation will move away from a simplistic definition of corruption that assumes a strict division between the public and private spheres and will analyze corruptive practices from a particularistic perspective that takes stock of the impact of the distribution of power on corruption. The universalism-particularism continuum dates back to Parsons and Shils (1951), who have described it as specific groups' "patterns of attitudes and behaviors" (p. 23) that inform the behavior of the individual. Particularism would imply that relationships take precedence over social codes while norms become context dependent. Or put differently, Uslaner (2002) argues that particularistic societies are characterized by social relations that rely on strong, cohesive group ties built on principles of tradition, conformity and benevolence. Consequently, the dissertation will outline a multipronged approach and sheds light on the importance of conceptualizing corruption in terms of particularism. Moreover, in order to be able to better understand and measure institutionalized particularism, there has to be a concomitant

move away from the commonly accepted definition of corruption (“the misuse of public office for private gain”). Thus, how well we understand the context in which corruption takes place is of key importance and has serious ramifications for the compatibility and potential effectiveness of the policy solutions we aim to design.

In order to understand the peculiar nature of Romania’s corruption, it is important to also understand how the "distribution of power according to status" (Jowitt, as cited in Mungiu-Pippidi, 2005, p. 53) will manifest itself in a post-communist setting. According to David (1994), institutions are "carriers of history" (p. 205) embodying past legacies, present conventions and the future developments. A path dependent analysis implies that "history matters" (David, 1994, p. 205). As Schwartz (1995) put it, “while everyone agrees that history matters, no one agrees how history matters. Similarly, while everyone agrees that institutions matter and sometimes exhibit puzzling inefficiencies, no one agrees quite how institutions matter or why those inefficiencies persist” (p. 1). Thus, the dissertation aims to focus on explaining precisely how history and institution matter, that is, how Romania’s communist heritage played into the power-elite reconfigurations that continues to reinforce particularism.

The concept of path dependence can be traced back to David (1985), who defined it as a small initial advantage having the power to steer the course of history. The idea of path dependence figured prominently in nonlinear dynamics models such as chaos and complexity models that assume a sensitivity of outcome on initial conditions. Academics from different fields, most notably historical institutionalism scholars, have adhered to path dependency even by over-stretching the concept and dulling its value. For instance, Page (2006) argues that the term has turned into a "trendy way to say that history matters" (para. 1) and that the concept of path dependence does no longer provide any analytic leverage.

The dissertation will move away from a wide conceptualization (e.g. the past affects the future) and instead adopt Page's (2006) definition of path dependence as "current and future states, actions, or decisions depend on the path of previous states, actions, or decisions" (p. 88). Page's (2006) definition also brings together four concepts relevant for understanding the inner mechanism of path dependence. The four concepts are: increasing returns, self-reinforcement, positive feedback and lock-in. Increasing returns refers to the phenomenon that a choice that is more often exercised will also yield higher benefits. Self-reinforcement is closely related to increasing returns and depicts the ramification of taking a specific course of action that will lead to the inception of complementary institutions further reinforcing the original choice. Positive feedback means that an initial choice will create positive externalities, while the concept of "lock-in" refers to one choice prevailing if the former has been taken by numerous people.

Pierson (2000) also emphasized other path-dependent characteristics, such as the importance of timing and sequence and the likelihood of significant consequences stemming from relatively contingent events. More importantly, he also accentuated the importance of certain political events given that particular decisions or courses of action, when and if introduced, may not be reversed (Pierson, 2000).

The dissertation relies on Shefter's (1994) idea that clientelism can create strong path-dependence especially when it thrives during the formative periods of a given political system. The puzzle however is to determine and understand the mechanisms that structure events in a path dependent fashion. Moreover, such path-dependent explanations have to be accompanied also with arguments that explain the self-reinforcing persistence of institutional structures. For instance, Lipset and Rokkan (1967) explored how critical historical junctures produced major political cleavages that later froze into party systems. Similarly, North (1990)

emphasized the lock-in effect of institutions through their capacity to induce self-reinforcing processes that discourage reversals over time. Initial start-up cost, followed later on by learning and coordination effects as well as adaptive expectations will make institutions sensible to increasing returns. Moreover, North (1990) introduces the "interdependent web of an institutional matrix" (p. 95) concept, which indicates that existing institutional arrangements encourage the formation of complementary organizational forms that, in turn, produce "massive increasing returns" (p. 95).

According to Arthur (1994), increasing return processes exhibit four intriguing characteristics. First, given that early accidental events have a large effects, an element of uncertainty permeates increasing returns. Additionally, given its "lock-in" effect, as the process goes further, the more difficult it becomes to switch paths. Such inflexibility is the direct consequence of an undesirable "lock-in". Third, Arthur (1994) draws attention to the non-ergodicity of the path dependent processes' given that accidental events that occur early in the sequence will have an impact on the whole path since they shape the early events. Lastly, potential path inefficiencies may ensue, assuming that "locked in" outcomes might be inferior to overlooked alternatives.

Some authors have focused on such sub-par "lock -in" despite the agreement that increasing returns led to path inefficiencies. Skocpol (1999) suggests that organizations have a strong tendency to persist once institutionalized. Other historical institutionalism scholars also extensively focused on issues of timing, sequencing and critical junctures that reinforce the chosen path. Levi (1997) proposes that while there might be other "choice points" (p. 28), the entrenchment of specific institutional arrangements will hinder any attempt to reverse the initial

choice. Thus another way of conceptualizing increasing returns is by suggesting that preceding steps will encourage further steps along the same path given high exit costs.

Nonetheless, some authors such as Page (2005) urge scholars to reconsider a basic hypothesis that conflates path dependence and increasing returns. Accordingly, increasing returns are neither necessary nor sufficient for path dependence and the assumption that increasing returns would cause one outcome to be selected over another is incorrect. He iterates that any externality can alter outcomes and negative externalities have also the capacity to create path dependence (Page, 2005). Emphasizing budgetary, spatial and even cognitive constraints, he proves that "in many examples of path dependence, while increasing returns do exist, negative externalities are the true cause" (p. 6). More importantly, the logic of constraints can embrace a variety of phenomena, such as competing technologies or legal doctrines.

Similarly, Schwartz (1995) underscores the importance of path-dependent arguments focused on institutions and timing, but not all temporal or institutional occurrences are path dependent. Thus, path dependent arguments need to comprise "critical junctures with contingent outcomes in which the mechanism that produces the critical juncture can be differentiated from the mechanism that sustains that outcome" (Schwartz, 1995, p. 3). This is a crucial distinction, given that some processes do not depend on the entire path, but are conditioned solely by the early history of the path. Page (2005) introduces the term "*early path dependence*" (p. 24) for processes that are initial outcome-dependent.

Thus, the dissertation will incorporate the analysis of negative and positive externalities and shed light on the ways they continue to reinforce particularism. Special attention will be given to understanding the changes that took place in the region by incorporating the three characteristics of path-dependence: contingency, the critical role of timing and sequencing and

inertia (Pierson, 2000). Under contingency Pierson (2000) refers to the importance of relatively small events-occurring at the right moment – and causing enduring consequences. Inertia will include both positive and negative externalities and feedback mechanisms that lead to outcomes that are locked in and resistant to change.

The first argument is presented in the first chapter, revealing the relatively narrow arsenal of anti-corruption instruments the EU designed in order to address the problem of corruption. The chapter will highlight the importance of problem definition as an important intervening variable between perception of the underlying conditions and the transformation of these perceptions into policy preferences. As we shall see, problem definition indirectly delineates the goals and values the problem solver aims at, what values will be sacrificed, what counts as a solution and what kind of problem-solving means will be considered. Through adopting the latter lens, the chapter will demonstrate that agreeing on an encompassing definition of corruption, as well as the context in which it takes place, becomes pivotal as problem definition will condition policy responses. Thus, chapter one will demonstrate why problem definition is a truly complex endeavor especially when the problem is as multifaceted as corruption. As the first chapter will demonstrate, the EU marginalized problem definition as an issue, overlooking the fact that the determination of problem causation will result in different legislative responses.

The way the EU approached corruptive acts' problem definition resulted in two important limitations that seriously impaired EU's role as a powerful change agent in the fight against corruption. Thus, the EU's approach created a definitional "lock-in" and narrowed the path of legislative responses that followed, conditioning EU instruments to address corruption in a marginal fashion. Chapter one will outline the legal powers under the TEU and the repercussions of a narrow definition of corruption. Such a narrow problem definition which focused solely on

safeguarding the community's financial interests biased the legislative responses against corruptive practices. Thus, attention focused primarily on the protection of the European Community's financial interests and was directed exclusively towards policy against fraud. The EU failed to develop a more encompassing approach to anti-corruptive measures and limited itself to an atomistic and fragmented fraud control. Moreover, from a problem definition perspective, the EU's narrow definition circumvented the emphasis on corruptive acts threat to the rule of law, good governance as well as economic development. As we shall see, it was the 2004 enlargement that motivated the EU to adopt a broader problem definition followed by a more comprehensive anti-corruption policy, given that among the new acceding post-communist states corruption was pernicious. Thus, the chapter will focus on the path-dependent characteristic of contingency, that is, how events occurring at the right moment are able to have large and enduring consequences. Moreover, it will also reveal how positive and negative feedback led to equilibria in the EU's conceptualization of corruption that turned out to resist change.

Chapter two introduces the importance of an early path-dependent understanding of corruption by shedding light on the implications and repercussions of Romania's preferred property restitution method and the complex patterns of corruption it generated. Did the more gradual approach adopted by the Romanian governments and its long-lasting partial reform equilibrium spawn the way to startling rent-seeking opportunities? How did it shape the attitudes of the state officials toward the nascent market? Moreover, what may these experiences teach us about the relationship between rent-seeking and corruption? The chapter will focus on the critical junctures and the mechanisms that produced and alternatively sustained the given outcomes during the critical period of transition.

Paltiel (1989) show that in a period of transition from plan to market, patronage politics dictates economic policy-making. Indeed, typical features of the transition, such as the uncertainty about the rules of the game and the state officials' control of access to lucrative market opportunities create fertile ground for this ascendancy. In line with Polanyi's argument that market relations do not develop in isolation from the State, they posit that these relations evolve in interaction with an existing state administration (Paltiel 1989). More concretely, Paltiel (1989) attribute the pervasiveness of patronage during market reform in China to the absence of property rights:

To substitute for the protection of property based on law, the economic actors must seek the protection of political patrons. Uncertainty about potential party intervention guarantees the persistence of clientelist *guanxi* or connections. Clientelism, in turn, not only impedes the impersonal operation of the competitive market place, but also destabilizes the operation of predictable rational-legal norms within the state...human relations become the essential matrix of economic behaviour. (p. 257)

But even if we observe the period preceding the collapse of communism, endemic shortages were circumvented by the emergence of social networks that allowed for the procurement of goods and services necessary for ones' survival. Jowitt (1992) focuses on such social networks and the clientelism that developed between officials and their subordinates in which favoritism flourished as it solidified loyalty and cooperation. Moreover, while corruption was foremost motivated by the widespread shortages of consumer goods and agricultural products, these chronic shortages provided officials with strong financial incentives to engage in black-market activities (Coulloudon, 2002; Kornai, 1990).⁴ For example, the duty to fulfill the

⁴ For example, the "bribery funds" for soviet industrial managers was supplied by so called "dead souls", namely fictitious employees who were regularly paid salaries.

plan at any costs in spite of the chronic inconsistency in the flow of supplies sustained a penchant for falsifying statistical records and accounts. Overstating the plant's requirement for raw materials to prevaricate the problem of future supply shortages or understating the plant's true production capacity were the most prominent surviving tactics industrial managers had to resort to. Nonetheless, as Clark (1993) suggests, corruption in the communist system was a "logical requisite and administrative inevitability in the Soviet mode of politics" (p. 203). Moreover, Sun (2004) argues that the characteristics of corruption germane to a centralized economy⁵ derived from affective ties guaranteeing a more stable environment and moderate rates of payment for favour seekers.

More importantly, the rents delivered by partial liberalization induced bureaucrats to contain the accelerating pace of access to the international markets. Contrary to the liberal hypothesis which concerns itself only with the end point of internationalization, a process sensitive approach may provide better insights on the logic of an incomplete reform stage. In such a partially regulated system, control over an expanding flow of resources becomes a critical source of power, influence and wealth. What underpins partial reform equilibrium is a trend of concentrated rent generation in favour of systemic winners who oppose further liberalization (and democratization) for the sake of preserving these favourable conditions (Hellman, 1998).

According to Hellman (1998), the most common obstacles to the progress of economic reform in post-communist transition came from the beneficiaries of the partial measures in the earliest stages: enterprise insiders stripping their firms' assets, commercial bankers capitalizing on enormous arbitrage opportunities or local officials preventing market entry to protect their monopoly rents. This reality challenges the implications of Przeworski's (1991) J-curve

⁵ Profiteering, accounting violation, squandering, negligence, and privilege seeking

approach, which posits a positive correlation between radical economic reforms and short-term transitional costs and predicts a heightened vulnerability of the former to both ex-ante opposition and ex-post reversal. This second implication seems to have persuaded the defenders of gradual restructuring into ignoring the dangers of a prolonged maintenance of partial reforms and their accompanying market distortions. At the same time, those who knew that the progress of economic reform is expected to dissipate the initial concentration of rents advocated immediate and comprehensive radical reforms (Lipton & Sachs, 1990).

Segmented deregulation in China, best exemplifies this pattern. This gradual form of liberalization freed specific localities from regulatory restrictions but kept them over others. Whereas the deregulated localities received preferential policies that considerably reduced their transaction costs⁶, the sectors operating within the ordinary regulatory constraints found themselves at a comparative disadvantage (Zweig, 2002). Not surprisingly, gaining deregulated status, preferential policies and the ensuing extra-normal profits led to “feverish” rent-seeking behaviour by local officials (Zweig, 2002).⁷ An uncertainty over the momentum of liberalization and an apprehension about missed opportunities caused widespread capital misallocation accompanied by a massive waste of resources (Zweig, 2002). For example, land apportionment for future development took place in spite of the scarcity of investment capital (Zweig, 2002).⁸ Moreover, according to Zweig (2002) unclear property rights removed any responsibility if investment brought no returns: “Who owned the zone, who was responsible if it failed, and who

⁶ These policies included tax breaks, easier access to domestic and foreign capital, higher salaries and greater freedom in foreign trade.

⁷ The prominent strategy employed was referred to as “building nests to attract birds” that is, first building zones and then lobbying for national recognition and preferential policies.

⁸ Only 2% of the 1.5 million hectares planned for development was being developed. The rest remained uncultivated and was deteriorating.

was responsible for the loans used to purchase the land if they were never repaid, remained unclear” (p. 98).

The second chapter will address the importance of path-dependence outlining a thorough discussion of Romania’s opaque decollectivization and property restitution methods. The chapter aims to challenge the idea that rents stemming from an incomplete reform stage can easily disappear once markets deepen and will demonstrate the importance of adopting a regional lens to post-communist transition in order to understand local actor’s vested interests to control and maximize their long-run rent-seeking opportunities.

Did commune mayors and local commissions preserve their position of power? If yes, which were the channels that allowed such preservation? Was there a marked disjuncture between what was legislated at the center and what transpired to rural locations? What are the repercussions of a weakening political center? Will the latter be able to control lower levels of government? What are the accompanying corruption patterns property and housing restitution has generated? Again, the path dependent characteristics of the restitution process will be highlighted through a careful analysis of contingency, critical role of timing and sequencing as well as inertia.

Chapter three presents a thorough examination of Romania’s anti-corruption institutional development consequent to formal pressures of EU accession. The chapter sheds light on the conditions that promote or obstruct successful “rule transfer” and their effective institutionalization at the domestic level building on Schimmelfennig and Sedelmeier’s (2004) external incentives model of governance. The operation of the principle of conditionality is particularly instructive. Numerous actors at the EU level acknowledged that Romania, being the most problematic accession case, failed to fulfill most of its membership criteria and would most

likely fail to meet the requirements in the near future. Unwillingness to eradicate endemic corruption compelled certain Members of the European Parliament (MEPs) to call for the suspension of accession negotiations in early 2004 (Gherghisan, 2004).

Some skeptics pointed to the EU's "rhetorical commitment and entrapment" in admitting Romania. Others believed that economic interests and security issues played a major role. For example, the US-led operations in Iraq secured UK, Spanish and Italian support. Overall, the EU had serious reservations about Romania's membership, but was confident that it would have continued to exert its leverage after accession. The chapter will shed light on the limitations of the external incentives model given its exclusive focus on the EU dimension while ignoring the importance of domestic politics. Therefore, as we shall see, once the implementation of conditionality lands on the national agenda it is essential to assess the domestic government's capacity and commitment to fulfill the necessary requirements. Thus, the accession process will be conceptualized as a two-level game, where domestic factors, next to EU conditionality, may constrain or facilitate the implementation of the *acquis*. The chapter will point at the EU's naiveté in ignoring the implications of Romania's post-communist institutional context. Brussels was strongly handicapped in its approach with this particularly difficult accession case. This is especially evident in the post-accession phase, in which the monitoring of Romania through the Cooperation and Verification Mechanism and Anti-Corruption Reporting Mechanism induced the political elite to adopt an overall critical tone and cynical stance. From a path dependent perspective, the chapter will highlight the importance of timing and sequencing, as well as the importance of certain political decisions that once introduced may not be reversed.

Chapter four will present a thorough overview of the "success story", the National Anti-Corruption Directorate, an independent anti-corruption agency established after numerous EU

pressures and will outline the difficulties in eradicating deeply entrenched patron-client networks. As the chapter will show, when it came to the fight against high-level corruption, the Commission supported two politically neutral institutions: the National Anti-Corruption Directorate (DNA) and the National Integrity Agency (ANI). In the case of Romania, a country regarded by the EU institutions as highly corrupt, the solution to corruption according to the Commission had to be an exogenous response, that is, a source of authority located outside of patron-client networks. The dissertation's path-dependent theoretical framework will emphasize the "lock – in" effect of institutions and the accompanying self-reinforcing processes that discourage reversals over time. Moreover, North's (1990) "interdependent web of an institutional matrix," (p. 95) in which existing institutional arrangements encourage the formation of complementary organizational forms establishing increasing returns will figure prominently in the analysis.

The chapter will also trace the path-dependent characteristics of Romania's judiciary, characterized by strong politicization of the judiciary in which nomenklatura judges and Communist party cadres monopolized control of the country's judicial, executive and legislative powers. Reconfiguring power relations away from this monopoly promised to be an arduous task. After decades in which Party apparatchiks dictated judicial decisions over phone while special secret-police tribunals destroyed regime opponents, building an authentic judiciary has been an enormously difficult process.

While chapter four will discuss the judiciary's weaknesses and its undermining potential, chapter five brings out numerous other institutional pitfalls that challenges the success of anti-corruption agencies. As chapter five will outline, in Romania the immunities regime became the political elite's most powerful instrument in subverting anti-corruption institutional development

and obstructing the justice system. The Romanian Parliament persists relentlessly in the disturbing habit of legislating loopholes that facilitate corruptive practices and delaying prosecutorial work by postponing immunity-lifting for MPs. The European Commission has often criticized the Romanian Parliament's unpredictability with regards to immunity lifting. This unpredictability leaves the National Anti-Corruption Directorate with diminished capacities to open investigations against corrupt MPs. The chapter will highlight "lock-in" effects and potential path inefficiencies given that numerous inferior outcomes became locked in due to neglected alternatives (Arthur, 1994). Negative externalities, such as the immunities regime, an inefficient ombudsman and corrupt media undermine the fight against corruption and reinforce the initial status quo.

The chapter sheds light on the various routes through which corrupt- elite networks tend to expand and self-perpetuate while keeping new political actors out of the political arena. The path dependent analysis will refer to the discussion on particularism outlined in the first chapter and will reveal the importance of understanding political systems characterized by particularistic resource distribution and concentration of power.

The chapter will also outline how the democratic transition inherited the socialist regime phenomena. The analysis will shed light on Romania's legal framework's purpose of discouraging new parties from entering the political scene, which reflects the legacy of the intricate manipulation techniques introduced by the National Salvation Front in the 1990s. It will also discuss the problem of political migration and the prevailing patronage at local levels of government. As we shall see, sub-national politics reflects the dynamics occurring in the national central institutions, while the national power-holders make use of their might to influence to their advantage politics at the local level and nurture clientelistic ties. The latter can also be traced

back to the institutional lock-in elements discussed in chapter two. Thus, the chapter shall reveal how politically appointed prefects turned into key political players and were able to tighten the central government's grip on the local government while nurturing and amplifying deeply entrenched clientelistic ties.

Chapter five will also demonstrate that other accountability mechanisms to prevent corruption and guarantee control and oversight, such as the ombudsman's office or an efficient NGO sector involved in the formulation of the relevant government policies are prominent absentees in the government's practices. As we shall see, in Romania, the media has become a channel for politically motivated attacks targeting judges and prosecutors with the aim of undermining or discrediting ongoing anti-corruption investigations and trials. The last part of the chapter will outline a path-dependent framework that takes into account the country's communist heritage in order to explain why the press has degraded in its current state and why the EU fails to understand the intricacies behind Romania's captured media.

Finally, the conclusion will present recommendations and the case will be made that the EU needs to develop a much better understanding of corruption in post-communist countries and concomitantly move away from parsimonious assumptions that fail to encompass a path-dependent understanding of corruptive patterns.

CHAPTER ONE

The European Union's Fight against Corruption

Introduction

In Central and Eastern Europe, the initial legal arsenal coupled with a rising political will to tackle corruption came hand in hand with the former's democratization efforts and the accompanying accession process. International organizations like the Organization for Economic Cooperation and Development (OECD), the United Nations (UN) and the Council of Europe (CoE) highlighted corruption's risk to good governance and its distorting impact on international competitiveness. While the OECD Convention constituted a first attempt to collectively undermine corruptive practices, international norms progressively widened their scope of action. Simultaneously, the latter was accompanied by an international proliferation of declarations and norms to fight corruption. It does not come as a surprise that the extent and complexity of the problem of corruption in the post-communist context posed a particularly difficult challenge for the European Union. The European Union reacted to the problem of corruption with its own existing arsenal of legal tools in the second half of the 1990s, presenting a relatively narrow problem definition.

Problem definition indirectly delineates the goals and values at which the problem solver aims, what values will be sacrificed, what counts as a solution and what kind of problem-solving means will be considered (Dery, 1984). Through adopting the latter lens one realizes that the definition of corruption, as well as the context in which it takes place, becomes pivotal as the definition also conditions policy responses. According to Entman (1993), "to frame is to select

some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation and/or treatment recommendation for the item described” (p. 52). Consequently, framing and problem definition become the pivotal intervening variables between perception of the underlying conditions and the translation of this understanding into policy preferences (Wagner, 2011).

However, herein lies the complicated nature of problem definition, especially when the problem is as multifaceted as corruption. While the last thirty years have witnessed an increased prevalence of research on corruption, a precise definition of the term that would apply to “all forms types and degrees of corruption, or which would be accepted universally as covering all acts, which are considered in every jurisdiction as constituting corruption” is still missing (Council of Europe, 2000, p. 14). As this chapter will demonstrate, the European Commission relegated the importance of problem definition to a minimum, overlooking the fact that the determination of problem causation may generate substantial cleavages in accordance with the interpretations of the “problem owners” (Rocheford & Cobb, 1993, Themes in Previous Work section, para. 6). The latter terminology was introduced by Rocheford and Cobb in 1993, emphasizing that the root causes of a problem may hinge on personal or impersonal factors, intended choices or accidental occurrences, or simple or complex phenomena. Finally, problem owners may be able to allocate blame more specifically, or conversely, refrain from shirking it to a particular institution altogether.

The chapter will demonstrate how the EU's narrow problem definition created a path-dependent "lock-in" effect that further prevented the European Union's development of methods and instruments against corruptive practices. The instruments that the EU initially introduced

targeted corruption only cursorily. The chapter will demonstrate the path-dependent characteristics of contingency, that is, how events occurring at critical junctures will gradually produce enduring consequences. The EU's problem definition will be analyzed from two perspectives: first, the chapter will detail its path-determining lock-in effect stemming from a rigid and narrow conceptualization of corruption that focused only on its detrimental effect to the European Community's financial interest. As we shall see, problem definition affects legislative responses occurring at a later point in time. Moreover, the chapter will also focus on how certain events were able to set the path and allow the EU to work out a broader problem definition. This definition encompasses both exogenous and endogenous causes, as well as positive and negative feedbacks that diluted any resistance to change paving the way for the incorporation of new elements.

The chapter is divided into five parts. The first part will underscore the importance of defining corruption in a post-communist context using the problem definition framework, while seeking to pinpoint clear conceptual boundaries with reference to the post-communist context. The subsequent parts of the chapter will present a thorough analysis of the European Union's anti-corruption instruments, the EU's preferred definition of corruption and the path-dependent implications of a narrow problem framing. The chapter will show how a narrow problem definition created a so-called "potential path inefficiency," a lock-in generating inefficient policy solutions. Such initial path inefficiency turned out to create complementary legislative responses that continued to be built on the same narrow problem definition. There were numerous "mechanisms of reproduction" throughout the years which sustained and amplified the initial path. However, as Pierson (2000) correctly posits, "path-dependent analysis need not imply that a particular alternative is permanently locked in following the move onto a self-reinforcing path.

Change continues, but it is bounded change- until something erodes or swamps the mechanism of reproduction that generate continuity" (p. 265). Thus, the chapter will describe those changes occurring both within and outside of the EU that lessened the initial approach to corruption. As David (1994) noted, early path dependent processes are characterized by events that shape the path but will not determine it. The EU's new conceptualization of corruption reveals that while lock-in effects played an important role, throughout the years the definition of corruption departed from the initial parsimonious approach.

1.1 Problem Definition and Issue Framing in the Context of Corruption

In the 2014 Anti-Corruption Report, the European Commission (2014e) defined corruption in a broader sense as any “abuse of power for private gain,” (p. 2) a definition that has been used since 2003 with reference to both the public and private sectors. Nearly two decades earlier, in 1995, the European Parliament (EP) provided its first definition of corruption, defining it as “the behaviour of persons with public or private responsibilities who fail to fulfil their duties because a financial or other advantage has been granted or directly or indirectly offered to them in return for actions or omissions in the course of their duties” (1995d, section 1). Two years later, the Commission (1997b) refined the term as “any abuse of power of impropriety in the decision making process brought about by some undue inducement or benefit” (p. 1b). By adopting it in this form, the Commission made a conscious effort to distance its definition from that of others, such as the one used by the World Bank which restricts the phenomenon to the public sector. Transparency International (2009) has taken a more normative approach by

highlighting the notion of trust in power relations and defining corruption as “the abuse of entrusted power for private gain” (p. 14).

Similarly, there is an ongoing debate in the social science literature as to what constitutes corruption. Rose- Ackerman (1999) and Kaufmann (1997) view corruption as an act of public office abuse for private gains. Nye (1967) underscores the psychological dimension of the corrupt officeholder by synthesizing the concept in terms of a “behavior which deviates from the formal duties of a public role because of private –regarding, wealth or status gains” (p. 416). Yet, in spite of their differences all definitions have subscribed to a common theme: a neglect and mistreatment of the public (office, trust, resources, influence) to service the private (self- gain, profit, interest, advantage), or a so-called “deviation from the norm” (Scott, 1972, p. 3). There are other instances where international organizations do not provide a definition. For example, the United Nations Convention against Corruption (UNCAC) (2004) does not attempt to provide a problem definition, but instead forgoes the former by outlining the overall goal (e.g. promoting integrity, accountability and proper management of public affairs and public property) and norms (e.g. efficiency, transparency, merit, equity and objectivity).

The EU’s definition of corruption (“abuse of power for private gain”) is broad enough to include most forms of corruption, however the definition relies on a rather vague terminology such as “private gain” and “abuse of power.” Relying on a clear definition of corruption is critical, but at the same time setting its conceptual boundaries with reference to the post–communist context requires significant effort. The underlying assumption behind these definitions is a strict division between the public and the private sphere. However, this presumption cannot be applied to post-communist countries.

Generic definitions fail to capture the numerous facets of corrupt activities, especially in societies where corruption is concentrated among the elites and/or dispersed among the society at large. Many scholars have noted the significant quantitative and qualitative differences when it comes to the perception of bribery and corruption in a post-communist context. In some countries, many bribe-givers perceive corrupt activities they actively partake in as imposed upon their personal choices as opposed to a deliberate option they willingly exercise. Thus, they are more inclined to see themselves as victims of an unjust system that forces them to follow the rules of a corrupt game. Moreover, “real” corruption for them is played out on a much higher institutional level. This level encompasses the executive and the judiciary, representing the primary sources of corrupt activities that legitimize citizens’ needs to resort to petty corruption in the first place (Papa, Pizza, & Zerilli, 2003). Borneman (1997) suggests that bribery in such societies should be conceived as a way of “settling accounts” that is repairing past communist injustices and restoring a more equal social order. Such “informal practices” are not solely a method of complying with the “corrupt system” but also embody a form of resistance. According to Ledeneva (2009), this concept further intensifies corruptive tendencies within the society, while at the same time representing a form of mobilization against such tendencies. This duality presents further difficulties in terms of perception and measurement. Similarly to socialist coping skills, in which bribery served as a strategy to circumvent endemic shortages, in the post-communist context, corruption at the grassroots level becomes an act of complicity and/or opposition (Gadowska, 2010).

Another framework for analyzing corruption is the principal-agent-client model (Banfield, 1975). This model focuses on the relationship between the principal (i.e. the top level of government) and the agent (i.e. a public official) who subsequently takes the bribes from the

client (private individuals) interested in some government-produced good (Banfield, 1975). The assumption behind the model is that both the agent and the client take an economic approach to corruption: they will engage in corrupt activities only if the benefits from doing so outweigh the costs. At the heart of the principal-agent problem lie the divergent incentives and information asymmetry between the two actors. According to McFaul (1995), from a principal-agent theory perspective, the political economy of the communist system had been characterized by a much stronger information asymmetry in favor of the agent than that existing in capitalist economies. Since the principal in the Soviet system consisted of the vast centralized bureaucratic machinery of the state, it had neither the knowledge nor the capacity to exercise the state's property rights over individual firms. Indeed, in many areas (such as monitoring agent's activities, setting incentive mechanisms for motivating agents to act in the principal's interest) the principal fell short of its role expectations. Even when it came to the main instrument of control, the plan, the principal's formal authority was overshadowed by the agents' (directors of SOEs) superior knowledge about the operations of their individual enterprises. In this environment of weak supervision by the principals, the agents began to acquire de facto property rights over their entities. In line with the conclusions derived from the principal-agent model, illicit activities are greater when agents have monopoly power, enjoy high discretion and accountability is poor (Banfield, 1975).

To the extent that corruption and rent seeking are covert phenomena, measuring and investigating them is inherently difficult. Nevertheless, as Hutchcroft (2002) puts it, "conceptual complexity and dilemmas of data gathering are no excuses for throwing the baby out with the bathwater" (p. 120). Therefore, we must acknowledge that measuring corruption and rent-seeking is impossible without allowing for some margin of error. Despite the fact that

researchers are still short of a universal measure of corruption, they still may consult a variety of datasets that attempt to quantify its various dimensions and compare measurements of perception. We can divide these cross-country corruption data sources into three categories: (1) Firm-and household surveys; (2) Expert assessments; and (3) Composite indexes. The first category includes four indices: the Business Environment and Enterprise Performance Survey (BEEPS), the Executive Opinion Survey conducted by the World Economic Forum (WEF), the World Values Survey, and the International Crime Victimization Survey. In this context, it is important to underline that existing corruption indicators differ significantly in the aspects of corruption they claim to measure, in the methodology they employ and especially in the transparency of their assessments. Hence, we must first understand the constraints and opportunities behind these indicators.

The Business Environment and Enterprise Performance Survey (BEEPS) is a joint initiative of the European Bank for Reconstruction and Development (EBRD) and the World Bank. The BEEPS encompasses up to 16,000 enterprises and 30 transition countries and has been compiled every three years since 1999 (European Bank for Reconstruction and Development, 2015). The analytical dimension of the survey concentrates on the bribe-paying pressures entrepreneurs face, the impact of “state capture” and the overall costs of corruption for the business environment. BEEPS specializes in providing narrow, specific indicators by incorporating questions on bribing frequency and predictability, bribe tax and the share of firm revenues paid as bribes to public officials (European Bank for Reconstructions and Development, 2006). At the same time, this proclivity on measuring only corrupt transactions between public officials and business firms offers a contracted scope compared to more broadly-defined corruption measures.

Another prominent firm survey is the World Economic Forum's Executive Opinion Survey (EOS). Similar to the BEEPS, it aims to capture business leaders' perception on corruption by aggregating and computing simple averages of all executives' responses. The question format is similar to the BEEPS (World Economic Forum, 2004), however the focus is much more on the respondent's perception of corruption than the firm's overall experiences. Moreover, the WEF's Executive Opinion Survey differs from the BEEPS in important aspects. First, the sample in the WEF survey shows a bias by selecting experienced executives from large firms with extensive international connections. Additionally, many questions specialize on subject matters where firms may have unreliable knowledge, for example the ways in which public funds are diverted.

Household surveys like the World Values Survey, the International Crime Victimization Survey, and Transparency International's Global Corruption Barometer seek to capture the opinion and experiences of individuals (and households) with corruption. The downside of these surveys is that they display comparability problems; hence, their utility is limited. Their sample composition also excludes rural households and concentrates only on urban respondents. The second category, Expert Assessments, includes data from Freedom House' Nations in Transit (NIT), the World Bank's Country Policy and Institutional Assessment (CPIA), the International Country Risk Guide (ICRG) and the index computed by the Economist Intelligence Unit (EIU). The methodology utilized in these assessments differs in several important ways. First, we can distinguish between centralized and decentralized indices, depending on the number of experts who determine the final ratings. If a very small number of people ultimately shape the final ratings despite the network of correspondents with country-specific expertise being large, the degree of the assessment is known to be centralized (United Nations Office on

Drugs and Crime, 2004). This type is exemplified by Nations in Transit (NIT) and the International Country Risk Guide (ICRG). ICRG offers to assess the relative incidence of corrupt transactions, while NIT measures the impact of corruption on the business environment. The measured aspects of corruption are a function of the attitudes of various constituencies and audiences. According to Knack (2006), while the NIT addresses the sphere of politics, the ICRG's subscribers (multi-national investors) tend to be more interested in conditions potential foreign investors confront in a given country. Expert assessments vary also in the extent of the documentation they provide about the sources of information or the methodology employed. Some corruption measures, like the ICRG, NIT and CPIA fail to disclose the weights given to various aspects of corruption listed in the assessment criteria, while the EIU bypasses the disclosure of the assessment criteria altogether. Consequently, these broad, multi-dimensional measures of corruption compared to the BEEPS or WEF lack conceptual precision and semantic clarity. Moreover, if the implicit weights given to the various dimensions vary from one period to the other, then measuring changes over time becomes problematic.

In the third category, Composite Corruption Indexes, a single corruption index is constructed from a wide array of distinct sources. The most prominent example in this category is Transparency International's Corruption Perception Index (CPI) and WBI's Control of Corruption index. Composite indexes are known to reduce measurement error by virtue of their capacity to aggregate data from multiple sources. Accordingly, the combination of several sources is more likely to capture the different forms of corruption and present a more comprehensive picture of this complex phenomenon. In addition to this, if several sources are aggregated, then the number of countries covered increases. TI's CPI computes averages only for those countries where at least three data sources are available (Transparency International,

2010a), while the WBI index is calculated even for countries with data accessible from only one source.

In contrast to many corruption measures (ICRG, NIT, CPIA, EIU) that forego the disclosure of weights given to various aspects of corruption, both the TI and WBI provide detailed explanations of their aggregation method. However, the aggregation procedure's transparency per se does not circumvent the problems associated with the incomplete and ambiguous construction of many of the components of the composite index, which ultimately contribute to the opacity of the composite index itself. Moreover, the sources used for aggregation change over time and vary from country to country (Knack, 2006).⁹ This phenomenon does not just bias possible comparisons, but also indicates the degree to which the individual composition of the sources for each country form computed composite indexes that reflect different aspects of corruption across cases.

Consequently, we face limitations both for pair-wise comparisons at a point in time and single country comparisons at two or more points in time. The problem is further aggravated when considering the restrictions imposed by both TI and WBI on the access to the component data sources. Such a restriction reveals another serious problem: if the sources employed in these composite indexes are not independent, then the assumption of WBI and TI regarding the independency of their sources is erroneous.¹⁰ Knack (2006) also notes that this assumption has repercussions on the choice of weights in aggregation. For example, the WBI index gives a greater weight to sources that are more correlated with each other. Again, the assumption is that

⁹ For the 2005 TI index calculated in Eastern Europe only four pairs of countries had a common set of sources: Russia and Poland had the same fourteen sources, Estonia and Romania the same thirteen, Bulgarian and Lithuania the same twelve and Croatia and Latvia the same eleven.

¹⁰ If several sources of the composite index assess a country more favourably in year 2 than in year 1, we could assume that this assessment is stronger than one based only on a single data source. Unfortunately, if these different sources do not represent independent judgements, then the assumption of statistically significant improvement or worsening is incorrect.

if sources are independent, an outlier source that would agree less with the other sources is a less accurate measure of corruption. However, if the agreement among experts' assessment is based on opinion-sharing or exploring the same information pool, the high correlation among their opinion is a problematic proxy for accuracy.

Aside from the abovementioned shortcomings, the available corruption indices offer only a snapshot of corruption's actual reach, while failing to recount the specifics of the process through which endogenous and exogenous variables shape its patterns in time. A sole focus on cross-country data sources may significantly bias the final conclusions and policy recommendations. To avert the likelihood of this problem, this dissertation proposes a multipronged approach that takes into account path-dependence and sheds light on the importance of conceptualizing corruption in terms of particularism.

Moreover, in order to be able to better understand and measure "institutionalized particularism," there has to be a concomitant shift away from the commonly accepted definition of corruption ("the misuse of public office for private gain") while at the same time non-perception based indicators need to anchor such a mechanism. Given the clandestine nature of corruption and the importance of the country-specific context in which it thrives, some researchers have embarked on examining corruption from a different angle in order to arrive at new indicators that are more helpful in deconstructing corruptive behavior. According to Fritzen (2006), as long as the essentials of institutionalized particularism and state capture are not dismantled, trying to eradicate such practices through promoting international norms and conventions remains a futile practice. Thus, how well we understand the context in which corruption takes place is of key importance and has serious ramifications for the compatibility and potential effectiveness of international norms and conventions.

Thus, as already mentioned, despite an ongoing debate on corruption's detrimental effects and a concomitant engagement in social sciences about the former's long and short-run repercussions, a consensus on a commonly agreed definition of "corruption" has yet to come to the fore. Some scholars who adopt a norm-based macro-perspective focus on the "general premises and consequences of the state of degradation of political systems as a whole and social values underlying them" (Della Porta & Vannucci, 2014, para. 1). In contrast, micro-level approaches examine corruptive tendencies as a certain behavioral outcome emerging from a specific context. Such cultural perspectives highlight the differences in social norms and traditions, as well as their influence on the individual's moral preferences.

Especially in the Central Eastern European countries, bribery often appears in the form of a gift-giving, a practice rooted in the local cultures. Recent comparative anthropological studies reveal that the variety of gift-giving customs serves as a basis for categorizing countries in different clusters that from a normative and legal perspective would be classified under petty corruption. Torsello (2014) concludes that successful anti-corruption strategies and policies need to take into account cultural differences that condition citizens' perception about the costs of corruption. Moreover, certain corruptive patterns that persist even after EU membership date back to "local cultural practices and their perceived need" (Torsello, 2014, para.

6) to compensate for discrepancies in regional development.

This dissertation promises to move away from a simplistic definition of corruption that assumes a strict division between the public and private spheres. Corruptive practices will be conceptualized from a particularistic framework that takes stock of the impact of the distribution of power on corruption. A particularistic state is characterized by a concentration of power in the

hands of a small elite, a hazy boundary between the public and the private and the enshrinement of corrupt practices as informal norms (Mungiu-Pippidi, 2006).

An encompassing consensus within the international community about corruption's detrimental effects is fairly recent. While in the early years of modernization theory corruption was generally condemned as a phenomenon incompatible with the norms of morality with very few studies dealing with its precise causes, consequences and potential remedies, it was the revisionist literature that first recognized the potential positive consequences of corruption. These scholars re-conceptualized corruptive practices by looking at them in terms of promising paths for circumventing government inefficiencies. Thus, it is not surprising that the rent-seeking literature reached its zenith in an era with a prevailing frenzy for the virtues of the unregulated markets and sheer skepticism about the authoritative niche of the government in the economy. The latter also induced ambivalence concerning potential destabilizing effects on economic prosperity. Many authors argued that in developing countries corruption served as a tool enabling entrepreneurs to sidestep an obstructive bureaucracy as well as a substitute for the protection of their property rights (Leff, 1964). Others considered corruption as a vital source of capital formation, a spur for cutting red tape and a starting place in providing entry opportunities for minority group entrepreneurs (Nye, 1967). However, by the late 80s and early 90s corruption was more strongly viewed as an impediment to global trade and development. By the time Transparency International was established in 1993 and the EU accession process began, the consensus in the international community shifted to a wholesale vilification of corruptive practices.

In Central and Eastern Europe, the initial legal arsenal coupled with a rising political will to tackle corruption came hand in hand with the former's democratization efforts and the

accompanying accession process. The EU was extremely outspoken about corruption raising serious moral, political and economic concerns. Its risk to good governance and its distorting impact on international competitiveness has brought the issue of corruption increasingly to the forefront, reaching the attention of international organizations like the Organization for Economic Cooperation and Development (OECD), the United Nations (UN) and the Council of Europe (CoE). For instance, competitiveness considerations played a pivotal role in the adoption of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions.

While the OECD Convention constituted a first attempt to collectively undermine corruptive practices, international norms progressively widened their scope of action. Simultaneously, the latter was accompanied by an international proliferation of declarations and norms to fight corruption. Despite the fact that all Central and Eastern European Countries and current EU member states have ratified the majority of international and European conventions, the latter has shown inconclusive results. According to Dorhoi (2007) CEE countries have adopted a substantial amount of legislation as well as improved existing anti-corruption laws. Consequently, numerous scholars question their positive impact or suitability while others praise such efforts as indispensable in promoting and strengthening domestic standards in combatting corruption (Kubiciel, 2012; Michael, 2010; Wolf, 2010). While the subsequent chapters will shed light on why such measures failed to eradicate deeply entrenched clientelistic networks in Romania, the following section of this chapter aims to analyze the EU's shortcomings on the anti-corruption legislative front. It does not come as a surprise that the extent and complexity of the problem of corruption in the post-communist context posed a particularly difficult challenge for the European Union. The EU reacted to the problem of corruption with its own existing

arsenal of legal tools in the second half of the 1990s. The EU's legislative and institutional framework against corruption as well as its legal and historical context will be discussed in the following section.

1.2 The Legal Foundation in the European Union's Anti-Corruption Policy

After two decades of puzzlement and disorientation, the European Commission came to the realization that the onerous task of challenging corruption urged for a serious consideration of the latter's path-dependent character and the socio-cultural features of the environment in which it thrived. The European Commission recognized that there was no "one size fits all" approach to corruption and took the conscious decision of omitting recommendations that would fail to take into account the multitude and complexity of the forms of corruption within each Member State. According to the recently launched anti-corruption reporting mechanism (ACR),

what (legislative or other) solutions are needed to address the challenge related to conflict of interests depends on a variety of factors, including the degree to which conflicts of interest are already perceived as an issue in a country, what cultural norms are in place, and the degree to which recognized societal norms need to be reflected in legislation. (European Commission, 2014e, p. 40).

Therefore, the Commission's new anti-corruption policy allowed an opportunity to understand the peculiar context that might encourage or undermine corruptive tendencies. This new approach was the result of a decision taken back in 2011 when the Commission decided to

set up a group of experts on corruption to steer the EU's new anti-corruption policy. In addition to the sixteen anti-corruption experts, the European Commission also decided to arrange a network of twenty-eight local research correspondents (LRCC) with one expert to represent each Member State. The LRCCs were responsible for providing the Commission with regular updates about the MS's efforts (or lack thereof) to combat corruptive practices. These deliverables ranged from bi-monthly brief regular updates to overall analytical reports and country studies. In order to guarantee that all local research correspondents' deliverables conveyed an opinion that was unbiased, twenty-eight external reviewers were appointed to oversee their work. Thus, for the first time after two decades of misguided anti-corruption efforts, the Commission realized that an in-depth qualitative assessment persisting over a prolonged period (four years) would allow the European Commission to recognize different patterns of corruption and the importance of the country-specific context in which such corruptive practices take place.

This novel approach also introduced a more efficient methodology that privileged the employment of qualitative indicators alongside those quantitative measurements which had theretofore dominated the assessment process. This shift in focus towards an integrated qualitative/quantitative approach revealed the Commission's firm conviction that past methods to study corruption had not uncovered the problem in all its gravity. Thus, the European Commission also acknowledged the limits of surveys and composite indexes, that is, the former's high sensitivity towards subjective perceptions and the latter's tendency to aggregate not up-to-date data sources.

The Commission's newfound appreciation for such an elaborate assessment stands in stark contrast to the way the problem of corruption had been conceptualized in the mid-1990s. The legal foundation of the EU anti-corruption acquis is fairly intricate from a legal perspective.

Fighting corruption is a cross pillar issue, regulated under both European Community (EC) and EU treaties (Szarek-Mason, 2010). Under the Treaty on the Functioning of the European Union (TFEU) Article 325 (ex Article 280 TEC), the EU has very limited legal powers to combat corruption, as the problem of corruption is addressed solely in the framework of protecting the European Community's financial interests. However, the scope of measures adopted through Article 325 does not extend the European Union's competences if there are no financial repercussions from the corrupt act. According to Article 325:

The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies (Official Journal C 326, 26/10/2012 P. 0001 – 0390).

Moreover, Article 325 stipulates that similar measures should be taken to counter fraud and urges Member States to “coordinate their action aimed at protecting the financial interests of the Union” against the latter (Official Journal C 326, 26/10/2012 P. 0001 – 0390). In addition to Member States' efforts, Article 325 also calls for a stronger cooperation between the European Parliament, the Council and the Court of Auditors in order to adopt the necessary measures to prevent and battle “fraud affecting the financial interests of the Union” (Official Journal C 326, 26/10/2012 P. 0001 – 0390).

1.3 Initial Anti-Corruption Instruments

The Treaty on European Union (TEU) constituted the first step for the EU to adopt a new lens through which corruption was conceptualized while slowly moving away from a narrow problem definition which focused only on safeguarding the community's financial interests (Szarek- Mason, 2010). The most important anti-corruption instruments introduced by the TEU, such as the Joint Action¹¹, the Convention on the protection of the European Communities' financial interests (the PIF convention)¹² and the First Protocol¹³ proved highly ineffective, mainly because of their serious delays in the ratification and implementation processes.

The Joint Action's objective was to establish some common definitions for the policy of combating corruption in the private sector, aiming to incentivize each Member State to "take the necessary measures to ensure that active and passive corruption, and the acting as an accessory in or instigator of corruption, are punishable by effective, proportionate and dissuasive criminal penalties" (Official Journal L 358, 31.12.1998). However, this policy had a negligible effect owing to MS's lack of implementation efforts (European Parliament, 2005a). Moreover, since the coming into force of these anti-corruption instruments experienced serious delays, their effectiveness suffered. For instance, the Convention on the Protection of the European Communities' financial interests (PIF Convention), which was adopted in 1995, did not come into force until seven years later on October 17th, 2002.

¹¹ Joint Action 98/742/JHA of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector (Official Journal L 358, 31.12.1998)

¹² Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (Official Journal C 316 , 27/11/1995 P. 0048 – 0048)

¹³ First Protocol of 27 September 1996 to the Convention on the protection of the European Communities' financial interests (Official Journal C 313, 23.10.1996)

The PIF convention's main goal was to "tackle fraud affecting the financial interests of the European Communities" (Klimek, 2015, p. 117) and required each Member State to make the former "punishable by effective, proportionate and dissuasive criminal penalties" (Klimek, 2015, p. 118). By the same token, the convention against bribery of Member States and Community Officials urged MSs to take all necessary measures to ensure that any

deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute passive corruption (Protocol to the Convention on the protection of the European Communities' Financial Interests, article 2, section 1)

and is made a criminal offence. Similarly, the same requirements were spelled out for active corruption, caused by the

deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties. (Protocol to the Convention on the protection of the European Communities' Financial Interests, article 3, section 1)

However, while the Anti-Corruption convention was adopted in 1997, it entered into force with a significant delay of eight years in September 2005 (European Parliament, 1997a). Adding to this procrastination, the conventions were also adopted under the rule of unanimity, thus producing the lowest common denominator on the anti-corruption front. According to Kuijper (2004) the third pillar measures from the TEU, especially the anti-corruption instruments, are characterized by a minimalist approach.

While the TEU stressed the importance of combating fraud on an international scale and introduced the above mentioned conventions, it was not until 1999 when fighting corruption became recognizably one of the European Union's most important objectives. According to Article 29,

the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters by... preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud. (Art 29 TEU)

The explicit acknowledgment of the fight against corruption as one of the EU's objectives enhanced its intensity significantly. More importantly, less effective legal instruments to curtail corruption, such as the Joint Action and the PIF Convention, have been gradually replaced by more efficient measures. According to Szarek- Mason (2010), the introduction of a higher quantity of framework decisions that, in contrast to conventions, is a more potent legal

instrument, allowed the EU to have a bigger impact on Member States' criminal legislation. In contrast to the conventions discussed above, framework decisions allow the Council and the Commission to monitor if the former have been successfully implemented into MS's national laws. Moreover, framework decisions sidestep the ratification requirement thus their deadline for implementation is much tighter (Szarek-Mason, 2010). For instance, the Framework Decision¹⁴ on corruption in the private sector (Framework Decision 2003/568/JHA) entered into force by the end of July 2003 and had a strict two year transposition deadline (Official Journal L 192, 31/07/2003 P. 0054 – 0056). The latter aimed to replace the ineffective Joint Action 98/742/JHA¹⁵ of December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, which failed to be implemented by all Member States (European Parliament, 2007).

Nevertheless, the crisis triggered by the Santer Commission's resignation in 1999 demonstrated that corruption was not just national but European concern. The whistleblower report issued by Paul van Buitenen, a Dutch member of the EU Commission's financial control unit, revealed that the extent of fraud within the Commission encompassed embezzlement of EU funds, falsified contracts as well as the forging of other people's handwriting (Osborn, 2003). As an immediate response on January 14th, 1999, the European Parliament adopted a resolution on improving the financial management of the Commission, and established a committee of independent experts to assess the given situation (Committee of Independent Experts, European Parliament, 1999). The European Parliament requested the Committee to "examine the way in which the Commission detects and deals with fraud, mismanagement and nepotism, including a

¹⁴ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (Official Journal L 192 , 31/07/2003 P. 0054 – 0056)

¹⁵ 98/742/JHA: Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector (Official Journal L 358 , 31/12/1998 P. 0002 – 0004)

fundamental review of Commission practices in the awarding of all financial contracts” (Committee of Independent Experts, European Parliament, 1999, p. 9).

The first comprehensive report included a 146 page thorough analysis in which the Committee discussed the implications and events leading to six corruption cases (Tourism, Med, Echo, Leonardo, Security Office and Nuclear Safety) as well as the accountable Commissioners. Overall the Committee concluded that what increased the Commission’s vulnerability to corruption was the absence of a “simple, rapid and practical internal financial procedure to establish individual responsibility for the irregularities” (Committee of Independent Experts, European Parliament, 1999, p. 144). As such it recommended that the audit reports should focus largely on individual performance and alert immediately an independent administrative committee in the case that its conclusions reveal instances of fraud. Moreover, the report drew attention to Commissioners’ “growing reluctance among the members of the hierarchy to acknowledge their responsibility” (Committee of Independent Experts, European Parliament, 1999, p. 144) when it comes to cases of fraud. It also highlighted an accountability vacuum at the senior management level, raising questions about the EU’s institutional and legal capacity to fight corruption within its internal institutions and not just within its own Member States. A corruption-plagued EU would have limited credibility in eradicating or even adjudicating corruption within its own members.

In the path dependency literature, the concepts of path dependence and critical junctures are often conflated, but Hacker (1998) underscores the importance of distinguishing between the two. Accordingly, arguments in the literature focus on explaining the lasting consequences triggered by historical junctures. At the EU level, the resignation of the Santer Commission in 1999 acted as a critical historical juncture that reconfigured problem definition and paved the

way for a broader conceptualization of and a more complex approach to corruption. In different words, the EUs approach towards corruption was "locked in" and corruption as a problem definition moved onto a self-reinforcing path. However, the discovery of corruption within the EU constituted a critical juncture with lasting consequences.

The Santer Commission's resignation generated two positive developments allowing for the credibility and commitment of the EU institutions against corruption. The rapid nomination of Romano Prodi as well as the subsequent "Reforming the Commission: a White Paper" promised to maintain "high standards of ethical behavior, thereby contributing to the confidence of the public in the functioning of the European Institutions" (European Commission, 2000a, Chapter 2). The Action Plan established an audit unit within the Commission overseeing the disbursement of funds, introduced new procedures in the training and recruitment procedures and improved public access to documents of the European Parliament, the Council and the Commission.

Equally important was the establishment of the European Anti-Fraud Office (OLAF) following the resignation of the Santer Commission, replacing the Anti-Fraud Coordination Unit (UCLAF) on June 1st, 1999. With its threefold mission to protect the EU's financial interests by detecting and investigating internal corruption,¹⁶ fraud and other illegal activities while supporting other EU institutions, OLAF quickly became one of the most important independent administrative bodies in the fight against corruption (European Commission European Anti-Fraud Office, 2015a). OLAF has the authority to carry out internal and external investigations; the former encompasses any European institution that has been funded by the EU budget, while

¹⁶ E.g. matters related to the discharge of professional duties by EU staff

the latter refers to investigations carried out at the national level if the corruptive act endangers the EU budget.

In such instances, OLAF has the right to carry out inspections in the given Member State in cooperation with third authorities. Once OLAF opens a case it might fall into either of the abovementioned two categories (e.g. internal or external investigation) or may be classified as a “coordination case” or “criminal assistance case.” In coordination cases, OLAF's tasks include the gathering and exchange of evidence in investigations carried out by national authorities. In contrast, criminal assistance cases refer solely to the close cooperation of OLAF with Member State or third country authorities for criminal investigations (European Commission European Anti-Fraud Office, 2015). The fourteenth report of the European Fraud Office showed that during the previous two years (2012 and 2013) the number of investigations peaked at 431 and 253 respectively, with an average duration of 21.8 months per investigation (European Anti-Fraud Office, 2013). All in all, in 2013 OLAF issued a total of 353 recommendations to authorities at the Member State or the relevant EU institutional level. Such surge in the level of recommendations (a 77% increase compared to 2006) as well as in the number of investigations is mostly attributable to the introduction of Regulation No 883/2013 that entered into force on October 1st of 2013 and brought along important institutional changes to guarantee the efficient functioning of the Fraud Office. The Regulation introduced regular encounters between the Office and the EU institutions and mandated the designation of an Anti-Fraud Coordination Service in each Member State (European Commission European Anti-Fraud Office, 2013). Given OLAF's success, the substantial span of time the EU needed to develop an adequate anti-fraud policy is surprising. Nikodem (2002) distinguishes between three developmental phases

within the Commission's anti-fraud units. The first phase was characterized by a missing anti-fraud framework that debilitated the potential for a better encompassing anti-fraud policy.

Meanwhile, the Court of Auditors in its annual reports frequently highlighted the serious shortcomings in the management of Community funds. The Court of Auditors together with the European Parliament pressured the Commission to come up with a plan for addressing such shortcomings and the mismanagement of the Community funds. More specifically, the EP called for a plan including the monitoring of expenditures as well as the prevention of fraud and irregularities. The Commission's (1987) report on "Tougher Measures to Fight against Fraud Affecting the Community Budget (COM (87) 572 final, 20 November 1987)" articulated an urgent need for a central agency to stem the aforementioned trend. The Commission (1987) defined fraud as "any infringement, whether intentional or not, of a legal provision committed by private persons or bodies and having adverse financial consequences for the Community budget" (p. 3). Moreover, the report emphasizes Member States' capacity to fight fraud by "hav[ing] the most of the powers of authority needed" (European Commission, 1987, p. 5) and clearly places the onus of fraud detection on the former.

The European Commission (1987) clearly distanced itself from the responsibility of directly dealing with instances of fraud, as "it does not deal directly with all the cases of fraud" (p. 7) and "is not always informed in detail of the situation in the member states" (p. 7). Nonetheless, the Report outlined strict criteria on how the Commission can play a more effective role in the fight against fraud. Most importantly, in 1988 the Commission established the "Anti-Fraud Coordination Unit" (UCLAF), a central coordination body within the Secretariat-General of the European Commission in order to provide the assistance necessary to tackle EU funds

mal-administration and transnational organized fraud (European Commission European Anti-Fraud Office, 2015b).

European Commission President Jacques Delors faced mounting pressure as a result of the increasing number of financial irregularities squandering the Common Agricultural Policy's budget. Thus, UCLAF marked the second phase in the Commission's efforts to advance a common strategy in its anti-fraud policy. The Coordination Unit was responsible for (1) enforcing systematic and compulsory communication among all Directorates-General; (2) facilitating the workings of a committee; (3) representing the Commission in issues related to fraud; (4) reporting every six months to the Commission and (5) assessing yearly noticeable improvements and challenges in the anti-fraud coordination action (European Commission European Anti-Fraud Office, 2015b). While UCLAF's goals were quite ambitious, the organization failed to establish an all-encompassing anti-fraud policy coordination.

According to Quirke (2007), a high degree of fragmentation, poor database use and a high number of staff employed on temporary contracts resulting in a high turnover rate disrupted the investigative process and marked the organization's major fallacies. Others even go as far as to describe UCLAF as "merely a small group of desk-bound staff processing information received from others" (Nikodem, 2002, p. 68) or argue that the concept of the Anti-Fraud unit was flawed from the very beginning. In the summer of 1998, the European Court of Auditors published a report on UCLAF's activities and criticized the agency's shortcomings on numerous dimensions. Among these shortcomings, the poorly defined and overcomplicated judicial authority, the defective vetting system, the inconsistent application of confidential information as well as the high number of temporary agents that undermined continuity in the investigative process constituted the Court's primary criticisms. The fact that the initial staff was composed of

merely seventeen individuals forced UCLAF to resort to temporary employees in the respective Member States. More importantly, however, the report shed light on problems with the immunities regime in at least three cases where Member States failed to comply with UCLAF's request or instances where the "Commission only lifted the immunity of three officials, some twenty months after a request from the competent national authority" (Court of Auditors, 1998, p. 13). Moreover, UCLAF lacked independent criminal investigative powers that heavily restricted the number of investigations it could carry out.

All in all, the two phases described above constituted a slow, fragmented and narrow approach to the EU's anti-corruption policy development. Attention focused solely on protection of the EC's financial interests and was directed exclusively towards policy against fraud. This raises the question as to why the EU failed to develop a more encompassing approach to anti-corruptive measures instead of limiting itself to an atomistic and fragmented fraud control. From a problem definition perspective, it is important to understand why the EU focused solely on "fraud" versus "corruption" in addition to why it directed its attention to fraud's economic destabilizing effect without emphasizing its negative impacts on other problem dimensions (e.g. the lack of accountability, transparency etc.). More importantly, it also begs the question as to why an encompassing anti-corruption policy failed to emphasize corruption's threat for the rule of law and good governance, as well as economic development.

Many other prominent anti-corruption initiatives (e.g. Council of Europe, UNCAC) were motivated primarily by the abovementioned considerations and relegated corruption's destabilizing effects on "financial interests" to a tertiary cause. The fact that from the start the EU anti-corruption stance focused solely on the protection of the Communities' financial interests instead of a more multifaceted standpoint has limited and delayed the European Union's

capacity to develop an adequate legal basis to address corruption both within its institutions as well as among its Member States.

Stone (1989) emphasizes that “how [a] situation[...] come[s] to be seen as caused by human action and amenable to human intervention” (p. 281) is always underpinned by causal ideas, which constitute a “process of image making” (p. 282) where the images serves to attribute cause, blame and responsibility. In the early stages of integration, the protection of the European Community financial interests was not necessarily on the EU’s radar, mainly because the Community budget was dependent on MSs’ direct contributions. As Nikodem (2002) acknowledges, the Council also enjoyed exclusive authority over budgetary matters, and on the Community level fraud “was of minor importance since the Member States carried the burden of negative financial consequences of fraud due to their direct contributions” (p. 65). Consequently, the lack of political will to develop an effective mechanism to combat fraud at the European level at the initial stages of integration arises from a vacuum of “image making” and “problem definition,” as the Community lacked its own resources.

The EU's narrow problem definition created a path-dependent "lock-in" effect. However, in the 1970s a series of changes were introduced that not only drastically changed the initial arrangements for the Community’s budget but also reconfigured the power-sharing relationship between the Council and the European Parliament. The first decision on own resources was adopted in the spring of 1970 and encompassed funds from agricultural taxes, custom duties and VAT resources, followed by the adoption of the First and Secondary Budgetary Treaties. Both events constituted critical junctures that diminished the original lock in effect. Moreover, in 1976 the Commission requested a Treaty amendment known as the principle of assimilation, which required Member States to treat infringements of Community rules as violations of domestic

laws and principles. A supremacy of principles allowing Member States to assimilate infringements of EU law to domestic legislation was in place. Yet what impaired its effectiveness was the lack, at the EU level, of a common definition of “fraud” and “corruption” given that variation within Member States’ national legislation was fairly significant. Thus, the lock-in effect still prevailed.

It was not until 1995, fifteen years after the principle of assimilation was introduced by the Court of Justice that a common definition of fraud affecting the Community budget was agreed upon in the PIF Convention. The Convention distinguished between expenditure and revenue fraud, defining the former as

Any act or deliberate omission involving the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, non-disclosure of information in violation of a specific obligation, with the same effect; the misapplication of such funds for purposes other than those for which they were originally granted (Official Journal C 316 , 27/11/1995 P. 0048 - 0048).

The revenue fraud definition changed only marginally, highlighting the vulnerability of an “illegal diminution of the resources of the general budget,” (Official Journal C 316, 27/11/1995 P. 0048 – 0048) and demanding the penalization of both types of fraud within each Member State.

Table 1.1 Initial Anti-Corruption Instruments

	<i>Adopted</i>	<i>Goal</i>	<i>Impact on Member States</i>
Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995)	1995	It introduces a common definition of fraud (expenditure fraud and revenue fraud)	Fraud becomes a criminal offense under national legislation Introduces liability of Heads of Business Introduces rules on judicial cooperation in cases of cross-border fraud
Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995)	1995	Harmonizing systems of administrative sanction	It defined the administrative concept of irregularity against the Community budget
Council Regulation (Euratom, EC) No	1996	Empowering OLAF to carry out inspections at	Article 7 and 8 allowed OLAF access to

<p>2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996)</p>		<p>any level (central, regional, and local) for recipients of financial benefits from the Community budget</p>	<p>documents under similar conditions as national inspectors</p>
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Source: Szarek-Mason, P. (2010). The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries. New York: Cambridge University Press.

Thus the PIF Convention required each EU country to “tackle fraud affecting the financial interests of the European Communities” (Klimek, 2015, p. 117) and make fraud punishable by “effective, proportionate and dissuasive” (Klimek, 2015, p. 118) criminal penalties. Consequently, expenditure and revenue fraud became a Criminal Offense under domestic legislation, in addition to introducing regulations on judicial cooperation¹⁷ and business leaders’ liability. As already mentioned, while the PIF convention was adopted in 1995, it only entered into force on the 17th of October in 2002, seven years after its adoption and with a time-lag that seriously inhibited its effectiveness. Moreover, the PIF convention failed to provide a definition for corruption and instead focused solely on “fraud affecting the financial interests of the European Communities,” resulting in a narrow problem definition. Consequently, the EU's

¹⁷ If a fraud constitutes a criminal offence and concerns at least two EU countries, those countries must cooperate effectively in the investigation, the prosecution and the enforcement of the penalties imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another EU country.

narrow problem definition continued to persist as a path-dependent "lock-in" therefore conditioning instruments further down the road to target corruption only cursorily.

Nonetheless, the EU gradually tried to tackle the significant variation among Member States' fraud legislation. Thus, Council Regulation No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995) which was adopted in the same year as the Convention itself aimed to harmonize the systems of administrative sanctions within Member States. It introduced a definition for administrative "irregularities," that is, any "infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them" (OJ L 312, 23.12.1995).

According to White (1996), Council Regulation No 2988/95 was the first horizontal instrument empowering the Commission to carry out and apply administrative checks and sanctions. A year later in 1996, "Council Regulation 2185/96 concerning on the spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interest against fraud and other irregularities" gave OLAF the authority to conduct inspections at all three administrative levels benefiting from Community funds. According to Article 7, Commission inspectors shall have access "under the same conditions as national administrative inspectors," (OJ L 292, 15.11.1996, Article 7) as well as "avail themselves of the same inspection facilities" (OJ L 292, 15.11.1996, Article 7) as domestic actors.

Nonetheless, all three measures discussed in Table 1.1 tried to tackle the problem of corruption only incrementally. Meanwhile, none of the anti-fraud measures purported to address the wider ramifications of corruption and the threat it could pose to the rule of law. Until 1998,

the premise was that anti-fraud measures should serve only one role: that of protecting the financial interests of the Community.

Consequently, such a narrow problem definition created a so called “potential path inefficiency”, a lock-in generating inefficient policy solutions. Such initial path inefficiency turned out to create policy instruments that continued to be built on the same narrow problem definition. The above mentioned mechanisms of reproduction throughout the years sustained and amplified the initial path. The above-illustrated instruments demonstrated a growing consensus over an obligation to protect the Community budget from fraudulent practices. From a problem definition perspective, the instruments outlined in Table 1.1 failed to address the problem of corruption from an encompassing perspective that would underscore the latter’s hazard for the rule of law, good governance and economic development.

Ironically, it was the European Parliament who demanded a comprehensive definition of corruption and at the same time additional and more effective anti-corruption instruments than the ones presented in Table 1.1.

In its “Resolution on combating corruption in Europe” in 1995, the EP extended the problem definition, emphasizing wider ramifications than the danger it could pose on the community’s financial interest. Accordingly,

Corruption undermines the rule of law, the social tissue and the principles of democracy because it is against the interests of all members of the public. It is also a leading cause of economic underdevelopment and, in particular, a factor which contributes to the distortion of competition within the European Union. (Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs, 2002, Explanatory Statement)

While the European Parliament always adopted a more holistic approach to corruption's detrimental effect on the rule of law and good governance, in 1997 it took a stronger stance against the latter's impact on the democratic system, its effect on organized crime and its capacity to divert funds. Moreover, the EP (1998b) acknowledged that "corruption in the public sector endangers the functioning of the democratic system" (section B) and "undermines citizen's confidence in the integrity of the democratic rule of law" (section B).

Thus such an endogenous event was able to set the path to change, paving the way for the incorporation of new elements into the conceptualization of corruption. The EP called on the Commission to devise proposals aiming to combat corruption more effectively within the EU institution as well as encourage a much wider problem definition of the concept at hand. As previously mentioned, anti-corruption initiatives in the form of the First and Second Protocol failed to address the problem of corruption from a wide-ranging perspective and chose to focus instead on upholding the European Community's financial interests. The latter meant that anti-corruption measures were deemed necessary only if certain defrauding practices could potentially cause damages to the Community's financial interests. Such narrow problem definition inhibited the EU from developing a comprehensive policy against corruption much earlier because the former's requirement was a comprehensive approach to the problem of corruption itself. Despite a wider problem definition that should have motivated the Commission to design more comprehensive anti-corruption measures, the legislative response in the form of the First and Second Protocol was quite disappointing. The codified instruments did not move beyond the primary goal of protecting the Community's financial interests, thus maintaining the

requirement that any corruptive act should have been associated to a threat to the financial interests of the EU.

Consequently, the locked in problem definition created self-reinforcing processes in which anti-corruption instruments that relied on a similar conceptualization of corruption further continued to exhibit lock-in effects. According to Pierson (2000) self-reinforcement is closely related to increasing returns given the institutionalization of similar choices that will reinforce the original decision. Moreover, all this led to a so-called path inefficiency, given that the narrow problem conceptualization locked in sub-par policy solutions.

1.4 Subsequent Anti-Corruption Instruments

While the EU was unable to diverge from a narrow problem definition, the First Protocol¹⁸ introduced a pioneering definition of passive and active corruption. Passive corruption was defined as

the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests. (Official Journal C 313, 23.10.1996)

¹⁸ First Protocol of 27 September 1996 to the Convention on the protection of the European Communities' financial interests (Official Journal C 313, 23.10.1996)

Similarly, the definition of active corruption changed only marginally to encompass “whosoever promises or gives” (Official Journal C 313, 23.10.1996, Article 3) an advantage of any kind, still underlining the corruptive act's concrete or potential brunt against the European Community's financial interests. The First Protocol emphasized that each Member State shall make both passive and active corruption an offense in its criminal legislation as well as established a legal basis for EU countries' judicial cooperation.

The Second Protocol¹⁹ broadened the scope of problem definition by introducing the potential threat of money laundering as damaging the European Community's financial interests and the subsequent need to hold those liable if “fraud or active corruption and money laundering” (Official Journal C 151, 20.5. 1997), preamble) would occur. It also introduced the legal liability of legal persons²⁰ and the requirement that each Member State should present the necessary measures to confiscate proceeds of corruption. However, both Protocols held firm to a narrow problem definition, emphasizing and maintaining that any corruptive act necessitates having the potential to undermine the financial interests of the Community.

¹⁹ Second Council Protocol of 19 June 1997 to the Convention on the protection of the European Communities' financial interests (Official Journal C 221, 19.7.1997)

²⁰ “Legal person” shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organizations

Table 1.2 Subsequent Anti-Corruption Instruments

	<i>Adopted</i>	<i>Goal</i>	<i>Impact on Member States</i>
<p>First Protocol of 27 September 1996 to the Convention on the protection of the European Communities' financial interests (Official Journal C 313, 23.10.1996)</p>	1996	<p>Introduces a definition of passive and active corruption</p> <p>Establishes the basis for judicial cooperation among Member States</p>	<p>Obligating the Member State to establish jurisdiction when the offence is committed in whole or in part within its territory (Article 6(a))</p>
<p>Second Council Protocol of 19 June 1997 to the Convention on the protection of the European Communities' financial interests (Official Journal C 221, 19.7.1997)</p>	1997	<p>Introduces the legal liability of legal persons for active corruption.</p> <p>Criminalizes the laundering of proceeds of corruption</p> <p>Introduces the responsibility to take the necessary measures to confiscate proceeds of corruption</p>	<p>Improved the prosecution and judicial cooperation in cross-border corruption cases</p>

Source: Szarek-Mason, P. (2010). The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries. New York: Cambridge University Press.

It took the EU quite some time to broaden the problem definition and address corruptive acts' detrimental effects beyond their damage to the Community's financial interests. The international proliferation of norms countering corruption and a consensus on the latter's deleterious effects allowed for the development of a more encompassing problem definition. Thus, the first step in this new direction was taken in 1997, when Member States opted for the adoption of the Anti-Corruption Convention.

1.5 Broader Anti-Corruption Measures

One of the primary goals of the Convention was to build on the legislative achievements of the First and Second Protocol and improve judicial cooperation in criminal matters between Member States (Szarek- Mason, 2010). Most importantly, the requirement that corruptive acts had to damage or potentially damage the European Community's financial interests had been sidestepped, allowing for a much broader problem definition than the previously discussed anti-corruption measures.

The Joint Action adopted by European Parliament in 1998 redefined corruptive patterns' distorting effects, focusing instead on their destabilizing capacity to fair competition, transparency and the functioning of the internal market. The Framework Decision adopted in 2003 shifted the problem definition perspective from the market and the European Community's financial interest to the individual by emphasizing its threat to the rule of law and sound economic development (Official Journal L 192, 31/07/ 2—3 P. 0054-0056). The latter's goal was to replace the Joint Action and underscore the need for a harmonized problem definition that

“should give more muscle to the fight against corruption which destroys the basis of economic life and distorts competitiveness” (Official Journal L 192, 31/07/ 2—3 P. 0054-0056). Moreover, the Framework Decision underscored the importance of combatting corruption that “favors a minority but is detrimental to society at large” (Official Journal L 192, 31/07/ 2—3 P. 0054-0056).

Table 1.3 Broader Anti-Corruption Measures

	<i>Adopted</i>	<i>Goal</i>	<i>Impact on Member States</i>
Council Act of 26 May 1997 drawing up the Convention made on the basis of Article K.3 (2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (Official Journal C 195 of 25 June 1997)	1997	To broaden the fight against corruption beyond the protection of the Community financial interests Improve judicial cooperation in criminal matters among Member States	Much wider scope than the First and Second Protocol as it allows for a much wider problem definition

<p>Joint Action 98/742/JHA of 22 December 1998 adopted by the Council on the basis of Article K. 3 of the Treaty on European Union (Official Journal L 358 , 31/12/1998 P. 0002 – 0004)</p>	<p>1998</p>	<p>Focus on corruption in the private sector</p>	<p>Impact of corruption on transparency, fair competition and internal market</p>
<p>2003/568/JHA : Council Framework Decision of 22 July 2003 on combatting corruption in the private sector (Official Journal L 192, 31/07/ 2— 3 P. 0054-0056)</p>	<p>2003</p>	<p>Further widens the problem definition of corruption</p>	<p>Underscoring corruption’s detrimental effects to society at large</p>

Source: Szarek-Mason, P. (2010). The European Union’s Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries. New York: Cambridge University Press.

It does not come as a surprise that the 2004 EU enlargement was preceded by a wider problem definition followed by a more comprehensive anti-corruption policy, given that among the new acceding states, corruption was pernicious. The EU found itself under tremendous pressure in terms of developing a new mechanism that would allow the evaluation of progress made by candidate countries and subsequent member states. The 2004 EU enlargement constitutes a critical juncture that brought about enduring consequences and shifted a narrow problem definition that proved to be very resistant to change. The EU's new conceptualization of

corruption reveals that while lock in effects played an important role, critical junctures were able to alter the initial sub-par path inefficiency. Moreover, it also sheds light on the role of contingency, that is, how events occurring at the right time will have important and enduring consequences.

Despite this development, as we shall see in the third chapter, the EU failed to tackle corruption from an encompassing standpoint as its anti-corruption strategy in transition countries reveals a complete obliviousness in comprehending the diversity and complexity of factors underpinning corruptive patterns in CEE countries. Warner (2008) goes on to criticize how the EU failed to make widespread corruption within Member States a barrier to membership, falsely assuming that post-accession monitoring would still allow Brussels to exercise some type of leverage. Corruptive patterns in CEE countries are rooted in clientelistic ties that date back to communist times. Thus as Szarek–Mason (2010) articulates, an efficient anti-corruption policy and an understanding of corruption in a post-communist context cannot be separated from an understanding of clientelism.

Conclusion

This chapter discussed the European Union's shortcomings on the anti-corruption legislative front. The Commission's newly found appreciation for an elaborate assessment of corruption through its new Anti-Corruption reporting mechanism initiated in 2012 stands in stark contrast to the way the problem of corruption had been conceptualized prior in the mid-1990s. Throughout the course of the last two decades, EU instruments to address corruption have

remained relatively marginal while failing to address important aspects essential in the fight against corruption. As the chapter has demonstrated, the EU had very limited legal powers to combat corruption, as the problem of corruption was addressed solely in the framework of protecting the European Community's financial interests. The TEU constituted the first step towards the emergence of a new conceptualization of corruption as a phenomenon that departed from a narrow problem definition which focused exclusively on safeguarding the community's financial interests.

While the TEU stressed the importance of combating fraud on an international scale, it was not until 1999 that the fight against corruption became one of the European Union's most important objectives. The explicit acknowledgment of the fight against corruption as one of the EU's objectives significantly enhanced its intensity. More importantly, measures and instruments are now more effective, conceived with a purpose of addressing the weaknesses that characterized initiatives such as the Joint Action and the PIF Convention.

Moreover, the crisis triggered by the Santer Commission's resignation in 1999 revealed that corruption was not just a problem faced by Member States, but also the EU as a whole. The latter raised questions about the EU's institutional and legal capacity to fight corruption within its internal institutions. A corruption-plagued EU would have had limited credibility in eradicating or even adjudicating corruption within its own Member States.

Political developments are often punctuated by critical junctures that have the capacity to alter original path inefficiencies. Following the Santer Commission's resignation, the immediate nomination of Romano Prodi as well as the establishment of an audit unit within the Commission overseeing the disbursement of funds improved public access to documents of the European Parliament, the Council and the Commission. Equally important was the establishment of the

European Anti-Fraud Office (OLAF) replacing the Anti-Fraud Coordination Unit (UCLAF) on June 1st, 1999. With its threefold mission to protect the EU's financial interests by detecting and investigating internal corruption, fraud and other illegal activities, OLAF quickly became one of the most important independent administrative bodies in the fight against corruption.

Nonetheless attention still focused solely on the protection of the European Community's financial interests and was directed exclusively towards policy against fraud. The EU failed to develop a more encompassing approach to anti-corruptive measures and limited itself to an atomistic and fragmented fraud control. From a problem definition perspective, the EU's narrow definition forwent the pernicious effects of corruption on the rule of law, good governance and economic development. This was extremely important during a time period when many other prominent anti-corruption initiatives such as the Council of Europe or UNCAC were motivated primarily by the abovementioned considerations and relegated corruption's destabilizing effects on "financial interests" to a tertiary cause. This chapter demonstrated that the EU's anti-corruption stance focusing solely on the protection of the Community's financial interests, rather than the adoption of a more multifaceted standpoint, both limited and delayed the European Union's capacity to develop an adequate legal basis to address corruption both within its institutions as well as among its Member States.

As we could see, in the early stages of integration, the protection of the European Community financial interests was not necessarily on the EU's radar, mainly because the Community budget was dependent on MSs' direct contributions and the latter, and not the Community itself, suffered the impact of negative financial consequences. Such a "mechanisms of reproduction" sustained and amplified the initial path. Moreover, given that path dependent processes are plagued by inertia, once the EU accounted only for corruption's damaging effect

on the European Community's financial interests, the latter became locked in and conditioned further policy responses.

However, in the 1970s a series of changes were introduced that not only drastically changed the initial arrangements for the Communities budget but also reconfigured the power-sharing relationship between the Council and the European Parliament. The first decision on own resources was adopted in the spring of 1970 and encompassed funds from agricultural taxes, custom duties and VAT resources, followed by the adoption of the First and Secondary Budgetary Treaties. Moreover, in 1976 the Commission requested a Treaty amendment known as the principle of assimilation which required Member States to treat infringements of Community rules as violations of domestic laws and principles. Yet what impaired its effectiveness was the lack, at the EU level, of a common definition of "fraud" and "corruption" given that variation within Member States' national legislation was fairly significant.

It was not until 1995, fifteen years after the principle of assimilation was introduced by the Court of Justice that a common definition of fraud affecting the Community budget was agreed upon in the PIF Convention. As previously discussed, while the PIF convention was adopted in 1995, it only entered into force on the 17th of October 2002, seven years after its adoption and with a time-lag that seriously limited its effectiveness. All anti-fraud measures introduced during that period tried to tackle the problem of corruption only incrementally and none purported to address the wider ramifications of corruption and the threat it could pose to the rule of law. The premise, up until 1998, was that anti-fraud measures should serve only one role: that of protecting the financial interests of the Community.

The chapter also demonstrated the path-dependent characteristics of contingency, that is, how events occurring at critical junctures produced enduring consequences. Thus, it was the

European Parliament who demanded a comprehensive definition of corruption and at the same time additional and more effective anti-corruption instruments. In 1995, the EP expanded problem definition, emphasizing the wider ramifications rather than the danger it could pose for the Community's financial interest. Despite a broader problem definition that should have encouraged the Commission to draft more comprehensive anti-corruption measures, the legislative response represented by the First and Second Protocols was quite disappointing. As a matter of fact, legislation on the issue did not move beyond the primary goal of protecting the Community's financial interest, thus, still treating corruption in terms of its threat against the financial interests of the EU.

It took the EU quite some time to broaden the problem definition and address corruptive acts' detrimental effects beyond their damage to the Community's financial interest. Its path-determining lock-in effect stemming from a rigid and narrow conceptualization of corruption that focused only on its detrimental effect to the European Community's financial interest changed only gradually. The international proliferation of norms countering corruption and a consensus on the latter's deleterious effects allowed for the development of a more encompassing problem definition. The first step in this new direction was taken in 1997 when Member States opted to adopt the Anti-Corruption Convention. The notion of damage to the European Community's financial interests had been replaced by a much broader problem definition than the previously discussed anti-corruption measures. Moreover, the Joint Action adopted in 1998 redefined corruptive patterns' distorting effect, focusing instead on its destabilizing capacity to fair competition, transparency and the functioning of the internal market. The Framework Decision adopted in 2003 shifted the problem definition perspective from the market and the European

Community's financial interest to the individual by emphasizing its threat to the rule of law and sound economic development.

Thus, it is not surprising that the 2004 EU enlargement was preceded by a wider problem definition followed by a more comprehensive anti-corruption policy, given that among the new acceding post-communist states corruption was pernicious. The EU found itself under tremendous pressure in terms of developing a new mechanism that would allow the evaluation of progress made by candidate countries and subsequent Member States. The next chapter will address the importance of a path-dependent understanding of corruption by shedding light on the implications and repercussions of Romania's preferred property restitution method and the complex patterns of corruption it generated.

CHAPTER TWO

Property Restitution and Corruption in Romania

Introduction

The liberalization and marketization of the state-planned economy in China has engendered new and more pernicious forms of corruption. Sun (2004) contradistinguishes two stages of economic transition (1978 to 1992 and the post-1992 period) and describes their corresponding patterns of corruptive behavior. In the early phases of the first stage, state planners still possessed an unquestionable authority in setting commodity prices and production quantities, whereas by 1984 this regime had gradually evolved into a “two-track system.”²¹ In stark contrast to the first stage, the post-1992 period saw the supremacy of the markets displacing the influence of the state planners. The opportunities and incentives for corruption, its arena and the sources of black money adjusted to the mutually exclusive dominance of either market or plan in given areas of the economy. As China’s post-1992 experience demonstrates, the lessening of States’ responsibilities and the parallel increasing ascendancy of market relations have created more lucrative rent-seeking opportunities.²²

The same phenomenon is pertinent to the transitional experience of the former socialist countries in East Central Europe, where the shift from state to private ownership has been accompanied by soaring corruption and clientelism, despite the fact that in the early 1990s when the privatization process began, there were few warnings about such consequences. For instance,

²¹ In which firms could price and sell their products after fulfilling state output quotas.

²² The term “rent” describes incomes (monopoly profit, subsidies, transfers) which are situated above the threshold an individual or firm would have received in a competitive market situation. Rent-seeking refers to all those activities that seek to create and maintain these rents.

Stark (1990) recognized that the Hungarian spontaneous privatization was not moving the economy from "plan to market" but instead from "plan to clan" (p. 351). He emphasized the dangers of disregarding the ability of clientelistic networks to impede or facilitate marketization (Stark, 1990). Thus privatization had to be conceptualized as a path-dependent and network focused process. Soon enough it became evident that the ambiguity of the post-communist political context made the privatization process a hotbed for corruption and mismanagement. Kaufmann and Siegelbaum (1996) noted that privatization tendered a substantial wealth of the economy for sale or transfer from the state to private interests, while the regulation and oversight of the process had been largely crippled.

During this transitional opacity, between unworkability of the old rules and the establishment of new ones, corruption has reached endemic levels as the power-holders were not only playing the game, but also determining its rules. Poland's former minister of Property Transformation Janusz Lewandowski brilliantly captured the essence of this period when he referred to privatization as "[when] someone who does not know who the real owner is and does not know what it is really worth, sells something to someone who does not have any money" (Verdery, 2003, p. 1).

While the previous chapter discussed the European Union's shortcomings on the anti-corruption legislative front, the current chapter will address the importance of a path-dependent understanding of corruption by shedding light on the implications and repercussions of Romania's preferred property restitution method and the complex patterns of corruption it generated. The chapter builds on the theory of increasing returns processes to explain the reinforcement and consolidation of a chosen path. Increasing returns arguments highlight the importance of temporal ordering and how a particular sequencing of events will play an

important role in discouraging alternative outcomes. Levi (1997) suggests that path dependence will reinforce the originally chosen path given that high reversal costs disincentivise reforms. Moreover, the entrenchment of institutional arrangements will further obstruct an easy reversal of the initial choice. Similarly, Pierson (2000) defines increasing returns as a notion in which preceding steps in a particular direction further reinforces movement in the same direction because the exit costs increase. Arthur (1994) believes that increasing returns processes exhibit five important characteristics. First, such processes often yield unpredictable outcomes given that early events have a significant impact by conditioning the crystallization of outcomes other than the initial pathway. Second, increasing returns leads to inflexibility and non-ergodicity. The former denotes the idea that the further away we are from the original decision, the more difficult it becomes to shift to another path and lock-in effects might ensue. More importantly, given that accidental events that occur early in the sequence will have an important impact on the whole path, such events can't be ignored. Lastly, increasing returns process can potentially lead to path inefficiencies, especially in the long-run given that sub-par locked-in solutions can generate sub-par outcomes.

As we shall see, in the Romanian context an original decision on how to approach restitution processes in the early 90s locked-in sub-par policy responses and incentivized the emergence of corruptive practices and rent-seeking. More importantly, the idea of adaptive expectations will figure prominently in the analysis in conjunction with path-inefficiency. Adaptive expectations is a situation in which given sub-par legislative decisions, actors have to adjust their behavior in the light of how they expect others to act. The chapter will investigate how adaptive expectations and increasing returns processes constrained actors' behavior and gave rise to different patterns of corruption following Romania's transition. The chapter is

divided in three parts and presents a thorough discussion of the country's opaque decollectivization and property restitution methods, challenging the idea that rents stemming from an incomplete reform can easily disappear once markets deepen. The chapter seeks to demonstrate the importance of adopting a regional lens to post-communist transition in order to understand local actors' vested interests in controlling and maximizing their long-term rent-seeking opportunities.

2.1 Decollectivization and Land Restitution in Romania

On February 19th 1991 the Romanian parliament passed Law 18/1991 (Legea Fundului Funciar), commonly referred to as the Law on Agricultural Land Resources (Camera Deputatilor, 1991). The ambitious architects of the law foresaw the liquidation of all collective farms and the restitution of formerly "donated" (expropriated) plots to its original owners. In theory, recreating a pre-1959 ownership pattern seemed a straightforward and unproblematic attempt at solving a particularly delicate issue, as well as ameliorating some of the injustices caused by the communist past. However, in practice, removing the hand of the State proved to be an arduous task. As a result, the Land Law led to over one million court cases, widespread corruption and ill-defined property rights. The first serious weakness of the law was a ban on in-kind restitution whenever the land had been placed under the administration of State Farms (SF). SFs encompassed 30% of Romania's total agricultural land and Law 18 disbanded only the remaining 70% owned by Collective Farms. The government feared that dismantling State Farms and allowing former land owners for in-kind restitution would threaten food supply and decrease agricultural productivity (Negrescu, 1999). Framed in terms of economic rationality, it

introduced a deliberate discriminatory element: many prior landowners compelled to relinquish rights over their land received dividends instead of their old parcels and became shareholders of SFs artificially re-named as agricultural “commercial companies” (Verdery, 2003, p. 98). This early injudicious decision created increasing returns that spurred the movement along the same path.

The Land Law also placed a ten hectare limit on the maximum surface of land that could be returned to its former owners. The government emphasized the importance of distributing land to those who might have worked it for years but had not owned land prior to collectivization. In addition, after 1945 many ethnic Germans deported to the Soviet Union lost their land to Romanians, a situation that could lead to several competing ownership claims and aggravated ethnic conflict. Therefore, “reserve funds” made up of excess and unclaimed land were intended to guarantee a peaceful and effective restitution process. According to Negrescu (1999), despite the fact that the problem was framed as a social equity question, granting land to persons who never enjoyed legal entitlements while denying the same rights to former owners (if their land happened to be used by State Farms) constituted a “moral aberration” (p. 9). Verdery (1996) suggests that imposing a ten ha limit was motivated primarily by the government’s desire to “preclude the re-creation of a viable, propertied middle class in agriculture, one that might exert certain kinds of pressure on the state” (p. 137). While the reasons behind the policy are disputable, this chapter will clearly demonstrate that the given reserve land became an immense source of corruption for local actors in control of the restitution process.

Moreover, the Land Law also limited landowners’ rights to alienate property. Contingent on whether ownership rights have been re-established or newly created, the law prohibited selling land for three to ten years (Negrescu, 1999). In addition, owners had to guarantee the

uninterrupted cultivation of their parcels. Thus, if land remained unworked for longer than two years, the State would expropriate them *de novo* (Parliament of Romania, 1991). Subjecting former (or new) owners to such constraints while denying them the financial assistance to access the necessary means of production led to ill-defined property rights. At the same time, hyperinflation during the 1990s caused shocking increases in the cost of various factors of production while agricultural prices remained relatively stable. For instance, from 1990 to 1996 the price of tractors increased by 428.4 times the initial cost, the price of agricultural engines 275.7 times, the cost for chemical fertilizers 175.5 times and the price of fuel 291.5 times (Ioan, Susanu, Enachi, & Virlanuta, 2009). In contrast, pensions – the rural population’s principal source of income – increased only 18 fold between 1994 and 2000 (Ioan, Susanu, Enachi, & Virlanuta, 2009). Unable to cultivate the areas at their disposal, smallholders turned to more affluent peasants. These wealthier and better-connected farmers would rent the land from elderly villagers trapped in the vicious circle of subsistence agriculture. Consequently, decollectivization led to a peculiar “rentier society”: “instead of many tenants seeking land from a few large owners,” (Verdery, 2003, p. 364) decollectivization created a bizarre situation where “many small owners were chasing fewer large tenants” (Verdery, 2003, p. 364).

While the scope of this chapter does not allow for an in-depth discussion of the repercussions of such an abstruse decollectivization outcome, it is important to distinguish between the “losers” (smallholders) and “winners” (tenants) of the restitution process. The latter also encompasses commune mayors, councillors and members of the land commission responsible for implementing the Land Law.

To effectively address a variety of regional claims, property restitution in Romania was delegated to local mediators working on three different levels: the county (*județe*), its rural

subdivision (communes /comună) and their constituent villages. Table 2.1 outlines the three administrative levels and their respective commissions and committees in charge of the restitution process.

Table 2.1 Administrative levels responsible for the restitution

Administrative Level	Executive Body	Composition
I. County	County Commission (Comisia județeană)	County prefect + administrative personnel
II. Commune	Commune Commission (Comisia Comunală)	The Village Committees + jurist
III. Village	Village Committee (subset of the Commune Commission)	The mayor, agronomist and 1-3 Village residents (elected by the village)

Source: Verdery, K. (2003). The Vanishing Hectare: Property and Value in Postsocialist Transylvania. Ithaca, NY: Cornell University Press

Out of these three administrative units, village and commune commissions were the most influential. Led by the commune mayor, the two commissions were responsible for determining the amount of land each village's household was to receive. Unaccountable to any higher level authority (e.g. County Commission), these commissions were able to seize control over large parts of arable land and extensively delay Romania's restitution process. Thus, the Land Law created strong institutional counter-stimuli undermining the effective restitution of old properties. From a path – dependent perspective, increasing returns processes reinforced the original path and locked in sub-par policy outcomes. Moreover, as Pierson (2000) correctly

notes, in an increasing returns process “it is not only a question of what happens but also of when it happened. Issues of temporality are at the heart of the analysis” (p. 251). Thus, the transitology literature often downplayed the importance of a path-dependent analysis in the study of the larger ramifications of the decisions taken during the institutional upheaval of the 1990s. In the transitional context, issues of timing and sequence are crucial in determining further advancement along the chosen path. For instance, numerous scholars debated the question of gradual or radical economic restructuring.

According to Hellman (1998), the ones who benefit of partial measures, be them state enterprise managers, bankers or local strongmen, are those who seek to block the progress of further economic restructuring. In such a transitional system, control over an expanding flow of resources generates power and wealth. The idea of partial reform equilibrium entails a trend of concentrated rent generation favoring winners. These winners are hostile to liberalization (and democratization) perceiving them as a threat to the condition that privileges them. This dynamics challenges Przeworski’s (1991) J-curve positive correlation between radical economic reforms and short-term transitional costs and predicts an increasing vulnerability of reform progress to both ex-ante opposition and ex-post reversal. By accepting this second implication, the literature forwent the deleterious effects of the persistence of partial reforms and their accompanying market distortions. However, those who had already developed sound insights about the annihilating effect of economic reform on rent-concentration argued for immediate and thorough radical restructuring (Lipton & Sachs, 1990).

Aslund (1999), a prominent supporter of the radical approach, claims that “the main drama of the post-communist transformation has been the strife between those who want to minimize rent-seeking and those who want to maximize it” (p. 52). He identifies three major

rent-seeking opportunities characteristic of the initial phase of transformation: (1) arbitrage (buying at fixed state prices and selling at high market prices), (2) import subsidies arising from multiple exchange rates, and (3) subsidized credits (Aslund, 1999). These rents, even if only for a stint, secured sizeable gains for those actors who were in a position to profiteer from the market distortions caused by incomplete reforms. Nonetheless, in the period subsequent to the exchange rates unification, the abolition of interest subsidies, and the liberalization of prices, the proceeds from these rent-seeking opportunities started drying up gradually but steadily, while the most patent forms of rent-seeking largely disappeared. It is quite puzzling that Aslund (1999) overlooks the peculiar dynamics of the transitional opacity under which post-communist privatization took place and rather succumbs to simplification by considering it as a first step in terminating rent-seeking.

As we shall see, land restitution in Romania challenges the idea that rents stemming from an incomplete reform stage can easily dry up and will dissipate once markets deepen. Moreover, adopting a regional lens to post-communist transition reveals local actors' vested interests to control and maximize their long-run rent-seeking opportunities. Thus, in addition to Hellman's (1998) "winners," property restitution in Romania produced a powerful group of local actors, who considered land to be an important political and economic asset – as long as it remained under their own influence.

An initial legislative decision created incentives for corruption that further reinforced the original path. The costs of exit in this instance involve the loss of the corrupt gains by those in charge of the restitution process. As the process furthered and benefits accumulated, these powerful local actors concentrated their efforts to hold on to their original position and lock-in the given path. How could commune mayors and local commissions preserve their position of

power and delay the restoration of ownership claims? How can we explain the marked disjuncture between what was legislated at the center and what transpired to rural locations? In order to address these questions, we have to understand the specific dynamics of the Romanian communist and post-communist context and its repercussions on property restitution. Thus, the analysis must take into account David's (1994) concept of strong path dependence. In strong path dependent processes, the earliest history matters more, given that the decisions of that period become more determinant over time (David, 1994).

2.2 Corruption, Rent-seeking and Land

In the communist period, corruption in Romania was foremost motivated by widespread shortages of consumer goods and agricultural products.²³ A prominent scholar like Kornai (1990) points at the chronic shortages as a premise and incentive for black-market activities controlled by communist officials. This was especially the case for Romania. Industrial managers falsified records by overstating the plant's need for raw materials in response to problem of future supply shortages or understating the plant's true production capacity. By the late eighties, these had become common managing strategies. Many scholars concur that official corruption was endemic to the structure of the communist system (Clark, 2003). Moreover, Sun (2004) suggests that the characteristics of corruption in a state-planned economy (profiteering, accounting violation, squandering, negligence, and privilege seeking) was the outcome of affective ties aiming at moderate payment rates for favour seekers. However, when scarcity as a phenomenon and planning as a structural feature are not there anymore, corruption practices are no longer

²³ Prominent examples include shortages in the housing sector, automobile market, difficulties in purchasing gasoline etc.

ingrained in input/output processes of productions, but concern more profit-yielding areas.²⁴ As social relations commercialize and affective ties lose their salience, the level of bribes became a function of the exchange relations in the marketplace. Thus, economic liberalization has contributed to new and more pernicious forms of corruption.

The transitology literature assumes that while exhibiting some degree of continuity with the past, the post-transition period has been characterized by the emergence of novel forms of corruption against the backdrop of the partial disappearance of old patterns. As privatization, marketization and economic decentralization progress, communist plan-related corruption should simply peter out. However, this assumption holds true only in certain cases. Treisman (2000) relies on cross-country evidence to argue that perceived corruption levels in the former socialist countries do not exhibit any significant path-dependency attributes. His reasoning seems to suggest that the dramatic institutional changes in the region have not been conducive to the emergence of distinct patterns of corruption.

Such findings constitute a parsimonious assumption about the inconsequentiality of the socialist system for the variation in the forms of corruption that may easily invite disagreement and criticism. Unfortunately, conclusions about the region that are solely based on n-country, cross-section regression analysis focusing only on broad regularities often overlook the nuanced nature of individual country experiences. Thus, I concur with Barnes (2003) that both the context of state-economy relations nearing the regime's breakdown and the ensuing governments' choices over the control of the state assets' transfer to the private sector are important variables in explaining how the new institutional structures generated new opportunities for corruptive behavior.

²⁴ Commercial and monopoly benefits, underhanded competition, property theft, tax frauds, regulatory oversight and judiciary partiality

The literature ignores that a shift from plan to market does not progress uniformly throughout the different regions and sectors of a transition country. As a result, the extent of market opportunities will vary across localities and sectors. More developed regions will stand in sharp contrast with under-developed rural areas where the reach of the market is weak. These structural differences and locality-specific features also condition the configuration of local patterns of abuse (Sun, 2004). Consequently, we might find certain developed areas exhibiting new forms of corrupt behavior while intensified forms of “socialist-era mishandlings” are more dominant in remote regions.

Verdery (2003) claims that throughout the restitution process, commune mayors in Romania continued to behave like socialist bureaucrats, establishing a “power base by accumulating clients and dependents and by cultivating far-flung networks through reciprocity” (p. 147). By refusing to give out titles or settle disputes, they retained the land (or gave it to their cronies) and kept claimants in a dependent posture. Looking at land as a source of political capital was foremost motivated by the lack of other enrichment opportunities and the uncertainty in which the restitution of property rights took place. This type of “top-down” pattern of corruption aligns perfectly with local corruption chains that Sun (2004) identified in China’s underdeveloped and remote areas. The “top” refers to the tip of the local administrative hierarchy: the mayor, the party secretary of a county or the provincial governor. From here, corruptive patterns “ripple [...] down the chain of the administrative command” (Sun, 2004, p. 121). Where market opportunities are scarce, state control is insufficient and alternative profiteering opportunities are absent, these top-down corruption chains flourish through office for sale predispositions and the misappropriation of government aid. Consequently, “top down”

corruption is encouraged by the weakening of the old administrative control system and the lack of market opportunities.

Similarly, Romanian mayors and commune commissions resorted to “top-down” corruption as a result of a weak political center and the government’s inability to control those in charge of the restitution process. First and foremost, Law 18/1991 failed to introduce sanctions for local officials unable (or unwilling) to implement the Land Law and return the plots to their previous owners. In addition, there was no institution specialized in overseeing the work of the commission. According to Article 11, county commissions should have supervised village and commune committees and solved problematic restitution cases. However, due to a lack of information and numerous conflicting property claims, higher authorities withdrew and gave county commissions a free hand in settling local problems.

When villagers turned to higher authorities or to the courts, their cases were usually re-delegated to local level authorities. Consequently, the architects of Law 18/1991 handed over unprecedented discretionary power to commune mayors while simultaneously removing all checks and balances against them. Lack of a sanctioning mechanism led to incentives to lock in the given path and reinforce the path’s non-ergodicity. Not introducing sanctions against local officials who were unwilling to implement the Land Law was a negligence on the part of the national government. However, in increasing returns processes, accidental events that happen early in the sequence will not cancel out. As Arthur (1994) puts it, such events can’t be treated as noise, as they will inform future choices. Such an ill designed legislation established an inefficient path and locked-in a sub – par outcome.

In the wake of the state’s retreat, transition countries in Central and Eastern Europe ignored the repercussions of a weakening political center unable to control lower levels of

government responsible for carrying out the privatization process. Similar developments happened to occur as markets were deepening in China. Sun (2004) refers to this situation as the rise of the “first- in- command’s” absolute power at local levels. When the plan’s hierarchical structure is removed, upper administrative echelons face a principal –agent problem. The latter enjoys a comparatively advantageous position: besides an information asymmetry vis-à-vis the center, the head of the local administrative unit is no longer accountable to any higher level official.

In addition to the abovementioned reasons, commune mayors also resorted to rampant corruption due to the overall uncertainty characteristic of the early 1990s. Paltiel (1989) shows that in a transition from plan to market, patronage politics dictates economic policy-making. This ascendancy owes to the lack of a regulatory framework in a context where state officials are the market opportunities' gatekeepers. China is a case in point. The lifting of regulatory restrictions and the promotion of preferential policies for specific localities, but not for all, contributed to uneven development across the territory. Moreover, the localities' race for deregulated and/or preferential status coupled with the uncertainty of the future triggered the local officials' rent-seeking behaviour and widespread capital misallocation (Zweig, 2002).

Commune mayors in Romania faced similar uncertainties over their ability to maintain their local administrative position and nourish relations with their superiors. Despite commune mayors' extensive local autonomy, budgetary decisions were still made by their prefects. The latter, representing the government in each of the country's 41 counties, was appointed by the winning coalition. In contrast, mayors were elected from below by the citizens they administered. Thus, they were dependent on the prefect's predisposition to grant them preferential budgetary treatments, especially when they supported a different political party than

their superiors. Mayors could also lose the support of local constituents or new regulations might tie their hands over the unrestricted use of villager's unreturned parcels. Consequently, establishing clientelistic ties and collectively exploiting others' resources constituted a rational response to all uncertainties accompanying restitution. Increasing returns processes led also to significant inflexibilities given that diversions from the path established by the Land Law became impossible given actors' vested interests. Moreover, the locked-in solution had serious ramifications on Romania's local level power struggles.

As chapter five will demonstrate, the Law of Local Public Administration passed in 1991 was abused by centrally appointed prefects to abolish and dismiss mayors from the opposition, guaranteeing a mechanism for the post-communist central government to extend party patronage to cities and rural communes. In contrast, while opposition mayors were dismissed, mayors from the ruling party were backed up by the prefect. As a response, opposition mayors who were marginalized decided to switch party affiliation to gain access to resources distributed through particularistic ties. Today, independent mayors enjoy the highest shares of discretionary resource allocation, given that in 2006 the government adopted Law 249/2006 to limit political migration among mayors and representatives elected at local levels. After its coming into force, mayors circumvented the law by masking their political affiliation as independents and attracting the highest share of funds.

As the last chapter will demonstrate, discretionary financial transfers and investment projects to municipalities and counties following partisan lines have persisted since the fall of communism. Lack of transparency leaves ample room for local and regional contracting authorities to employ favouritism in public resource allocation. The regular distribution of public goods in a non-universalistic basis mirrors the vicious distribution of power where access to

public goods and services becomes a function of personalized connections and reinforces clientelism at local and central levels of government.

In addition to adopting a network focused approach, property restitution has to be conceptualized as a path - dependent process. The way communists treated land held in collectives had serious ramifications on in-kind restitution. The mechanism of early path dependence plays a crucial role in explaining why local commissions and mayors were able to fully exploit the nebulous situation of adapting a pre-1959 ownership registry to the reality of the 1990s. Many of these household members have died, emigrated or married and moved to urban areas. More importantly, land in collective farms was worked in huge blocks. Thus, all distinguishing characteristics that were dividing many pre-1959 plots had to be demolished and land surfaces were merged into one undividable parcel. Signs whereby old owners were able to identify their property disappeared. On top of not remembering where their parcels were situated, many elderly villagers failed to register their land or lost their proof of ownership over the course of the years.

Consequently, decollectivization benefited local commissions and mayors, who took advantage of the skewed distribution of knowledge and memory about past ownership. According to Verdery (1996) they could influence a decision by “suddenly remembering that X never had land in the field whose ownership Y is contesting, and they could occupy lands because they knew where there are fields that no one (or no one important) was claiming” (p. 159).

In sum, land restitution in Romania challenges the idea that rents stemming from an incomplete reform stage can easily dissipate once markets deepen. Moreover, adopting a regional lens to post-communist transition sheds light on local actors’ vested interests to control and

maximize their long-run rent-seeking opportunities. Property restitution in Romania produced a powerful group of local actors who considered land to be an important political and economic asset. These actors continued to behave like socialist bureaucrats, establishing a clientelistic power base shielding them from transition's uncertainties. Looking at land as a source of political capital was foremost motivated by the lack of other enrichment opportunities and the government's inability to oversee and control the restitution process. Thus, commune mayors and their commissions resorted to "top-down" corruption patterns while savouring the repercussions of 30 years of communist agricultural policy that eliminated any distinguishing characteristics over the pre-collectivized surfaces of arable land. Moreover, as chapter five will demonstrate, post-transition clientelism continues to condition patronage politics at the local level as early path inefficiencies remained locked in.

2.3 Housing Restitution and Corruption

Soon after the fall of the communist system, Law 61/1990 allowed three million tenants living in state-owned apartments to gain ownership rights over their houses. Selling apartments at particularly low prices was primarily motivated by the desire to attract voters (industrial workers and civil servants) occupying these dwellings. This motivated tenants living in nationalized houses (e.g. houses that the communist system has confiscated from their original owners) to press for similar rights and lobby the government for the chance to obtain ownership of the dwellings they had been renting for decades. According to Stan (2006), invoking non-discrimination they argued that it was not their fault, and that the party-state offered them nationalized housing instead of state-owned apartments built by the communist system.

The discourse changed quickly in favour of circumventing a disadvantageous position for tenants as opposed to rectifying the injustices old owners had suffered under the communist dictatorial regime. Consequently, Law 112/1995, in contrast to the Land Law, limited in-kind restitution to those cases where residential units were still occupied by their initial owners. In all other instances, tenants were able to buy the houses they had occupied during the communist years for a fraction of their market value. Not surprisingly, the bill benefited mostly those who voted for the given law. According to Stan (2006), the reasons for the politicians' reluctance to restore old ownership rights became apparent in 1997 when the head of the prime minister's Control Office, Valerian Stan, revealed that among tenants who bought nationalized homes were many well-connected MPs (Stan, 2006). One of the tenants was president Iliescu himself, who rented a nationalized four-room apartment in Bucharest before buying it for an exceptionally low price (Stan, 2006).

In Romania, the post-communist power holders were a handful of communist-era secret police officers and high members of the former Romanian Communist Party (PCR). This stratum received a majority in the 1990/1992 elections allowing them access to valuable political and economic capital. Moreover, a sheer legislative majority preserved and perpetuated the old communist-era power networks. Kopecký (2008) suggests that the interaction of the post-communist political parties to the state is an important step not just for understanding the foundations and functioning of post-communist political parties, but also the emergence of rent-seeking opportunities in state institutions. Post-communist parties were those in charge of rebuilding state institutions and setting the rules of the game after the collapse of communism and through this position of authority they further tighten their grip on the state institutions.

In their despair, owners turned to courts, but even in cases when courts ruled in their favour, the prosecutor-general (appointed by the executive) frequently used the recourse in annulment practice to overturn definite verdicts (Romanian Academic Society, 2008). The uncertainty and unreliability characteristic of the Romanian judiciary motivated former owners to turn to the European Court of Human Rights (ECHR). The avalanche of complaints the ECHR received alarmed Brussels over Romania's mistreatment of formerly expropriated owners.

Thus, the EU exerted considerable pressures on Romania's political elite to resolve this disquieting situation. Nonetheless, as chapter four will demonstrate, the EU completely ignored the country's communist heritage in which nomenklatura judges and Communist party cadres monopolized control of the country's judicial, executive and legislative powers. Building an authentic judiciary and introducing a series of reforms in Romania's legal structure failed to translate into the creation of an impartial and uncorrupt judicial system.

Nonetheless, as will be discussed in the third chapter, the country's deep-rooted aspiration to join the EU and the significant scale and scope of the conditionality attached to its membership have allowed Brussels some influence on the restructuring of its domestic institutions. In this context, six years after adopting Law 112/1995, in February 2001, the Romanian parliament approved the "Law on the Legal Status of Property Abusively Taken Over by the Communist State During the 6 March 1945–22 December 1989 Period" (Ciobanu, 2011, p. 1). Commonly referred to as Law 10/2001, Articles 1 and 7 allowed for in-kind restitution or compensation whenever physical restitution was not possible. Nonetheless, Article 2 specified that despite the fact that Law 10/2001 recognized old owner's rights to their confiscated property, claimants could only exercise these rights if the courts have ruled in their favour. Moreover, as Stan (2006) suggests, Law 10/2001 did not clarify the situation of the houses which

were already sold to tenants on the basis of Law 112/1995. This led to the disastrous situation of competing ownership claims, where both the tenant and the owner held titles to the same property. Consequently, Laws 112/1995 and 10/2001 pitted both actors against in each other to fight ferociously over ownership claims, injustices caused by the communist system and a roof over their heads (Stan, 2006).

Not surprisingly, more than 80% of civil law cases in recent years directly concerned property rights, particularly housing restitution. In addition to endless court hearings, owners and tenants fought over property rights using numerous means, especially corruption. Zerilli (2005) claims that

in property restitution law cases when litigation shifts from a ‘private versus public’ judicial structure to a ‘private versus private’ one, then the social actors tend to represent themselves as authorized to mobilize their network of social relations in order to influence the court’s judgment. (p. 90)

Consequently, the argument that “I bribe because the other is bribing,” is not any longer a simple self-justification, but also a new framework according to which corruptive practices are legitimized as the only way of gaining access to a fair trial.

Thus, former Romanian owners resorted to bribery and corruptive practices in order to defend their property rights against an intrusive state that they perceived to be unjust and corrupt. Borneman (1997) suggests that bribery can also be conceived as a way of settling accounts that is repairing past communist injustices and restoring a more equal social order. Similarly, Papa, Pizza, and Zerilli (2003) suggest that for former owners any judicial sentence pronounced against

property restitution represented “a new expropriation, ‘a second nationalization’ or, more prosaically, ‘a theft.’” In addition, bribe-givers perceived corrupt activities in which they actively partook as imposed upon their personal choice as opposed to a deliberate option they could exercise. They were more inclined to see themselves as “victims” of a rotten system that forces them to follow the rules of a corrupt game. Moreover, “real corruption” for them was played out on a much “higher” institutional level. This level encompasses the executive and the judiciary, representing the primary source of corrupt activities that legitimizes citizens’ need to resort to petty corruption (Papa, Pizza, & Zerilli, 2003).

Consequently, the housing restitution process produced “bottom-up” corruptive patterns, in which owners and tenants had to out-bribe each other to persuade the courts to grant them ownership rights. This type of corruption usually occurs in urban areas, where both societal and market forces are strong in addition to the state’s powerful involvement. For instance, Iliescu himself persuaded the prosecutor general to appeal to the court of last resort and overturn definitive court orders while continuing to undermine the implementation of Law 10/2001. At the same time, Prime Minister Adrian Năstase ridiculed thousands of Romanians desperate enough to turn to the European Court of Human Rights by reminding them that the ECHR “was not a real estate agent” (Stan, 2012, p. 150).

Liebowitz and Margolis (1995) introduce the concept of remediable path dependence when describing path dependent processes that have major ramifications like the housing restitution process. Increasing returns during the housing restitution process led to grave path inefficiencies. More importantly, owners’ and tenants’ adaptive expectations further reinforced path inefficiencies. According to Pierson (2000), “when picking the wrong horse may have very high costs, actors must constantly adjust their behavior in the light of how they expect others to

act” (p. 258). Adaptive expectations, such as Romanians' belief that the State and the Court system could not be trusted shaped their behavior and forced tenants and owners alike to out-bribe each other in order to receive ownership rights. The latter further reinforced the initial path and locked-in a long-run path inefficiency.

Romania has lost approximately 435 cases at the European Court of Human Rights for breaching Article 1 in protocol 1 of the Convention on Human Rights which protects property rights, while over 200,000 property restitution files are still awaiting a decision (Romania Insider, 2013). In 2005, the adoption of Law 247/2005 represented an important step in the right direction, establishing the Property Fund (Fondul Proprietatea) that would allow for monetary compensation for those unable to receive in-kind compensation (Parliament of Romania, 2005). However, the Fund failed to be listed at the Bucharest Stock Exchange for six years, postponing awarding eligible claimants’ shares in the Fund until late January 2011. In addition, Government Emergency Ordinance no. 81/2007 provided the possibility for those who had already obtained restitution titles to opt for compensation in cash up to a limit of 500,000 RON, or accept compensation offered in shares in the Property Fund (Meyer & Trandafir, 2009). Nonetheless, the latter decision was reversed three years later by Government Emergency Ordinance no. 62/2010 suspending the issuance of payment titles for two years.

An audit carried out by the Ministry of Finance in 2012 revealed that less than 25% of the 50,538 cases solicited at the National Authority for Property Restitution (ANRP) between the period of 2006 and 2011 have received a final decision (Marian, 2012). The audit also shed light on the disquieting fact that 17,170 cases were still being processed, while another 20,754 cases have not even reached the initial allocation phase (Marian, 2012). Moreover, measures to clearly spell out a “first-come first-serve” allocation criteria (according to which cases would be

assessed depending on the date the application has been received by the ANRP) were postponed until 2008. It goes without saying that the lack of a clearly defined allocation criteria invited corruptive practices, speeding up certain files while leaving others behind. For instance, cases accompanied by a doctor's note (usually released by the family doctor) proclaiming absurd medical conditions such as "smoker and/or ethanol consumer" would be considered "special cases" and enjoy priority. In addition to this, ANRP's leadership was composed of highly controversial figures, such as former vice-president Mr. Remus Virgil Baciuc, who was convicted on the 15th of February 2013 to three years in prison by the Bucharest Appeal Court for accepting a total of 270,000 Euros in bribes earmarked to speeding up certain restitution cases (Raducanu, 2013).

Consequently, property restitution continued on for two decades and sparked new controversies in mid-March 2013, when Prime Minister Ponta promised to finalize a new draft law. The latter was heavily criticised by the Association of Former Property Owners, who considered the draft problematic, further complicating the restitution process. Despite the ECHR's request, throughout the draft's preparation stages, the Government failed to initiate a consultation process with the Association. The ECHR has granted Romania a second extension (following the first one in April 2012) to adopt the new property restitution law for assets confiscated during Communism. The draft law proposed establishing a new fund (in addition to the original Property Fund (FP)) for the by now 200,000 unresolved cases unable to receive shares in the FP. The method of acquiring such shares is quite complex and spans throughout a long-drawn-out period. First, former owners will get points (depending on the compensation amount) they can later use to bid for properties owned by the new Fund (Cozmei, 2013c). If former owners choose to opt out the latter, they will receive cash in instalments over seven years,

beginning in 2017. Moreover, the draft law proposes to establish an additional institution – the National Commission for Compensating Building Owners – responsible for the distribution of points that former owners are entitled to. The risks are high that such solution will face similar inefficiencies and continue to stimulate bottom-up corruptive practices. Similarly to 2005, due to the plan’s complexity and longevity, owners might instead turn to intermediaries. For instance, actual owners entitled to restitution decided to sell their files to intermediaries who ended up becoming shareholders in the FP (Cozmei, 2013d). While such concerns are valid, the Association of Former Property Owners argues that protracting payments benefits solely the current government who desires to defer legal responsibility (Cozmei, 2013a).

Conclusion

While the EU ignored the fact that corruption in the former post-communist countries could exhibit any significant path-dependence, the chapter demonstrated that in Romania the shift from state to private ownership has been accompanied by soaring corruption and clientelism. Therefore, the explanation of corruptive practices in transition economies calls for an investigation of how old communist patron-client relations have been reshaped or how additional relations have been created during and after the transition. Romania’s opaque decollectivization and property restitution methods generated new patterns of corruption demonstrating that a shift from plan to market will not progress uniformly throughout the different regions and sectors of a transition country.

As a result, the extent of market opportunities will vary across localities and sectors. More developed regions will stand in sharp contrast with under-developed rural areas where the

reach of the market is weak. These structural differences and locality –specific features also condition the configuration of local patterns of abuse. The chapter referred to the concept of increasing returns to prove the importance of timing and sequence as well as surging costs that reinforce the given chose path despite significant path inefficiencies. As already discussed in the chapter, in increasing returns processes, the question of timing is essential. Moreover, accidental decisions or omitted questions will exhibit serious path–reinforcing mechanisms. The chapter shed light on the path dependent characteristics of the restitution process and the subsequent critical role of timing and sequencing.

Land restitution in Romania produced a powerful group of local actors, who considered land to be an important political and economic asset. Top-down patterns of corruption were foremost motivated by the lack of other enrichment opportunities and the government’s inability to oversee and control the restitution process. In addition, commune mayors and their commissions profited from the repercussions of 30 years of communist agricultural policy that swapped away any distinguishing characteristics over the pre-collectivized surfaces of arable land. Out of three administrative units, village-and commune commissions were the most influential. Led by the commune mayor, the two commissions were responsible for determining the amounts of land each village’s household were to receive. Unaccountable to any higher level authority they were able to seize control over large parts of arable land and delay extensively Romania’s restitution process. Thus, the Land Law created strong institutional counter-stimuli undermining the effective restitution of old parcels. The latter reinforces the idea that the most common obstacle to economic reform in a post-communist context comes from beneficiaries of partial measures in the earliest transition stages. In such a partially regulated system, control over an expanding flow of resources becomes a critical source of power, influence and wealth. What

underpins partial reform equilibrium is a trend of concentrated rent generation in favour of systemic winners, who oppose further liberalization for the sake of preserving these favourable conditions.

As the chapter demonstrated, land restitution in Romania challenges the idea that rents stemming from an incomplete reform stage can easily dry up and will dissipate once markets deepen. Moreover, adopting a regional lens to post-communist transition, the chapter also shed light on local actor's vested interests to control and maximize their long-run rent-seeking opportunities. Thus property restitution in Romania produced a powerful group of local actors, who considered land to be an important political and economic asset, only as long as it remained under their own influence.

The transitology literature assumed that while exhibiting some degree of continuity with the past, the post-transition period has been characterized by the emergence of novel forms of corruption against the backdrop of the partial disappearance of old patterns. As privatization, marketization and economic decentralization progress, communist plan-related corruption should simply peter out. But this assumption holds true only in certain cases and an extensive reliance on parsimonious assumptions about the inconsequentiality of the socialist system for the variation in the forms of corruption allows us to often overlook how certain areas preserved socialist-era mishandlings. By adopting a path-dependent framework, we seek to understand how certain decisions taken early in the path led to lock-in effects. Moreover, increasing returns also explains restitution's vulnerability to early accidental events.

Throughout the restitution process, commune mayors in Romania continued to behave like socialist bureaucrats, establishing a clientelistic base by refusing to give out titles or settle disputes, in order to retain their post-communist influence. Moreover, looking at land as a source

of political capital was foremost motivated by the lack of other enrichment opportunities as well as the uncertainty in which the restitution of property rights took place. During the early 90s, flawed policies were entrenched, which reinforced path inefficiencies.

Thus, Romanian mayors and commune commissions resorted to “top-down” corruption as a result of a weak political center and the government’s inability to control those in charge of the restitution process. In the wake of the state’s retreat, transition countries in Central and Eastern Europe ignored the repercussions of a weakening political center unable to control lower levels of government responsible for carrying out the privatization process. The latter enjoys a comparatively advantageous position: besides an information asymmetry vis-à-vis the center, the head of the local administrative unit is no longer accountable to any higher level official. The mayors’ strong desires to preserve such an advantageous position was further fortified by their dependence on the prefect’s predisposition to grant them preferential budgetary treatments, especially in situations when they supported a different political party than their superiors.

Increasing returns leads to inflexibility and non-ergodicity. Mayors could also lose the support of local constituents or new regulations might tie their hands over the unrestricted use of villager’s unreturned parcels. Consequently, establishing clientelistic ties and collectively exploiting other’s resources constituted a rational response to all uncertainties accompanying restitution. As chapter five will demonstrate, patronage at the local levels of government reveals strong path-dependent characteristics that draw back to the dynamics played out throughout the restitution process.

Accordingly, land restitution in Romania challenges the idea that rents stemming from an incomplete reform stage can easily dissipate once markets deepen and sheds light on the importance of adopting a regional lens to post-communist transition in order to understand local

actor's vested interests to control and maximize their long-run rent-seeking opportunities. In contrast, housing restitution revealed that in the backdrop of an intrusive and corrupt political elite, the process will produce "bottom-up" corruptive patterns, in which owners and tenants had to resort to out-bribing each other while persuading the courts to grant them ownership rights.

The post-communists' preferences to capitalize on housing restitution led to the disastrous situation of competing ownership claims, where both the tenants and the owners held titles to the same property. Adaptive expectations and increasing returns processes caused actors to adjust their behavior and created a serious lock-in. Locked-in solutions can generate sub-par outcomes. Given sub-par and self-serving legislative decisions, actors had to rethink their responses and proceeded to out-bribe a corrupt justice system. In this instance, increasing returns are also conditioned by negative externalities that further reinforce the original path and the accompanying patterns of corruption. A deeply corrupt political and legal system compelled tenants and owners to turn against one another.

Consequently, property restitution dragged on for two decades, sparking new controversies to this day. While the country's deep-rooted aspirations to join the EU and the significant scale and scope of the conditionality attached to its membership allowed Brussels to have some leverage over Romania's horrendous property restitution process, presently thousands of property restitution files are still awaiting a final decision.

Unfortunately, as the next chapters will show, the EU's anti-corruption strategy in Romania reveals a complete obliviousness in comprehending the diversity and complexity of factors underpinning the country's corruptive patterns. Thus, chapter three will present a thorough examination of Romania's anti-corruption institutional development along the lines of formal EU accession pressures and shed light on the conditions that promote or obstruct

successful “rule transfer” and their effective institutionalization at the domestic level building on Schimmelfennig and Sedelmeier’s (2004) external incentives model of governance. Romania’s deep-rooted aspiration to join the EU and the significant scale and scope of the conditionality attached to its membership, has allowed the EU to exert extraordinary influence on the restructuring of its domestic institutions. But numerous unsuccessful anti-corruption reforms will demonstrate that extensive conditionality, per se, does not guarantee that the candidate country will comply with EU regulations. While EU leverage over domestic institutions depends on the strength of conditionality and the determinacy of conditions, the Romanian case proves that strong conditionality and determinate conditions alone do not explain successful anti-corruption provisions.

Moreover, subsequent chapters will demonstrate the reasons underpinning the European Union’s failure to challenge Romania’s deep-rooted corruption and inability to dismantle patron-client networks. It will also further emphasize the importance of contextualizing corruption by analyzing its evolution in a post-communist reality and avoiding a parsimonious approach where corruption is treated as an abstract phenomenon. In addition, it will identify corrupt transactions’ clientelistic nature at the same time as it will stress the importance of understanding it as a path-dependent process of power relations reconfiguration that has accompanied transition from communism.

CHAPTER THREE

Anti-Corruption Institutional Development and Formal EU Accession Pressures

Introduction

Anyone following the post-accession political developments in Romania would have a strange feeling of déjà vu. Five years after the country's festive European Union accession, on January 19th, 2012, thousands of protesters gathered in Bucharest to demand the resignation of President Traian Băsescu. It seemed not too long ago when the president himself was addressing the enthusiastic crowds declaring, "It was hard but we arrived at the end of the road of our future" (BBC News, 2007, para. 4). This future, marked by a series of austerity measures, deep-seated corruption and patronage politics, left behind an emotionally and financially drained electorate. The overall political context remained particularly troublesome, as the year of 2012 brought immense political instability to the country. These developments have created an exceedingly polarized and antagonistic political environment that threatened the foundation of democracy and the rule of law.

Moreover, the recent 2014 Presidential elections ended in disaster when thousands of Romanians living abroad were unable to cast their ballot. It resulted in a blatant infringement of civil rights raising serious concerns about electoral fraud and the efficient functioning of Romania's democracy. The poor performance of the Ministry of Foreign Affairs and the Central Electoral Bureau caused thousands of diaspora Romanians to endure long line-ups and excessive waiting times before they could exercise their right to vote. In November 2015, Romanian Prime Minister (PM) Ponta resigned in the midst of corruption scandals following a deadly fire in a

Bucharest nightclub. The tragedy was largely seen as a result of insufficient safety regulations, and sparked outrage that culminated in a Bucharest protest of more than 12,000 people.

Overall, EU integration has served as an essential instrument for promoting democratic consolidation and anti-corruption institutional development. The fight against corruption, rent-seeking and clientelism was a significant component of the reform packages that the CEE acceding countries had to commit to in order to join the EU. At the same time, corruption in post-accession Romania has remained a salient and omnipresent topic.

The chapter presents a thorough examination of Romania's anti-corruption institutional development along the lines of formal EU accession pressures. The key questions guiding the chapter concern the actual leverage enjoyed by the EU vis-à-vis Romania. Was conditionality seen as a means to an end (achieving membership) or were there also some elements of commitment by the Eastern European state? Did the formal regulations adopted in order to comply with the *les acquis* change long-run informal codes of behavior or do domestic actors revisit old patterns of conduct the moment the country accedes?

This chapter sheds light on the conditions that promote or obstruct successful "rule transfer" and their effective institutionalization at the domestic level, building on Schimmelfennig and Sedelmeier's external incentives model of governance. According to Schimmelfennig and Sedelmeier (2004), the external incentives model of governance best explains variations in the EU's level of influence. EU leverage over domestic institutions depends on (1) the strength of conditionality and (2) the determinacy of conditions. We speak of strong conditionality if certain conditions are recurrently and eminently accentuated by the EU. The second variable measures the conditions' clarity and formality. A rule is determinate when formulated in an unambiguous and binding way, and to clearly indicate the laws, regulations and

institutions the target government has to adopt. Thus, determinate conditions are binding for both the candidate country and the EU as well. While EU leverage over domestic institutions depends on the strength of conditionality and the determinacy of conditions, the Romanian case proves that strong conditionality and determinate conditions alone do not explain successful anti-corruption provisions.

From a path-dependent perspective, the chapter will demonstrate the importance of specific patterns of timing and critical junctures that shaped Romania's path throughout the pre- and post- accession years. While the path-dependent literature assumes that particular courses of action, once introduced, cannot be abandoned easily, the Romanian case shows how clientelism can undermine legislative and institutional reforms in order to preserve the corruption-ridden status quo. The chapter will reveal that in spite of the country's commitment prior to the accession, the reforms it adopted were not permanently locked in so that they would continue through a self-reinforcing path even in the aftermath of the accession. Instead, some changes were successfully institutionalized, but others were undermined by a political elite wishing to hold on to its patronage position in the new context of EU membership.

In order to understand how such processes unfolded, the chapter will shed light on self-reinforcement and the accompanying institutions, the positive and negative feedbacks that either reinforced or undermined the given path. Moreover, increasing returns processes focus primarily on issues of temporality, which allows us to understand when the EU rule transfer was most successful and led to the establishment of key anti-corruption institutions. The chapter will also demonstrate that while increasing returns are important in explaining path-dependence, conflating the two will not allow us to truly understand how both negative and positive externalities can reinforce or alter a given path. According to Page (2006), increasing returns are

neither necessary nor sufficient for path dependence and the assumption that increasing returns would cause one outcome to be selected over another is incorrect. What he underscores is that any externality may alter outcomes and negative externalities have the capacity to create path dependence (Page, 2006). Thus, the chapter will incorporate the analysis of negative and positive externalities and demonstrate how they continued to reinforce particularism.

This chapter is divided into three main parts. It begins with an outline of the EU's formal pressure mechanism through the European Commission's Regular Reports from 1998 to 2004. The subsequent parts shed light on the EU's effective anti-corruption pressures through the Comprehensive Monitoring Reports during the post-negotiation/pre-accession period. Lastly, the chapter explores the ineffective post-accession conditionality through the Commission's Cooperation and Verification Mechanism (CVM). Viewing the accession process as a two-level game, the last part of the chapter demonstrates that conditionality as a mechanism of policy transfer is conditioned by the commitment of domestic veto players along with Brussels's limitations over its own conditionality.

3.1 The EU's Moderate Anti-Corruption Pressures Through Regular Reports

Two years after Romania presented its application in 1995, the European Commission (1997a) assessed the country's preparedness for EU membership in its "Agenda 2000 - Commission Opinion on Romania's Application for Membership of the European Union." In preparing the Opinion, the Commission's primary focus was to evaluate Romania's ability to meet the Copenhagen criteria: particularly, the existence of stable democratic institutions, the functioning of a market economy and the ability to adopt the *acquis communautaire*. The report

shed light on numerous shortcomings that would hinder a successful implementation of the *acquis*, and determined that at the time it was “uncertain whether Romania [would] be in a position to assume the obligations of membership in the medium term” (European Commission, 1997a, Conclusion section). Whereas transposing the *acquis* belonged to the non-negotiable fundamental principles of accession that Romania had to fulfill, the document also stressed the importance of other political conditions in the fields of democracy, human rights, judiciary reform and the fight against corruption.

While the Commission observed that “much still remains to be done in rooting out corruption” (European Commission, 1997a, General Evaluation section) and called for “urgent steps to combat [it],” (European Commission, 1997a, Administrative and Judicial Capacity section) suggestions for anti-corruption measures were practically absent. Clearly, tackling corruption was not yet regarded as the *conditio sine qua non* to open accession negotiations and eventually EU membership itself. Overall, the vague language and low credibility of the membership promise seriously limited the EU’s leverage to promote the adoption of necessary anti-corruption measures. Consequently, with a remote and uncertain membership perspective, the effectiveness of EU’s demands remained marginal.

The assessment of Romania’s corruption grew harsher in the successive Regular Reports. These later reports contained a detailed list of shortcomings and exhortations for greater efforts to be made in the area of anti-corruption reform. The 1998 Report included the first “Anti-Corruption Measures” sub-chapter under the Political Criteria section that urged the government to adopt the “Law on Prevention and Fight against Corruption” along with a clear definition of corruption in the penal code. The Commission (1998) remained skeptical of the newly created anti-corruption unit in the Prime Ministers’ Control Department and concluded that “overall, the

legal basis for the fight against corruption remains incomplete” (p. 10). In its 1999 Report, these concerns became even more apparent. As a result, the Commission included an extensive and much more detailed anti-corruption section along with statistics on tried offenders and investigations against magistrates, judges and prosecutors.

In addition, new institutions such as the National Council for Action against Corruption and Organized Crime (NCAACOC) and the specialized anti-corruption section under the Ministry of Justice were assessed. The Commission noted that the bodies’ institutional set-up was fragmented, responsibilities were not yet consolidated and intra-institutional cooperation required further improvement. The European Commission’s (1999) report concluded that “overall the fight against corruption is not addressed with sufficient determination” (p. 14) and corruption remained a “widespread problem in Romania” (p. 13). Despite Brussels’ mounting apprehension and skepticism, the Commission determined in 1998 that Romania fulfilled the Copenhagen political criteria. Following the Helsinki European Council’s decision in December 1999, accession negotiations started with Romania on February 15th, 2000.

The initiation of accession negotiations gradually exposed Romania’s blatant problem with corruption. Whereas the fight against corruptive practices as such was not part of the *acquis*, it soon became a central component of the political conditionality Romania had to satisfy in order to accede. As opposed to previous Regular Reports that focused only partly on this issue, with the launch of the accession negotiations, corruption gradually came to be perceived as the main barrier against Romania’s future integration. A first quantitative look at these reports reveals that references to corruption and anti-corruption measures increased significantly between 2000 and 2002. Altogether, the European Commission raised this problem 137 times in

this timespan, in addition to suggesting several improvements in anticorruption legislation.²⁵ The Commission's 2000(c) Regular Report noted that the entry into force of a new law on prevention and punishment of corruption in May 2000 was the first step "in the right direction" (p. 19), despite being only one of many to come. It further lamented the lack of progress with other short-term priorities such as the establishment of an independent anti-corruption department. Moreover, the European Commission also acknowledged a series of international conventions – such as the OECD's Convention on Combating Bribery and Corruption and the Council of Europe's Convention on Money Laundering that Romania still had to ratify.

In its subsequent 2001 report, the Commission did not veil its frustration and discontent with the newly (re)elected Iliescu government, noting that "despite a general recognition of the seriousness of this problem [...] there has been no noticeable reduction in levels of corruption and measures taken to tackle corruption have been limited" (p. 21). The uncompromising tone of the Report warned the Romanian government about the inadmissibility of superficial anti-corruption reforms. The Commission continued to push for a more profound reform agenda and outlined clear laws and regulations that the government urgently needed to adopt. The European Commission concluded that with the exception of the public procurement legislation, there had been no substantial progress in the fight against corruption. At this point, Brussels realized how deep-seated corruption actually was in Romania and how determined entrenched interests were to preserve the status quo. This opinion was common among other domestic non-governmental institutions that joined the Commission in voicing their concerns. This was such that an elaborate analysis by the Open Society Institute (2002) revealed that "the Government may be as much a source of corruption as a solution to it" (p. 454). The report also recognized the surge of anti-

²⁵ During this time period anti-corruption measures were addressed 33 times. See Table 1.

corruption measures, noting that they focused mostly on low- level corruptive practices that did not touch the upper echelons of power (Open Society Institute, 2002).

The 2002 Regular Report was the final assessment preceding the EU's decision on the group of countries acceding in the fourth enlargement wave. The persistently poor reform credentials seemed to quash Romania's membership aspirations. Nevertheless, the Romanian public, that revealed exceptionally strong popular support for EU integration, still hoped to receive an invitation to accede in 2004. In the face of these elevated pressures and expectations, the government hurriedly set up the National Anti-Corruption Prosecutor's Office (PNA) and ratified the majority of the international anti-corruption conventions. The PNA was the first institution that specialized on corruption cases involving sums over €100,000 that were linked to high-ranking officials.

The new institution sent Brussels a signal that Romania was wholeheartedly committed to eliminating political corruption. Initially, the Commission seemed genuinely pleased with The PNA replacing the previous anti-corruption section of the General's Prosecutors Office (European Commission, 2002). But a closer examination of the institution's activities revealed the disproportionately high influence of the Ministry of Justice alongside the persistence of "previous (and ineffective) anticorruption structures" (European Commission, 2002, p. 27). It was evident that the abovementioned measures were introduced too late to allow for higher conviction rates. The assessment of independent observers combined with statistics cited by the Commission reinforced the poor impression that concrete results were practically absent. Consequently, without noticeable reduction in levels of corruption, the EU decided against Romania's accession in 2004. At this point, it became clear that corruption was derailing the country's progress towards membership.

Before releasing its 2003 Regular Report, the Commission sought to counter the frustration and disappointment the postponed enlargement caused. To encourage Romania and Bulgaria in their efforts to become members, the European Commission published a detailed Accession Roadmap in late 2002. The Commission accentuated the fight against corruption and gave it first priority under the Justice and Home Affairs chapter. Brussels warned Romania that noncompliance with this condition would once again threaten the country's accession prospects. Further support to prevent enlargement fatigue came from the European Council of Thessaloniki in June 2003. To reassure both laggards that enlargement was still effective, the Council promised that "the objective is to welcome Bulgaria and Romania as members in 2007 [...] and concluding negotiations in 2004" (European Commission, 2003, p. 4) adding of course that this commitment was dependent on significant progress in complying with membership criteria. The Council noted that it would continue to assess Romania's progress based on the Regular Reports the European Commission had issued. Consequently, the Commission continued the critical evaluation of Romania's anti-corruption measures between 2003 and 2006.

In contrast to previous evaluations, Brussels started to exhibit *de jure* fatigue when exposed repeatedly to written commitments that were failing to produce *de facto* results. The 2003 Regular Report revealed that the Commission valued the actual implementation of obligations more than further legislative changes. The report noted "corruption in Romania continues to be widespread" (European Commission, 2003, p. 20) and found "no reduction in perceived levels of corruption" (European Commission, 2003, p. 20) while "the number of successful prosecutions remained low" (European Commission, 2003, p. 20). The European Commission (2003) also warned Bucharest that high-level corruption continued to thrive, making the new institutional arrangements ineffective. The Commission's previous requests

concerning the institutional pitfalls of the PNA fell on deaf ears. Consequently, the institution remained seriously understaffed and the government failed to curb the Ministry of Justice's influence. Despite the EU pressing authorities to establish an open and transparent selection process, the chief prosecutor was still appointed by the Romanian President after the Minister of Justice selected him from a limited pool of recommendations. The opaque selection process resulted in the appointment of Ilie Botos, a dubious political figure who propelled suddenly to chief prosecutor from a relatively unimportant position (Gallagher, 2009). While this decision ruffled both domestic and EU feathers, Rodica Stănoiu, then-Minister of Justice, defended her recommendation, declaring she found the candidate to be competent.

Two years later, insider sources revealed that two Social Democratic (PSD) MPs and close allies of Adrian Năstase, Gabriel Oprea and Eugen Bejinariu, played an important role in supporting Botoș' appointment. They were associated with Mr. Botoș' uncle, Ioniță Botoș, Commander in Chief of the Army and former superior of Oprea and Bejinariu. A report published by Freedom House in 2005 exposed other patron-client relationships nurtured at the top of the organization (Freedom House, 2005). For example, Ioan Amarie, the head of the PNA, had his brother Constantin Amarie sit in Parliament after appearing on the PSD's closed lists. In such an institutional environment, in which the majority of the prosecutors were tied to political patrons, it came as no surprise that the PNA could not stop high level political corruption.

The Council of Europe's Group of States against Corruption (GRECO) prepared a similar study that warned about powerful Romanian veto players obstructing anti-corruption provisions (GRECO, 2003). The 2003 evaluation emphasized institutions specialized in the fight against corruption, such as the police and the judiciary, that were also heavily affected by the practice. The Commission regretted that the government ignored GRECO's recommendations and

stressed once again the importance of effective anti-corruption measures (European Commission, 2003). In April 2003, Gunther Verheugen, the Commissioner for Enlargement, urged Romania to consider the fight against corruption as one of the country's key priorities.

While the EU was adamant about tackling corruption, Romania opted for a more relaxed position. The domestic political elite at times even seemed irritated by Brussels' interference. In September 2003, during a visit in Piatra Neamt, then Prime Minister Năstase tried to downplay the severity of corruption. Năstase directed his criticism to "others abroad" who displayed vested interests in portraying corruption as a pernicious Romanian problem (Adevarul, 2003). He lamented Romania's constant "self-stigmatization" and recommended to shift focus to other more corrupt neighbors (Adevarul, 2003). He also predicted corruption would cease once privatization was complete and private interests lose temptation to "bribe or whatever else causes them to be corrupt" (Adevarul, 2003). Unfortunately, these remarks could not unnerve Brussels, especially since the country's ranking in the annual TI Corruption Index fell from the 68th position in 2000 to 87th in 2004. Moreover, Romania ranked 33 positions lower than Bulgaria (54th), close to Russia (90th) and Algeria (97th), which had the lowest position of any previously acceding member state (Transparency International, 2015).

Later that year, in its 2004 Regular Report, the Commission once again called for increased efforts to tackle corruption. While still disgruntled about low prosecution rates, the report acknowledged Romania's anti-corruption legislation as well-developed and in line with the *acquis* (European Commission, 2004). To explain the gap between effective legislative changes and enduring corruption, the European Commission pointed to integrity problems obstructing anti-corruption provisions (European Commission, 2004). Because the institution's efforts to combat corruptive practices were largely corrupt as well, it came as no surprise that

their effects remained marginal. The statistics cited by the Commission shed light on the PNA's unsuccessful attempts to curb corruption. Out of 2,300 cases registered during September 2003 to July 2004 time period, 37% were still under investigation while 40% of the cases were dismissed (European Commission, 2004). Altogether, the PNA's activities resulted in 86 prison sentences, among them only a few high-level corruption cases (European Commission, 2004). These rather modest results combined with two additional legislative changes made Brussels apprehensive of the PNA's future competence.

By removing the institution's obligation to report to Parliament, transparency and accountability had been curtailed. In addition, by decreasing the financial threshold for corruptive exchanges, focus had shifted to petty corruption cases. The report also recognized a few positive changes, such as increasing the number of prosecutors and implementing the majority of GRECO's recommendations. However, these minor efforts left Brussels unconvinced, claiming that corruption in Romania continued to be "serious and widespread" (European Commission, 2004, p. 31).

North (1990) qualifies institutions as "carriers of history", and Romania's first anti-corruption agency, the National Anti-Corruption Prosecutor's Office, as we shall see in the upcoming chapter, was established by a political elite who preferred institutions without a legal capacity to fight corruption.

Reluctance to eradicate endemic corruption compelled certain Members of the European Parliament (MEPs) to call for the suspension of accession negotiations in early 2004 (Gherghisan, 2004). Romania's chief accession negotiator, Vasile Puscas, found MEP James Nicholson's (ELDR, UK) "radical attitude" extremely damaging to the country's future accession prospect (Beatty, 2004). He believed Nicholson was an outlier among many supporters

who would never warrant Romania such a negative stigma (Beatty, 2004). While the European Parliament (EP) questioned the extent to which Romania could meet the accession criteria, domestic politicians continued to downplay the seriousness of corruption in spite of some grave scandals in 2003 and 2004. The most prominent was Hildegard Puwak's case, then-Minister of European Integration, who facilitated access of her husband's and son's companies to embezzle €150,000 from EU funds (Avram, 2003).

The European Commission's Anti-Fraud Office (OLAF) assisted Romanian authorities in investigating these allegations. The case was closed shortly after the resignations of Puwak, Health Minister Mircea Beuran and Government Co-ordination Minister Serban Mihailescu. Năstase openly defended Puwak and praised her selfless resignation for unburdening the government from "minor issues [...] to take care of important matters" (BBC News, 2003, para. 6). Two years later, following pressures from newly elected Justice Minister Monica Macovei, Mrs. Puwak's family was tried and later convicted for embezzling the EU funds. It was revealed that Prime Minister Năstase had all the reasons to rush to the defense of his comrade, since in 2012 he himself was nailed for corruption (The Economist, 2012d).

Thus, clientelistic networks coupled with a justice system marred by clan politics seemed to squash any EU-initiated anti-corruption reform. Famous tennis legend Ion Tiriac's case revealed the executive's unrestrained control over the judiciary. In 2004, his son was arrested for a series of drug-related offenses, but all charges were instantly dropped following President Iliescu's instructions to PNA's chief prosecutor to "proceed with care" (Ziarel de Iasi, 2005). Tiriac added some fuel to the fire when he complained about the Judiciary's promptness, noting that this problem could have been resolved in less than 48 hours since "we are after all in Romania" (Cosmaciuc, 2005).

Before the accession negotiations concluded, concerns over Romania's corruption intensified. At first, the Netherlands, holding the presidency of the EU Council, suggested to postpone any decision on Romania's accession until March 2005. Ultimately, it was Finland, threatening to break the unanimity in the Council that decided to close the accession negotiations without a recommendation from the Commission (Papadimitriou & Phinnemore, 2008).

Nonetheless, the agreement was to include additional safeguard clauses such as the postponement clause that reserved the right of the Commission to postpone Romania's accession by one more year until January 1st, 2008. This clause's activation depended on the Commission's assessment of the implementation of the *acquis* chapters on Competition and Justice and Home Affairs. The latter included the conditionality on anticorruption. After several years of EU monitoring, it appeared that Romania's willingness to fight corruption had only been displayed after direct pressures from Brussels. This raised serious questions about the effectiveness of EU conditionality and its sustainability in the post-accession stage. The Accession Treaty allowed the EU to bypass the Council's unanimity, so that Romania's membership could now be postponed only by a qualified majority (European Parliament, 2005c).

This increased the EU's leverage considerably. Consequently, the country could no longer rely any on allies such as France to oppose the activation of the postponement clause. In addition, the Commission continued to observe Romania's efforts to combat corruption in the 2005 and 2006 Comprehensive Monitoring Reports. The postponement clause is a critical juncture and confirms that events or decisions taken at pivotal times will gradually produce enduring consequences. After closing the accession negotiations, both parties signed the Treaty of Accession in April 2005 to welcome Romania by the eventual target date of 2007. The previous Regular Reports from 1998 to 2004 raised some serious doubts about the country's

preparedness. Many EU Member States were questioning the overall desirability of Romania's membership, while others were convinced that enlargement was mainly motivated by geopolitical considerations. According to Papadimitriou and Phinnemore (2008), it was widely acknowledged that Romania did not fulfill most of its membership criteria and could probably not meet the requirements in the near future. Some skeptics pointed to the EU's rhetorical commitment and entrapment in admitting Romania (Schimmelfennig, 2003). Others believed that economic interests and security issues played a major role. For example, the US-led operations in Iraq secured UK, Spanish and Italian support (Gallagher, 2005). Overall, the EU had serious reservations about Romania's membership, but was confident in preserving its influence post-negotiations.

Romania's deep-rooted aspiration to join the EU combined with the significant scale and scope of the conditionality attached to its membership has allowed the EU to exert extraordinary influence on the restructuring of its domestic institutions. However, the numerous unsuccessful anti-corruption reforms show that extensive conditionality, per se, does not guarantee that the candidate country will comply with EU regulations. Hence, it is important to shed light on the conditions that promote or obstruct successful "rule transfer" and their effective institutionalization at the domestic level.

According to Schimmelfennig and Sedelmeier (2004), the external incentives model of governance best explains variations in the EU's level of influence. Hence, EU leverage over domestic institutions depends on (1) the strength of conditionality and (2) the determinacy of conditions. We speak of strong conditionality if certain conditions are recurrently and eminently accentuated by the EU. These terms, which also serve as indicators for assessing the candidate country's membership credentials, stand in sharp contrast with conditions that are monitored less

vigorously. Therefore, noncompliance with weak conditionality would not automatically threaten the candidate’s accession prospects. The second variable measures the conditions’ clarity and formality. A rule is determinate when formulated in an unambiguous and binding way and to clearly indicate the laws, regulations and institutions the target government has to adopt. Thus, determinate conditions are binding for both the candidate country and the EU as well. The former cannot bypass adopting an EU rule nor manipulate it in its own advantage, while the latter cannot withhold the reward (i.e. EU funds, membership) once the condition has been fulfilled.

Schimmelfennig and Schwelnuß (2006) examine the EU’s political conditionality with regards to non-discrimination and minority rights legislation. They show that conditionality, as a mechanism of policy transfer, is absent before credible EU membership perspectives are established and largely disappears after the country accedes. In between these two periods, the highest degree of convergence depends on the strength of conditionality and determinacy of conditions. Table 3.1 summarizes these variables measured throughout the Commission’s evaluation in its 1997 Opinion and the consecutive seven Regular Reports. In contrast to Schimmelfennig and Schwelnuß’ (2006) findings, strong conditionality and determinate conditions alone do not explain successful anti-corruption provisions. In Romania, EU rule transfer ranged from “weak” to “moderately” strong throughout the pre-accession negotiation period. What can explain this puzzling trend?

Table 3.1 EU rule- transfer throughout 1998-2004

	Opinion on Romania’s Application	Regular Report 1998	Regular Report 1999	Regular Report	Regular Report	Regular Report	Regular Report	Regular Report
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				2000	2001	2002	2003	2004
References to Corruption	12	15	26	37	50	50	62	52
Suggestions For Anti-Corruption Measures	0	3	5	6	12	15	23	17
Strength of Conditionality	weak	weak	weak	moderate	strong	strong	strong	strong
Determinacy of Conditions	indeterminate	indeterminate	indeterminate	indeterminate	determinate	determinate	determinate	determinate
Commitment of Veto Players	minimal	minimal	minimal	rhetorical	rhetorical	rhetorical	rhetorical	rhetorical
Rule Transfer	weak	weak	weak	weak	weak	moderate	moderate	weak

Source: Author's Compilation

Before negotiations started, the Commission's references to corruption and suggestions for anti-corruption measures were minimal. Tackling corruption was not yet regarded as an essential element to open accession negotiations or EU membership itself. Throughout 1997-1999, the Commission proposed a few anti-corruption provisions, while references to corruption increased from 12 in the Opinion to 26 in the 1999 Regular Report. This period was characterized by weak conditionality and indeterminate conditions. In line with the external incentives model, conditionality as a mechanism of policy transfer was absent before credible EU membership perspectives were established. Once credible commitments are made, strong conditionality and determinate conditions should produce the highest degree of convergence. Thus, we would expect anti-corruption provisions to be most effective following the

Commission's recurrent emphasis along with clear suggestions for anti-corruption legislation. The assessment of Romania's corruption grew much harsher after accession negotiations started in February 2000. Table 3.1 illustrates the extent to which references to corruption and recommendations for anti-corruption provisions increased in the subsequent 2000-2004 reports. Reducing corruption became one of the most vigorously monitored conditions. Progress in this area was crucial for closing negotiations. In 2001, the Commission also introduced a series of recommendations for anti-corruption measures and made specific suggestions to increase the efficiency of existing institutions. In contrast to the model's predictions, strong conditionality and determinate conditions resulted only in "weak" or "moderate" rule transfer. This suggests that extensive conditionality alone could not persuade Romania to comply with EU regulations. Additional intervening variables might provide us with a better explanation. From a path-dependent perspective, it is important to underscore the role of positive and negative externalities that may lock-in certain reforms without altering the path in the long-run.

The limitations of the external incentives model stem from an exclusive focus on the EU dimension while ignoring the importance of domestic politics. Therefore, once the implementation of conditionality lands on the national agenda it is essential to assess the domestic government's capacity and commitment to fulfill the necessary requirements. According to Pridham (2007), the accession process is a two-level game, where domestic factors, next to EU conditionality, may constrain or facilitate the implementation of the *acquis*. In order to explain why Romania failed to adopt efficient anti-corruption measures it is essential to integrate two additional intervening variables that will address both (1) Brussels' limitations over this conditionality and (2) domestic veto players' determination to preserve the status quo. In

other words, domestic factors are either negative or positive externalities: they can either challenge or reinforce the initial path inefficiencies.

As discussed above, the period from 1999 to 2004 was one consisting of only superficial measures to tackle corruption. With a few exceptions in 2002/2003, the political elite demonstrated a marked gap between government rhetoric and government action. The Năstase government was reluctant to fight high-level corruption, not least because the ruling party's own patronage interests (Pridham, 2007). Consequently, pre-negotiations were characterized by "minimal" or "rhetorical" commitments to eradicate corruption. Clientelistic networks were embedded so deeply into the domestic sociopolitical structure that extensive external pressures alone could not secure solid reforms. In spite of continuous EU pressures, the Năstase government was unwilling to guarantee the independence of the judiciary. Radical reforms would endanger well established patron-client relationships, cultivated for decades in the communist era. Consequently, domestic veto players' determination to preserve the (corrupt) status quo undermined the will to force through real change.

Gallagher (2009) shifts the blame to the EU and stresses its naiveté in ignoring the implications of Romania's post-communist institutional context. He suggests that Brussels was strongly handicapped in its approach with this particularly difficult accession case. The EU "never showed much concern about developing its own methodology for benchmarking corruption" (Gallagher, 2009, p. 206) and "the measures adopted in the anti-corruption struggle were not commensurate with the scale of the problem" (Gallagher, 2009, p. 14). Such an omission was irresponsible given the extraordinary amount of pre-accession funds channeled to the candidate country. Thus, from this perspective, exogenous pressures, those coming from the EU, can also be framed as externalities that were able or unable to change initial path

inefficiencies in the form of levels of corruption entrenched in particularism. As Page (2006) argued, while increasing returns are important in explaining path-dependence, conflating the two may prevent us from understanding how both negative and positive externalities can reinforce or alter a given path. Negative exogenous externalities, such as Brussels' scarce understanding of the true nature of Romania's corruption played an important role in reinvigorating the initial path inefficiency.

In the 2004 Regular Report the Commission disclosed the extensive financial assistance the EU has provided Romania throughout the years. From 1992 to 2003, only through PHARE, the EU had allocated about €2,100 million to Romania, including €283 million in 2003 (European Commission, 2004). In 2004 alone, the EU made €405.3 million available, of which approximately €50 million was earmarked to combat corruption (European Commission, 2004). Anti-corruption policies became a major business for the Romanian government, but hardly any successes have resulted from this investment. It was quite puzzling that the Commission relied solely on quantitative indicators (e.g. statistics, surveys) and failed to adopt an all-encompassing qualitative analysis to understand the deeper implications of Romania's corruption.

It is not surprising that the domestic elite exploited this principal-agent problem and converted Brussels' limitations to its own advantage. The Năstase government failed to capitalize on closing the accession negotiations, and in late 2004 President Băsescu, together with his Justice and Truth Alliance (JTA), won the elections. With a platform that labeled corruption as a national security problem and Romania's accession to the EU as a main priority, it seemed as if the new political elite were determined to eradicate corruption.

3.2 The EU's Effective Anti-Corruption Pressures through the Comprehensive Monitoring Reports

The 2005 Accession Treaty introduced novel pressures subjecting Romania to stricter EU conditionality. A new Commission took office in November 2005, dedicated to improving the Enlargement process with “extensive use of benchmarking, impact studies [...] and more transparency in accession negotiations” (Rehn, 2007). Olli Rehn, the new Commissioner for enlargement, counter to Verheugen’s more lenient flair, was known for his assertiveness towards Romania and his intolerance of anemic anti-corruption efforts. Consequently, the first Comprehensive Monitoring Report (CMR) contained more than 55 references to corruption and 19 suggestions for anti-corruption measures. It revealed Brussels’ unremitting pressures post-negotiations. The Commission (2005) called for “urgent action” (p. 80) to eradicate corruption, “if Romania [was] to be ready for membership by the envisaged date [2007]” (p. 80). It acknowledged the new government’s strong commitment to combat corruption, and invited Bucharest to avoid further legislative amendments.

While recognizing an “increase in the political will to tackle corruption,” (p. 13) the European Commission (2005) also warned Romania that such efforts need to be sustained and amplified. Brussels was pleased that the Băsescu government removed former Ministers’ immunity along other essential provisions designed to tackle high-level corruption. For example, the Commission was extremely fond of new Justice Minister Monica Macovei’s efforts to curb the PNA’s political influence and replace the inefficient institution with a new independent anti-corruption body. Following Macovei’s pressures, the Head of the PNA resigned and the National Anti-Corruption Department (DNA) became the leading institution for investigating and

prosecuting high-level corruption. In line with the Commission's (2005) recommendations, the DNA covered cases where bribes exceeded €10,000 or material damages were above €200,000 in addition to offences involving EU funds.

As chapter four will demonstrate, the establishment of the DNA and Minister of Justice Monica Macovei's sturdy efforts to fight corruption constitute critical junctures that brought about enduring consequences and disrupted the status quo. While the anemic reforms initiated during the previous corrupt Năstase's regime locked-in sub-par anti-corruption approaches (e.g. the inefficient PNA), the critical juncture mentioned above was able to alter the initial sub-par path inefficiencies.

The old domestic elite didn't share Macovei's enthusiasm and opposed deep-going reforms; meanwhile, they continued to block high-profile investigations even after losing the 2004 election. Since direct EU pressures shifted to the incumbents, the PSD unmasked its patronage politics. It vehemently opposed the dismissal of close ties to Ilie Botos and many others from the PNA's senior management team. When prosecutors finally inspected some PSD members, they—and their famous lawyers—challenged the anti-corruption agency at the Constitutional Court of Romania (CCR) (Freedom House, 2006). Surprisingly, the CCR admitted the request based on the claim that only the General Prosecutor's Office (GPO) had the sole mandate by the Constitution to investigate public officials. This decision raised some serious questions about the Năstase government's attempt to create a legal entity separate from the GPO that would be paralyzed the minute it threatened to reveal deep-seated interests. It also reflected limitations of EU conditionality, since the Commission overlooked that the institution so often criticized by Brussels turned out to be an illegal anti-corruption body (Burduja, 2006). In this instance, some domestic factors (e.g. the old corrupt elite) still reinforced initial path

inefficiencies in the form of negative externalities. Similarly, asymmetry of information and the EU's limited knowledge about the PNA's legal reach made the critical junctures ineffective at challenging the status quo.

EU pressures over corruption began to have more of an impact in the post-negotiation phase. Along with the DNA, another anti-corruption body, the General Anti-Corruption Directorate (DGA), had been set up within the Ministry of Administration and the Interior (MIA). For several years MIA, which encompasses the gendarmerie, the police and the immigration office, had been rife with corruption. The Commission exerted extraordinary pressures throughout the years to address this problem within the Ministry and in 2005 decided to become directly involved in the implementation of the DGA. Consequently, the EU funded the new anti-corruption body through a Twinning PHARE Project and appointed Marian Sintion as the institution's head. Sintion, a resolute prosecutor, was determined to eradicate corruption and displayed a great talent in efficiently channeling EU funds.

For instance, he set up a hotline to report corruption in the MIA that generated 16,000 calls (Gallagher, 2009). Surprisingly, there was no opposition to this newly-created anti-corruption body. Călin Popescu-Tăriceanu's government instantly issued an emergency ordinance to ensure the institution would become fully operational. It seemed at first that both the DNA and DGA would rein high-level corruption. The Commission concluded that it expected both anti-corruption provisions to deliver concrete results before the beginning of 2006.

In its 2006 CMR, the Commission paid maximum attention to the above-mentioned measures' effectiveness. Bucharest also anticipated that a decrease in high level corruption would inactivate the postponement clause. While the Commission (2006b) refrained from addressing this issue, it recognized the DNA's efficiency and found "a qualitative improvement

in its investigations” (Section on anti-corruption measures, para. 4). It commended reopening corruption cases closed by the previous management for “unclear reasons” (European Commission, 2006b, section on anti-corruption measures, para. 4) and noted that the DNA had the “staff, financial resources and training to conduct effective investigations into high-level corruption” (European Commission, 2006b, section on anti-corruption measures, para. 4).

Statistics cited by the Commission revealed that compared to previous years, the DNA’s cooperation with the DGA resulted in a 185% increase in high-level investigations. Despite this, Brussels did not shy away from expressing disapproval over certain discouraging trends. In 2006 the Romanian parliament rejected a request made by the DNA to search the property of ex-Prime Minister Năstase. Later that year, the Senate tried to block the institution’s efforts to start investigations against other corrupt MPs. Consequently, a growing divide established itself within the domestic elite. In order to preserve their vested interests, old veto players tried to undermine the threatening activities of the DNA and DGA.

Their objectives stood in sharp contrast to Macovei or Sintion’s, who were determined to push through deep-going change. In the end, two critical factors weakened the former’s position. First, due to the timing of pressures, the EU enjoyed an extraordinary leverage. Table 3.2 suggests that in the post-negotiation period, references to corruption and anti-corruption measures peaked in 2005 and decreased somewhat in 2006. Besides determinate conditions and strong conditionality, the EU also took an active role in the implementation of anti-corruption provisions. With the establishment of the two anti-corruption bodies, rule transfer was particularly effective during the two years preceding Romania’s accession.

Table 3.2 EU rule-transfer throughout 2005-2006

	2005	2006	2006
	Comprehensive Monitoring Report	Comprehensive Monitoring Report- May	Comprehensive Monitoring Report- September
References to Corruption	55	34	22
Suggestions For Anti-Corruption Measures	19	12	7
Strength of Conditionality	Strong	Strong	Strong
Determinacy of Conditions	Determinate	Determinate	Determinate
Commitment of Veto Players	Strong	Strong	Strong
Rule Transfer	Effective	Effective	Effective

Source: Author's Compilation

Second, the new Tăriceanu government was strongly committed to decreasing (high-level) corruption in order to circumvent the activation of the postponement clause. Given the Romanian public's strong support for EU integration, the newly elected government could not risk Romania's entry to be delayed by one more year. In contrast to Năstase's rhetorical commitments, the new government remained devoted to effective anti-corruption provisions throughout the post-negotiation/pre-accession period. Ultimately, Romania circumvented the

activation of the postponement clause. The Commission's last Monitoring Report confirmed that along with Bulgaria, the country would join the EU on January 1st of 2007.

However, was conditionality primarily seen as a means to achieving membership or were there also some elements of commitment by the domestic political elite? Did the new (successful) anti-corruption provisions change long-run informal codes of behavior or did domestic actors revisit old patterns of (corrupt) conduct the moment the country acceded? In a 2006 interview with a German journalist, Prime Minister Tăriceanu insisted, "with my hand on my heart, I tell you that corruption is no longer a major problem" (as cited in Gallagher, 2009, p. 208). Yet, post-accession developments have disproven Tăriceanu's declaration and corruption persisted as a pernicious problem.

3.3 The EU's Weakening Anti-Corruption Pressures Post-Accession

The 2007 New Year's Eve celebration revealed an enthusiastic Romanian public eager to enter a new stage of certainty. Romania's enthusiasm over the "end of history" was not widely shared by other EU member states as a growing distrust over the latest enlargement persisted. Pessimism regarding the sustainability of EU conditionality merged with the fear that Romania was not well prepared for EU integration. Often portrayed as the "laggard" or "the most difficult" enlargement case, the country's accession has always been a contentious topic. Nonetheless, the EU was committed to anchor Romania's post-communist development and exerted extraordinary influence on the restructuring of the candidate's domestic institutions. While the Commission's harsh criticisms along with the EP's pressures to halt the negotiations marked the pre-accession period, Romania generally achieved major progress after its 1995

Application for Membership. EU conditionality was most effective throughout the post-negotiation period. In line with the external incentives model, EU-inspired rule transfer peaked as the country's tentative accession date was nearing. Within this two-year pre-accession period, strong EU conditionality, determinate conditions and a committed domestic elite lead to efficient anti-corruption provisions. They were critical junctures that had the potential of altering the original path—inefficiencies characterized by locked in patterns of clientelism.

The external incentives model predicts that conditionality as a mechanism of policy transfer will largely disappear after the country accedes. This “backsliding hypothesis” describes a situation in which Romania would abandon or reverse the reforms introduced to qualify for EU membership (Andreev, 2009; Pridham, 2007). Such doubts echoed in the Romanian media, who maintained “our [Romanian] politicians are doing their jobs only under pressure from the EU” (Condon & Troev, 2007, para. 17). If pre-accession reforms were merely designed to impress EU officials, we would expect several reversals once Romania accedes. As a response to these reservations and in order to preserve its influence, Brussels decided to extend conditionality to the post-accession stage. The Commission (2006a) set up the Cooperation and Verification Mechanism (CMV) to “address specific benchmarks in the areas of judicial reform and the fight against corruption” (preamble). As expected, corruption started to surge (again) following the country's immediate EU entry.

According to Gallagher (2009), in the first eight months following accession a “legal-counter revolution” took place. Numerous attempts were made to “emasculate the various strategies and instruments which, at the EU's request, the authorities had introduced to try and bring corruption under control” (Gallagher, 2009, p. 220). While these developments were quite disheartening, they also raised some serious questions about the overall effectiveness of EU

conditionality and its sustainability in the post-accession stage. More importantly, while the path-dependent literature assumes that particular courses of action, once introduced, are highly difficult to change, the Romanian example shows how clientelism can shore up original path inefficiencies by undermining legislative and institutional reforms. Such negative domestic externalities (e.g. clientelistic structures) played a crucial role in reinforcing the original corrupt path.

Despite a regime of sanctions and new CVM benchmarks, Bucharest, now that it had achieved the grand objective of membership, felt confident enough to reverse a series of anti-corruption provisions. Justice Minister Macovei described the post-accession situation briefly in an interview, noting “many politicians care about their own interests, and those of their friends, and not [about] what Brussels says; we are in, and they know that Romania cannot be expelled” (Brunwasser, 2007, para. 4). A few days later, Prime Minister Tăriceanu dismissed Macovei from office and appointed Tudor Chiuariu, a young and inexperienced law graduate who previously worked for an influential Romanian politician. Mr. Chiuariu made several controversial decisions, including the dismissal of Doru Tulus, the most aggressive prosecutor in investigating politicians from across the political spectrum (Burduja, 2006). Sinton, who shed light on a series of corruption cases in the MIA, resigned after disclosing that the DGA’s work was sabotaged. Patronage politics returned in full force, and this time the EU was quite powerless. Macovei's dismissal marks a critical juncture that allowed once again to lock-in sub-par policy responses to rampant corruption.

In its first 2007 CMV report, the Commission seized the opportunity to address some post-accession developments. While the 22-page report contained 73 references to corruption, the Commission refrained from expressing any criticisms over the latest developments. Among

several suggestions to improve the judicial treatment of high-level corruption, the evaluation mentioned that “the early departure or replacement of officials holding key positions [...] can be damaging to the continuity of the reform process” (European Commission, 2007, p. 16). Weak post-accession conditionality, coupled with uncertain domestic commitments to sustain anti-corruption provisions, further reinforced actors’ old (corrupt) behavior. Consequently, a series of corruption scandals erupted in 2007. Decebal Traian Remes, then Minister of Agriculture, had to resign in September 2007, after being filmed in public for receiving a bribe (Adevarul, 2007). New Justice Minister Chiuariu defended Remes and insisted that Romanian authorities were better equipped than the EU or the World Bank to tackle corruption.

In its 2008 CMV Report, the Commission continued to laud the DNA’s efforts to decrease high-level corruption, but also voiced its concerns over the lack of effort to establish the National Integrity Agency (ANI). For years at this point, Brussels had urged Romania to create an agency responsible for monitoring and disclosing the assets of MPs, judges and senior administrators. The Commission hoped that the institution would shed light on the disquieting gap between moderate incomes and extraordinary wealth. Its adoption became one of the most important benchmarks within the process of evaluating Romania’s post-accession developments. In the 2006 Monitoring Report, Brussels warned Bucharest that a potential failure to establish ANI would automatically lead to the activation of the safeguard clause (Blagu, 2006).

Nonetheless, a parliamentary majority determined to defend its illegal enrichments immediately blocked the dangerous plan. After some political maneuvers, the Senate adopted a weak version of the original legislation and created the National Integrity Agency. The revised design of ANI placed the Senate and the National Integrity Council (NIC) in charge of

appointing the institution's leadership. It ensured that the agency would not pose a threat to corrupt politicians.

Asset disclosure was first introduced in 1996 for high-level officials, using confidential documents kept in sealed envelopes that could be opened only after a given complaint was issued. The system proved to be extremely inefficient. As a result, in 2003 asset declarations became public. Nonetheless, the design of the latter allowed for no verification mechanism for significant wealth surges. For instance, asset disclosure templates were very similar to a questionnaire, entailing numerous closed ended questions. Consequently, officials had to indicate if their bank account would exceed 10,000 Euros, without specifying the exact amount in their account. After some changes in 2004 and 2005, the design of the questions allowed for more transparency and the possibility to track wealth increases.

Nonetheless, in 2010, when the Constitutional Court ruled against ANI, asset disclosure templates were modified once again to include information on mobile assets, real estate (owned by the public officials and his family), loans, debts and income in the previous fiscal year. These declarations are submitted yearly in paper with the signature of the public official and forwarded to the National Integrity Agency.

Unjustified wealth and illicit enrichment is subject to confiscation. Nonetheless, confiscation is a very sensitive topic in Romania. The Commission's 2011 Report noted that out of 1.5 million Euros confiscation orders, only 200,000 Euros are brought back to the state budget (European Commission, 2011). The problem arises as a result of the misinterpretation of Article 44 section 8 of the Constitution, according to which a quasi-absolute presumption of legality is introduced for all assets held by individuals (Ghinea & Stefan, 2011). Consequently, it is the responsibility of the Romanian State to prove that these assets represent illegal enrichments.

Surprisingly, the Constitutional Court refused the Government's 2011 proposition (Decision nr. 799/2011) to eliminate this conflicting Article from the Romanian Constitution (Safta, 2012). Moreover, the efficiency of the National Integrity Agency has been seriously curtailed by Law no. 176/ 2010, introducing an absolute period of limitation requiring the integrity agency to complete investigations within three years of a public official's end of mandate. In addition, other legislative changes introduced in 2010 such as establishing the Wealth Investigation Commission, compelling ANI to refer cases first to the former, having the power to decide on their transmission to the courts, served the purpose to undermine the ACA's efficiency. As the Commission correctly noted, this new institutional design promised to delay cases by adding an additional institutional filter, while adjudicating them to unnecessarily high pre-trial standards.

In addition, ANI suffers from serious under-budgeting, low salaries and a lack of human resources. In 2012 only two employees were responsible for the institution's management, while the number of integrity inspectors had been reduced by 35.1% from 54 in 2010 to 35 in 2011, leaving one inspector to handle 106 cases (Freedom House, 2013). As a result, in contrast to the DNA, the institution's success rate has lagged behind.

Unfortunately, Romanian MPs will go to serious lengths to protect their illegal enrichment opportunities as well as hide conflict of interests or incompatibilities. Such tactics range from employing each other's children in order to circumvent visible conflict of interests (exhibited by the recent case of two PNL Deputies, Mr. Costel Soptica and Mr. Verginel Gireada) to instances where High Court (ICCJ) rulings are ignored and the government refuses to remove these MPs from their position (such as the case of Mr. Sergiu Andon and Mr. Florin Pâslaru or the recent case of Mr. Mircea Diaconu) (Cozmei, 2013b; Hadji-Culea, 2012). Romanian MPs ruthlessly disregard the rule of law in addition to demonstrating low levels of

integrity. Their strong determination to weaken the Integrity Agency poses a real danger to the country's capacity to combat illicit enrichment opportunities, incompatibilities and conflicts of interest.

Similarly, the National Anti-Corruption Directorate's determination to root out corruption shifted veto players' attention to the post-prosecution phase. Impotent to block investigations, corrupt politicians had to make sure their clients (e.g. courts, judges) would undermine all positive efforts introduced at the pre-trial stage. Consequently, "court sentences remained lenient and inconsistent" (European Commission, 2008, p. 4) while measures to improve these procedures "have either been delayed or have not been launched" (European Commission, 2008, p. 4).

As chapter four will demonstrate, the progress made by the National Anti-Corruption Directorate in bringing high-level corruption cases to court is simultaneously offset by the judiciary's diminished capacity to handle such cases in an effective manner. Therefore, the failure to eradicate high-level corruption lies more within the serious shortcomings of the Romanian Justice System than the efficiency of anti-corruption agencies. As the subsequent chapter will demonstrate, there are countless impediments to corruption cases' efficient prosecution, as the criminal procedural system generates numerous opportunities to block and delay court proceedings.

The EU has criticized Romania's under-performing justice system throughout the years. Unfortunately, without a functioning and efficient judiciary, anti-corruption agencies are strongly hindered in their fight against corruption. The risk of political interference in senior appointments has been Brussel's key concern with regard to judicial independence. Throughout the years the CVM reports have underscored the necessity of transparent and merit-based

selection procedures given that politically motivated recruitment processes, partisan appointments and dismissals have been a common practice throughout the post-communist period.

In 2008 the Commission put forth a stronger post-accession conditionality. However, political consensus behind the reforms was lacking along with “the unequivocal will across all political parties to root out high level corruption” (European Commission, 2008, p. 2). Similar to the pre-negotiation period (1998-2004), post-accession rule transfer has been conditioned by (1) Brussels’ limitations over its post-accession conditionality and (2) domestic veto players’ determination to re-introduce the corrupt status quo. In the case of the former, the absence of accession rewards (e.g. EU membership) combined with a weak sanctioning mechanism (the EU never activated the safeguard clause) undermined conditionality’s effectiveness. The latter reinforces the idea that the EU largely misunderstood corruption in Romania and underestimated the resourcefulness of a domestic elite determined to preserve clientelism even inside the EU. However, not all changes were reversed once accession as a reward ceased to motivate the corrupt elite to comply with the EU’s conditionality. North (1990) emphasized the "lock-in" effect of institutions through their capacity to induce self-reinforcing processes that discourage reversals over time. Moreover, initial start -up cost, followed later on by learning and coordination effects and adaptive expectations will make institutions sensible to increasing returns. North (1990) also introduces the "interdependent web of an institutional matrix" (p. 95) concept, which indicates that existing institutional arrangements encourage the formation of complementary organizational forms that, in turn, produce "massive increasing returns" (p. 95).

The establishment of the National Integrity Agency and the National- Anti-Corruption Directorate, as the subsequent chapter will demonstrate, proved to lock-in new self-reinforcing

processes that resulted in an effective endogenous force curbing corruptive practices. The resulting adaptive expectations created increasing returns processes that proved very resilient in the face of a corrupt elite determined to undermine them. Nonetheless, anti-corruption agencies (ACAs) still struggle to uproot clientelism.

The unsettled institutional environment in the 1990s that allowed the post-communist elite to loot state resources and abuse their position of power through designing weak supervisory organs has predetermined Romania's trajectory and significantly hindered the efficiency of ACAs. The last chapter will shed light on the powerful role of path dependence and how the peculiar impact of Romania's post-communist transition resulted in a nexus of clientelism and corruption.

Moreover, five years after the country's festive EU accession, on January 19th, 2012, thousands of protesters gathered in Bucharest to demand the resignation of President Băsescu. It seemed not too long ago when the president himself was addressing the enthusiastic crowds declaring, "It was hard but we arrived at the end of the road of our future" (BBC News, 2007, para. 4). Despite the country's EU membership, the overall political context became particularly troublesome as the year of 2012 brought immense political instability to the country. These developments have created an exceedingly polarized and antagonistic political environment that threatened the foundation of democracy and the rule of law.

On August 21st, 2012, the Romanian Constitutional Court (RCC) confirmed the July 29th referendum results in favour of the impeached President, as voter turnout fell short of the required 50% plus one stipulated by the referendum law (Manciu, 2012). Accordingly, out of 18,292,464 registered voters, 8,459,053 (46.24%) participated at the referendum with 87.52% (or 7,403,836) casting a vote against Mr Băsescu (Manciu, 2012). This result was immediately

contested by the Social Liberal Union (USL), who attributed the turnout to a continually shrinking electorate since 2002. Interestingly, these concerns did not surface during local elections held in June 2012, when turnout rates were calculated based on the 2002 Census. Similar dubious attempts, such as calls to remove registered voters with expired identity cards or those living abroad, were heavily criticized by the international and national media. They constituted steps at curbing the number one principle of democracy, the right to vote (The Economist, 2012a).

According to a Council of Europe official, members of the Constitutional Court faced extreme political pressures and in some cases even death threats (The Economist, 2012a). For instance, Mr. Aspazia Cojocaru had filed a complaint at the prosecutor's office after receiving death threats in early July of 2012 (Nielsen, 2012). In addition, Chief Constitutional Court judge, Augustin Zegrean, turned to the European Commission and the Council of Europe for help to protect its independence from political pressure asserted by Ponta's government. In an official letter to the EU bodies, Zegrean revealed there had been threats to the court's judges (Verseck, 2012).

These developments were preceded by the government's multi-layered tactics that ranged from swiftly replacing the Democratic Liberal speakers of both chambers of parliament with Social Liberal legislators, to firing the Democratic Liberal Ombudsman, Mr. Gheorghe Iancu (Avram, 2012). In addition, through a governmental ordinance the Constitutional Court was ruled out from reviewing acts of Parliament after having had transferred the State Gazette under the Parliament's jurisdiction (Avram, 2012). The latter would allow for significant delays

supportive of governmental preferences, affecting the timing of when decrees, decisions, laws and ordinances could enter into force.²⁶

All these culminated in a 20-page request by the Social Liberals to remove President Băsescu from office for seven categories of infringement (România Curată, 2012b). Among these, undermining democracy, overstepping his presidential powers and curtailing the independence of the judiciary stood as the most conspicuous reasons to end his power (România Curată, 2012b). The Constitutional Court found that none of the aforementioned accusations could be considered to have violated gravely the Constitution, and expressed concern only over the efficiency of the President's role as a mediator between the State and citizens and different institutions. Nonetheless, the Court validated the impeachment request and on the 6th of July the Romanian president was suspended with 258 parliamentary votes in favour and 116 against his departure (Georgescu & Zachmann, 2013).

The political conflict between President Băsescu and Prime Minister Ponta is rooted in the Romanian political party system's institutional structure. The semi-presidential executive-legislative arrangement, especially in times of cohabitation,²⁷ breeds a great deal of conflict in a dual executive system in which the Constitution leaves ample room for the interpretation of the president's role (Sum, 2012). For example, similar frictions between the President and then Prime Minister Tăriceanu surfaced back in 2008, before the replacement of the National Liberal Party (PNL) PM with the Liberal Democrat (PD-L) Mr Emil Boc.

Besides an institutional design that encourages conflict between the head of state and head of government, the Romanian system also suffers from a low institutionalization of political parties. In such an environment, clientelistic interests precede ideology. For instance, the

²⁶ They can enter into force only after they have been published in the State Gazette, a timing set by the government.

²⁷ When the two aforementioned actors represent different political parties.

coalition between the Social Democrats (PSD) and the National Liberal Party (PNL) – referred to as the Social Liberal Union (USL) – headed by Prime Minister Ponta – brought together MPs situated at opposing ends of the political spectrum. The PNL, representing the political right merged with the left-wing PSD in order to combat President Băsescu (Sum, 2012). Similarly, the aftermath of the 2008 parliamentary elections revealed a high level of political incohesiveness, as the Liberal Democratic Party (PDL) agreed to share power with self-confessed rival and ideological antagonists PSD (Downs, 2009).

In addition to programmatic incohesiveness and low party institutionalization, Romania's political system is characterized by chronic political migration. The latter constitutes a number one disequilibrium trigger. Throughout 2008-2012, MPs migrated in two political waves, mostly motivated by their party's electoral support. Thus, as support fluctuated, in the first wave of spring 2010, MPs abandoned the Social Democrats and National Liberals to join the Democratic Liberal Party. This trend was reversed in March 2012, when the Democratic Liberals' popularity vanished. For instance, Deputy Florentin Gust has changed his political affiliation four times in 2012, a process he refers to as "maturation" (Voinea & Delcea, 2012). Unfortunately, he is not an exception to the general rule.

As chapter five will demonstrate, despite multi party antagonism, a consensus prevails that state oversight institutions and anti-corruption agencies should have their mandates curtailed to allow the political elite to retain opportunities for illicit enrichment. The prevailing political compromise among the elite is to block or significantly delay investigations initiated by the National Anti-Corruption Directorate. Thus, anti-corruption institutional development is offset by political maneuvers.

The Cooperation and Verification Mechanism on Romania's progress continues to adopt an overall critical tone and shed light on numerous areas that are falling short of the mark. At the same time the political elite learned to adopt a cynical stance. For instance, when the CVM report mistakenly referred to three ministers under criminal investigation (instead of two), Prime Minister Ponta took great offence to this error; sarcastically stating "I could not find the third [corrupt Minister]" (Antena3, 2013, para. 4). Former PNL party leader Crin Antonescu stated, "The EC is talking in a completely exaggerated manner and under partisan influence about harassment campaigns against judges" (Stiri, 2013b). He drew attention to the "serious errors" the report contained while defending the two ministers who faced corruption charges, stating "not everyone allegedly corrupt is truly corrupt before the court ruled on his case" (Stiri, 2013b).

He also urged to end Romania's monitoring under the CVM mechanism, which is outdated, "falls under caducity" and should have been concluded back in 2010 (Stiri, 2013b). Similarly, USL MEPs (liberals Ramona Mănescu, Cristian Buşoi and PSD member Corina Creţu) agreed about the need to stop such a damaging reporting mechanism (Fratila, 2013). Ironically, the Romanian domestic elite, instead of a self-reflective attitude quickly shifted blame to Brussels and directed all its effort to undermine the CVM's credibility.

Moreover, following the CVM report published on January 31st, 2013, Mr. Ponta attempted to whitewash the corruption-related felonies of two ministers (European Commission, 2013). The report mentioned Mr. Relu Fenechiu's investigation for abuse of office prior to his appointment as Minister of Transportation and Regional Development Minister Mr. Liviu Dragnea's inspection on charges of election fraud (Udrea, 2013). Approximately seven months later, in mid July 2013, Mr. Relu Fenechiu received a five-year prison sentence for abuse of office, handed down by the High Court of Cassation and Justice (ICCJ) (2013). The judge panel

also rejected the request of the Transport Minister of an exception on grounds of unconstitutionality. Yet again, Mr. Ponta's reaction was dismal. Similarly, Mr. Antonescu displayed in no ambiguous terms his lack of remorse about nominating Fenechiu as the Transport Minister (Neagu, 2013).

To civil society's dismay, the publication of the Commission's new Anti-Corruption Reporting Mechanism (ACR) failed to cause any reaction from the government. While the media publicized the report in the day following its release and highlighted certain aspects of the report (mainly the Commission's recommendations, Romania's backtracking in the area of anti-corruption and the importance of the DNA as a "success story"), overall there was little reaction from relevant stakeholders. Apparently, the country's authorities have decided to counter the continuing anti-corruption reports with indifference, especially given that the CVM report was published only few days before the release of the ACR. Consequently, both reporting mechanisms have proven to be extremely inefficient when it comes to exercising any type of pressure on Romania's corrupt political elite.

Conclusion

Romania's aspiration to join the EU and the wide range of the conditionality attached to its membership exerted enormous pressure on the structure of the country's domestic institutions, yet without guaranteeing the success of anti-corruption reforms. The chapter shed light on the conditions underpinning successful "rule transfer", its successful codification in

domestic law and enforcement building on Schimmelfennig and Sedelmeier's (2004) external incentives model of governance.

The Romanian case reveals that strong conditionality and determinate conditions alone do not necessarily result in effective anti-corruption laws, but when a path-dependent framework is applied to the case, Romania's accession also challenges the conventional wisdom about the inevitability of a particular courses of action. Romania's lackluster legislative and institutional reforms could not lock in to challenge the corrupt status quo, thus, failing to crystallize a self-reinforcing path of systemic transformation.

Throughout 1997-1999, the Commission proposed few anti-corruption provisions. This period was characterized by weak conditionality and indeterminate conditions. In line with the external incentives model, conditionality as a mechanism of policy transfer is triggered once the prospect of EU membership is operationalized in credible concrete steps. Once credible commitments are made *strong conditionality* and *determinate conditions* should produce the highest degree of convergence. The expectation is that as the EU institutions intervene with recommendations and proposals, the country's authorities respond with promptness and diligence through legislation. This was the case of the accession negotiations in 2000 and 2001 when the fight against corruption was one of the most vigorously monitored condition. However, contrary to the model's predictions, strong conditionality and determinate conditions led only to a "weak" or "moderate" rule transfer proving the limited clout of extensive conditionality.

As the chapter demonstrated, the limitations of the external incentives model are related to an exclusive focus on the EU dimension that forgoes the domestic government's capacity and commitment to implement the necessary requirements. In this vein, the chapter outlined two important intervening variables: (1) Brussels' limitations over this conditionality and (2)

domestic veto players' determination to preserve the status quo. The pre-accession period from 1999 to 2004 was characterized of superficial measures unwilling to tackle head on high-level corruption, because of the ruling party's own patronage interests and deeply embedded clientelistic networks.

Pre-negotiations were characterized by shallow commitments against corruption. Moreover, as the subsequent chapter will demonstrate, the PNA became a victim of the corrupt sub-systems it should have fought. It was a situation revealing the susceptibility of autonomous institutions to political patrons and a reminder to the EU to consider the threats against the reform, a reminder that the EU institutions rebuffed with naïveté.

The 2005 Accession Treaty subjected Romania to stricter EU conditionality. The new Commission sought to better the Enlargement process through the extensive use of benchmarking and impact studies and there was a perception that Romania's anti-corruption efforts were anemic. With the establishment of the National Anti-Corruption Directorate, rule transfer was effective during the two years preceding Romania's accession because of the Tăriceanu government's commitment and the public's strong support for EU integration. The EU conditionality was most effective throughout the post-negotiation period. In line with the external incentives model, EU rule transfer intensified as the country's tentative accession date was nearing. Within this two-year pre-accession period, strong EU conditionality, determinate conditions and a committed domestic elite lead to efficient anti-corruption provisions.

However, the external incentives model also predicts that conditionality as a mechanism of policy transfer will largely disappear after the country accedes. This "backsliding hypothesis" describes a situation in which Romania will abandon or reverse the reforms required to qualify for EU membership. To counter a potential regress on the part of the Romanian Government,

Brussels decided to continue with conditionality even in the post-accession stage through a Cooperation and Verification Mechanism (CVM) in charge of monitoring specific benchmarks in the areas of judicial reform and the fight against corruption. However, the CVM proved extremely inefficient as already in the first eight months following accession a legal-counter revolution took place.

Weak post-accession conditionality, coupled with uncertain domestic commitments to sustain the anti-corruption effort, further reinforced actors' old corrupt behavior. The absence of accession rewards (e.g. EU membership) and weak sanctioning instruments (the EU never activated the safeguard clause) rendered conditionality ineffective. The political elite decided to counter the continuing anti-corruption reports with indifference and many politicians called for an end to monitoring under the CVM mechanism. The CVM mechanism showed how blatantly the EU misinterpreted Romania's corruption as a phenomenon and underestimated the resourcefulness of a domestic elite determined to preserve clientelism even inside the EU. Nonetheless, as the subsequent chapter will demonstrate, the Romanian National Anti-Corruption Directorate has become the most effective anti-corruption institution demonstrating that institutional development was not fully impaired in the post-accession phase when the accession rewards ceased. The DNA exhibits a strong "lock-in" effect through its capacity to induce self-reinforcing processes that discourage reversals over time (North, 1990).

Nonetheless, while anti-corruption measures have become more effective since Romania's EU accession, Romania's systemic corruption remains unscathed. The National–Anti Corruption Directorate circumvented the problem of political capture, but the multifaceted nature of Romania's corruption as well as the complexity of patron-client networks hints at the institution's difficulty to eradicate such networks. The last chapter will shed light on the reasons

why clientelism prevails by referring to the powerful role of path dependence and how the peculiar impact of Romania's post-communist transition resulted in a nexus of clientelism and corruption.

CHAPTER FOUR

Anti-Corruption Institutional Development

Introduction

Over the past two decades, countries facing rampant corruption have increasingly turned to the knee-jerk response of establishing independent anti-corruption agencies. The European Commission (2014e) has been a strong advocate, and encouraged many countries to set up a politically neutral agency responsible for combatting corruption. The idea of pooling core anti-corruption functions such as the investigation and prevention of corrupt practices into one powerful agency first gained prominence in Hong Kong through the success story of the Independent Commission against Corruption (ICAC), later followed by Singapore's Corrupt Practices Investigation Bureau (CPIB) (Meagher, 2002). In both instances, the main factor defeating corruption was a well-resourced agency untainted by clientelistic networks. The two institutions mentioned above have proven very influential precedents paving the way for the establishment of similar arrangements in the rest of the world.

As already discussed in the previous chapter, when it came to the fight against high-level corruption, the Commission supported two politically neutral institutions: the National Anti-Corruption Directorate and the National Integrity Agency. In the case of Romania, a country regarded by the EU institutions as highly corrupt, the solution to corruption according to the Commission had to be an exogenous response, that is, a source of authority located outside of patron – client networks. As the growing literature on ACAs shows, independent anti-corruption institutions often fail to produce the expected results and increasingly face the risk of being

plagued by patronage politics. As in many other instances, the Brussels' approach has been quite parsimonious, given that the threat of patronage capture has been largely ignored.

The Commission's latest anti-corruption report singled out five successful ACAs within the European Union²⁸ among which the Romanian National Anti-Corruption Directorate (DNA) received the highest praise. The European Commission emphasized its "notable track record of non-partisan investigations and prosecutions into allegations of corruption at the highest levels of politics, the judiciary and other sectors such as tax administration, customs, energy, transport, construction, healthcare, etc." (European Commission, 2014e, p. 14). The latest report assessing Romania's progress under the Cooperation and Verification Mechanism (CVM) continued to express admiration for the institution's spectacular number of indictments. It is a recognition on what one of the most problematic countries of the European Union also was able to achieve through the establishment of one of the most effective anti-corruption institutions earning a level of international acclaim that quite few domestic institutions can replicate in the post-communist context. Since 2006 the National Anticorruption Directorate (DNA) has increased the numbers of conviction almost exponentially, while the current head of the DNA, Mrs. Laura Codruta Kovesi has been labeled as "the most feared and, for some the most hated person in Romania" (Movila, 2014, para. 3).

Judging from the statistics, the number of indictments (a total of 4700 in seven years) of which 90.25% received final court rulings is astonishing (National Anticorruption Directorate, 2012). Overall, in 2012 the DNA achieved 552 convictions, a significant surge from 298 in 2011, resulting in the highest increase since 2006. In 2013 alone over 1051 individuals were convicted,

²⁸ The Slovenian Commission for Prevention of Corruption, the Latvian Bureau for Prevention and Combating of Corruption and the Croatian Bureau for Combating Corruption and Organized Crime attached to the State Attorney General's Office.

an increment of 23% compared to the previous year. Among those against whom the courts rendered final convictions, there were two cabinet ministers, one Senator, five Deputies, one Chief of the General Staff (with the rank of State Secretary), and one governmental inspector. In 2014, the number of indictments further increased to 1185, with indictments on (1) corruption offenses (408 cases); (2) abuse of office (464 cases) and/or (3) tax evasion and money laundering (313 cases). The value of the total damages stipulated in the indictments amounted to approximately 43 million Euros, a one million Euro increase in contrast to 2013 (National Anticorruption Directorate, 2014i).

While the Commission and the international media continues to praise the institutions' track record and encourages the advocates for the establishment of ACAs, research on anti-corruption institutional development reveals that conditions which determine an anti-corruption agency's success are rather exogenous and have little to do with the institution per se. According to Meagher (2002) political stability, the absence of macroeconomic crisis, public order and a positive association between anti-corruption success and political gain were the determining factors in ACA efficiency. Similarly, Manion (2004) argues that countries in which corruption is commonplace the institutional environment in which such corrupt transactions take place are fundamentally different from countries in which the former are uncommon.

Thus, in her comparison of anti-corruption reform in Hong Kong and China, the author also proves that anti-corruption agencies fail their mission when they are embedded in an environment where the sheer volume of corrupt transactions sustains the status quo. A shift away from such a "frequency –dependent equilibrium" (Manion, 2004, p. 200) involves the concerted effort of bringing down the size of corrupt payoffs and an overhaul of the customs and beliefs that sediment the corruption culture. While the latter reveals the necessary conditions for

exogenous changes, the success of Hong Kong's anti-corruption agency is attributable to its capacity to distance itself from party-politics while focusing on sharpening prevention and resourcing enforcement.

As the chapter will show, rampant corruption has the capacity of overwhelming any anti-corruption initiative and independent anti-corruption institutions, despite achieving high indictment rates remain unsuccessful in undermining patronage politics. In Romania, the success of ACAs led to numerous political attempts over the years to dismantle these institutions and made them targets of serious political pressures. These pressures range from a continuous rhetoric on DNA's and ANI's partisan nature to suggestions that the institutions should be restructured or dismantled. Moreover, progress in the prosecution and trial of high-level corruption cases failed to translate to lower perception rates. It is puzzling that anti-corruption measures seem to be quite effective (in the form of higher prosecution and conviction rates), but perceptions of corruption point at a deterioration of the overall situation. This discrepancy raises serious doubts over the impact of higher prosecution rates on a political elite committed to undermine the effectiveness of ACAs by employing various channels of manipulation.

By applying a path-dependent framework, the previous chapter demonstrated the importance of specific patterns of timing and critical junctures that shaped Romania's path throughout the pre- and post- accession years. The chapter analyzes the positive and negative externalities that locked-in certain reforms. The two ACAs (ANI and the DNA) exhibited a capacity to induce self-reinforcing processes and generate an endogenous force undermining high-level corruption. However, despite ACAs' success, the capacity to uproot clientelism is diminished by other important negative externalities that have the capacity to reinforce initial path inefficiencies and lock-in a status quo dominated by corruption. In the Romanian context,

the judiciary figures prominently as a force strengthening self-reinforcing processes and reinforcing a status quo in which corruption has the upper hand. In addition to Page's (2006) idea that negative externalities can lead to path dependence, the chapter will highlight the importance of *early path dependence*. Moreover, as he suggests, "some processes do not depend on the entire path, but on the initial history or on the early path" (Page, 2006, p.104).

By adopting this framework, early path dependent processes will involve the analysis of communist and post-communist structures that have hindered the development of an efficient judiciary. As we shall see, the lack of meritocracy, the executive's corrupt power and the judiciary's inefficiencies are all phenomena that may be traced to *early-path dependent* processes established during the communist system. The chapter will demonstrate how an inefficient judiciary becomes a negative externality that reinforces clientelism, despite the contribution in the opposite direction of new institutional structures, such as the ACAs. Thus, while increasing returns processes caused by the new anti-corruption agencies were able to create a new institutional environment, they are unable to uproot particularism given that the latter has permeated the judiciary itself.

The chapter is divided into five parts. The first part will address the ways in which the National Anti-Corruption Prosecutors' Office became fully absorbed into and captured by the corrupt sub-systems it should have undermined. The second part of the chapter will outline the National–Anti Corruption Directorate's success measured in higher prosecution rates, but inability to destabilize complex patron-client networks. The remaining three parts of the chapter will shed light on the judicial malpractices inherited from the communist regime and their path-dependent characteristics. In order to understand the post-communist institutional context and comprehend how a post-communist typology of corruption can distort the workings of anti-

corruption institutions one needs to understand how the progress made by the National Anti-Corruption Directorate of bringing high-level corruption cases to court is simultaneously offset by the judiciary's diminished capacity to handle such cases in an effective manner. Inconsistent jurisprudence and protracted-to-prescription corruption trials are pathologic characteristics of this faltering system.

4.1 The fall of the National Anti-Corruption Prosecutor's Office and the rise of the National Anti-Corruption Directorate

Former Prime Minister Năstase's corruption scandals received national and international media attention during the last five years. On January 30th 2012, Mr. Năstase received a two-year sentence for having illegally funded his 2004 presidential election campaign by collecting approximately 1.6 million Euros from companies who declared these payments as attendance fees for a governmental symposium (Ciobanu, 2012). Nonetheless, the ex-PM fought ferociously, first by staging a suicide attempt and, then, by arranging last-minute manoeuvres to have the Government Infrastructure Agency (ISC) complaints withdrawn from his file. The High Court of Cassation and Justice (ICCJ) issued a statement regarding Mr. Năstase's high-level corruption case. According to the ICCJ, Mr. Năstase was the "primary" beneficiary of the "Quality Trophy" election fraud that has been "widely orchestrated by him" (HotNews, 2012b). However, the former Prime Minister's two-year sentencing remained relatively lenient in contrast to those of his accomplices, such as Mr. Bogdan Popovici's six-year condemnation, or his wife, Mrs. Marina Popovici's, five-year stretch. While two other corruption cases were awaiting trial²⁹, the

²⁹ Next to the "Quality Trophy" case, Năstase also faced prosecution for the "Aunt Tamara" case involving a suspicious inheritance of Mr Năstase's wife, Dana Năstase of approximately 400,000 Euros that she claimed to have

arrest and sentencing of Mr. Năstase has attracted a great deal of political solidarity while he continued to shift blame, with accusations of a conspiracy within the National Anti-Corruption Directorate (DNA) for his arrest and two-year sentencing (Serban, 2012).

He accused the DNA of political bias in favour of and with the consent of President Băseșcu's camp (Mondo News, 2012). Moreover, the arrest and conviction of Mr. Năstase has attracted a great deal of solidarity from both the public and his own party. In March 2013, the Bucharest Tribunal dismissed the DNA's appeal and allowed Năstase's early release request after spending 8 months and three weeks in prison, which corresponded to one third of his two-year sentence. Quite surprisingly, on April 8th 2013, three of the five High Court judges requested to abstain from the "Zambaccian" case claiming that they had previously deliberated on Năstase's other corruption cases (Lupasteanu, 2013).

For the "Zambaccian" case, Mr. Năstase received a three year suspended sentence for blackmail back in April 2012, appealed in January 2013 by the DNA. Romania's High Court has handed down a second, this time four-year prison sentence for the ex-PM on Monday the 6th of January 2014, in the "Zambaccian" case, while his wife received a suspended three-year sentence (National Anticorruption Directorate, 2010b). Năstase's second conviction fuelled the latest feud between Prime Minister Ponta and President Băseșcu. The PM called Năstase "a political prisoner" of the Băseșcu regime and compared his conviction to Iulia Timoshenko's imprisonment under the now universally reviled former President of Ukraine, Victor Yanukovich (HotNews, 2014a). Such statements are not surprising, given that Mr. Ponta is well

inherited from her aunt Tamara Cernasov. In 1999, when Mrs Năstase deposited this sum, the Romanian Office against Money Laundering became suspicious. Nonetheless, Mr. Năstase made sure to cover up incriminating evidence and asked Mr. Ioan Melinescu, employee of the Money Laundering Office, to dispose his file. The former became Head of the Money Laundering Office after 2000. In the "Zambaccian" case Mr Năstase purchased land at Zambaccian Street in the centre of Bucharest in 1998 for a suspiciously low price of approximately 11,000 Euros. In addition, he was also accused of receiving building materials and furniture worth approximately 550,000 Euros from Mrs Irina Jianu (former head of the State Inspectorate for Construction).

known for expressing his sympathy for corrupt MPs, while cheering for their acquittal. The Social Democrats have always demonstrated an unprecedented level of solidarity towards Mr. Năstase whom they are even celebrating as a martyr.

Nonetheless, Năstase's unprecedented high-profile conviction constituted a serious milestone in 2012. Similarly, the three-year prison sentencing of the controversial Liberal Deputy, Gigi Becali and the abhorrent media mogul Mr. Dan Voiculescu's conviction confirmed that the National Anti-Corruption Directorate's efforts show consistent signs of improvement. String pulling is not a rarity in Romanian politics, especially to protect high-profile offenders. Minister of Agriculture, Mr. Daniel Constantin, urged to help Mr. Voiculescu by removing a corruption claim directed against his patron. Voiculescu has been facing corruption charges since 2008, and has demonstrated an incredible talent for exploiting all legislative loopholes to delay and prolong his corruption trial. In the summer of 2012, he resigned from the Romanian Senate over the rejection of a tax evasion amendment (Biro, 2012).

His resignation meant that the High Court of Cassation and Justice (ICCJ) had to surrender jurisdiction and transfer the file to the Bucharest Tribunal. Later on, this record did not prevent Voiculescu from seeking re-election in the 2012 December's Parliamentary elections, only to resign again shortly thereafter. However, at the end of September 2013, the Romanian media mogul received a five-year prison sentence for the fraudulent privatization of the former Institute of Food Research (National Anticorruption Directorate, 2013a). Similarly, the former Romanian tourism minister and presidential candidate, Elena Udrea had been detained mid-February 2015 (National Anticorruption Directorate, 2015a). Ms. Udrea is charged with influence peddling, money laundering and bribe taking for preferential contracts while

organizing events (illegal financing of a boxing gala in 2011) during her time as a minister of tourism.

Despite some political attempts over the years to dismantle the DNA, the organization continues to be the leading institution for investigating and prosecuting high-level corruption. Its performance throughout the years has shown consistent signs of improvement in the number of indictments and investigations carried out against high-profile offenders irrespective of their party affiliation. In the first nine months of 2012, the number of offenders receiving final decisions has nearly doubled from 298 in 2011 to 552 in 2012 (National Anticorruption Directorate, 2015a). In 2013 alone over 1051 individuals were convicted, an increment of 23% compared to the previous year. In 2014 the number further increased to 1167 (National Anticorruption Directorate, 2014i). In spite of the initial start-up costs, learning and coordination effects along with adaptive expectations introduced increasing returns processes that fostered institutional efficiency. As North (1990) emphasized, institutions exhibit lock-in effects through their capacity to introduce self-reinforcing processes that discourage reversals.

Thus, in addition to Năstase's conviction, in February 2012, the former Secretary of State for the Problems of the Revolutionaries of 1989 Vasile Emilian Cătean (PSD) was sentenced to five years for embezzling approximately 85,000 Euros. In addition, eight lawmakers, twenty-six mayors and prefects, 24 magistrates and 164 police officers figure among those convicted on corruption charges. In June 2012, Romanian businessman Corneliu Iacobov was penalized with a seven-year sentence followed shortly by another five-year conviction for Senator Cătălin Voicu. Moreover, the 2012 investigations by the DNA against the former president of the National Agency for Fiscal Administration (ANAF), Mr. Sorin Blejnar, the head of the Customs Authority (ANV), Mr. Viorel Comanita, entrepreneur Mr. Radu Nemes and the former head of the

Intelligence and Internal Protection Service (SIPI), Mr. Dan Secareanu, reveal the extent to which clientelistic ties and corruption are ingrained in society. Accused for downgrading the quality of their mineral oil imports to evade taxes, the case truly reflects how positions of power in Romania are misused to advance private gains and clientelistic interests (România Curată, 2012a).

While the National Anti-Corruption Agency (DNA) incrementally but resolutely carried out an elevated number of indictments, its Năstase-established predecessor, the National Anti-Corruption Prosecutor's Office (PNA), became a victim of the corruption-ridden sub-systems it should have investigated and prosecuted. According to Iancu (2009), a “long tradition of entrusting broad administrative and regulatory mandates to independent agencies could have cautioned a measure of scepticism and parsimony in making use of neutral ‘governance’ mechanisms in order to solve complex systemic problems” (Iancu 2009, p. 198).

As demonstrated in the previous chapter, the Năstase government was reluctant to fight high-level corruption mainly because its own party's patronage interests. Clientelistic networks were embedded so deeply into the domestic socio-political structure that extensive external EU pressures alone could not secure solid reforms. From this perspective, Brussels ignored the fact that “neutral” governance mechanism are highly politicized to the extent that appointments come from politics. Maor (2004) suggests that elected leaders are prone to set up ACAs as an investment in “integrity capital” and once such institutions gain power well above the political elite's level of tolerance, the latter will strive to undermine anti-corruptive efforts and curtail prosecutors' powers (Maor 2004, p. 21). Other less obvious but widely used channels to reduce the effectiveness of ACAs is through diminished resource allocation and political appointments

to key positions. Once weakened, anti-corruption institution easily become prey of manipulation from the ruling political class.

From a statistical perspective, the PNA's activities resulted in some prison sentences, among them few high-level corruption cases (European Commission, 2004). Moreover, the Năstase regime removed the institution's obligation to report to Parliament, curtailing the institution's transparency and accountability as well as shifting focus to petty corruption by decreasing the financial threshold for corruptive exchanges. According to Meagher (2002), the success of an ACA hinges on its embeddedness in a comprehensive anti-corruption strategy, strong political backing, and cooperation with other institutions.

Most importantly, accountability in the form of an "availability of judicial review, systems for public complaints and oversight, a requirement that the agency answers to all branches of government and the public and expenditure accountability" are safeguarding mechanisms that would prevent the institution from being captured by political interests (Meagher, 2002, p. 69). The PNA lacked all of the above-mentioned attributes and became a tool of politicization and predation as well as a propaganda device echoing solely a rhetorical commitment against high-level corruption. While the more autonomous ACAs can be powerful in terms of expunging corruption, it may also become susceptible to political patrons if the fragile tradition of institutional independence is discontinued.

Moreover, as Pope (1999) suggests given ACAs special vulnerability to misuse as a political tool and a vehicle for corruption they should be subject to a combination of public oversight, legal standards and judicial review. More importantly, ACAs should not be placed in a position where they are subject to direct political or ministerial pressures (Pope, 1999). In the case of the National Anti-Corruption Prosecutor's Office, it is not surprising given the regime's

rhetorical commitment to curb corruption that the institution camouflaged instead of eradicated high-level corruption. Consequently, the PNA failed to foment a new institutional environment or stimulate the creation of complementary institutional structures that would produce increasing returns and lock in a new path.

In contrast, as already discussed in chapter three, given critical junctures such as EU accession and Monica Macovei's determination against high-level corruption determined the DNA's success. Its performance throughout the years has shown consistent signs of improvement in the number of indictments and investigations carried out against high-profile offenders irrespective of their party affiliation. In 2011, in contrast to 2010, the number of indictments increased by 5.9%, while the number of defendants brought to trial rose by 16.43% (National Anticorruption Directorate, 2011). More importantly, the number of defendants sent to trial essentially doubled from 548 in 2003 to 1091 in 2011 (National Anticorruption Directorate, 2011). Similarly, the number of the convicted European Fund offenders increased from 9 final convictions in 2009 to 54 in 2011 (National Anticorruption Directorate, 2011). In between the years of 2006-2012 the DNA sent 1,191 important officeholders to trial, among them: 23 parliament members, 15 ministers and state secretaries, 105 mayors and vice-mayors, 69 lawyers, 496 police officers, 104 military officers, 134 customs officers and 42 financial guard officers (National Anticorruption Directorate, 2011).

Only in 2012 the number of definitive sentences jumped by 150% compared to 2011: 202 offenders were convicted in 2011 and 743 were convicted in 2012. Eight of those sentenced were state dignitaries: a minister, a deputy (secretary at the time of his committing the deed), senator (an Army Ground Forces chief of staff), a state secretary, a director with the National Company of Lignite Oltenia (CNLO), an agriculture deputy general secretary, two intelligence service

deputy directors in rank of state undersecretary and a deputy prefect (Hotnews, 2013b). In addition to the eight state dignitaries, nine mayors, three vice-mayors, a president and vice-president of county councils, a prefect, five magistrates (three judges and two prosecutors), twelve lawyers, a president of the Chamber of Commerce, 71 police officers and 13 custom officers were also convicted in 2012 (Hotnews, 2013b). In 2014, in contrast to 2013, the number of indictments increased by 17.41%, while the number of defendants sent to trial through an indictment rose by 8.76% (National Anticorruption Directorate, 2014i).

4.2 Anti-Corruption Agencies unsuccessful fight against particularism

The statistics above illustrate that the effectiveness of anti-corruption measures has increased since Romania's EU accession. However, the Eurobarometer (2012b) study reveals that action against corruption at highest levels of government do not translates into lower perception rates (European Commission, 2012b). In 2014, 65% of respondents still considered corruption to be a serious problem when doing business in Romania and 25% admitted to having accepted a bribe in the previous 12 months (European Commission, 2012b). Moreover, 64% believe that patronage and nepotism remains a problem while government efforts to combat corruption are considered effective only by 27%. Despite the DNA's success, only 34% agree that there are enough successful prosecutions in Romania (European Commission, 2012b). Thus, perceptions of corruption signal deterioration or stagnation of the overall situation rather than improvement.

This discrepancy demonstrates that an increase in the prosecution or conviction rate fails to undermine the systemic nature of Romania's corruption (Romanian Academic Society, 2010). A study by the Romanian Academic Society (SAR) found that favouritism in public resource

allocation is widespread and has been on the rise throughout the years. For example, as the next chapter will show, the perpetual abuse of Romania's natural disaster fund sheds light on the increasing particularism in public resource allocation along government party lines (Romanian Academic Society, 2010). According to Mungiu-Pippidi (2005), in some countries, resources are redistributed to a tight-knit *politically connected* clientele while being inaccessible to the average citizen.

In such "neo-traditionalist" countries, corruption does not constitute an exception but becomes the norm. Moreover, corruption actually means *particularism*, defined as "*a mode of social organization characterized by the regular distribution of public goods on a non-universalistic basis that mirrors the vicious distribution of power within such societies*" (Mungiu- Pippidi, 2006, p. 86-87)

Thus, instead of conviction rates, measures that try to capture the level of government favouritism provide a much better proxy for recent trends in corruptive practices. Some measures are quite successful in quantifying particularism. For instance, the World Bank's Control of Corruption indicator (CC) reflects perceptions of the extent to which "public power is exercised for private gain" and the magnitude of "state capture" by private interests. Contrasting the 2007-2014 CC estimates of governance, we find that Romania's scores fluctuate from a negative 0.17 in 2007 to a slight improvement in 2008 and a strong deterioration by 2009.³⁰ The low score of -0.22 improves only marginally by 2010 and further deteriorates in 2012 and 2013 only to improve marginally again in 2014.

³⁰ The Control of Corruption (CC) scores range from negative 2.5 to positive 2.5, the latter score reflecting strong-governance performance, while the former indicating the reverse. Within this interval Romania's scores remain in the negative interval, reflecting a high level of "state capture."

Table 4.1: Magnitude of “State Capture“in Romania

Year	2007	2008	2009	2010
Estimate of governance	-0.17	-0.09	-0.22	-0.16

Year	2011	2012	2013	2014
Estimate of governance	-0.19	-0.27	-0.20	-0.14

Source: The World Bank (2015) *World Wide Governanve Indicators*.

<http://info.worldbank.org/governance/wgi/index.aspx#home>

The indexes above demonstrate that, despite ACAs successful investigation rate, particularism remains a very serious problem. Moreover, in 2014 the National Anti-Corruption Directorate came to the grips with a corruption mega-scandal that reveals deep-seated clientelistic networks stretching over four successive governments. It concerns a large IT acquisition signed by various governments in which Microsoft software licenses were purchased at a share of 30% to 40% above market prices. The DNA has started investigations against nine former ministers. They include three officials from the Ministry of Education (Ms. Ecaterina Andronescu, Mr. Daniel Funeriu, Mrs. Alexandra Athanasiu), four from the Ministry of Communication and Information (Mr. Valerian Vreme, Mr. Adrian Ticau, Mr. Gabriel Sandu, Mr. Dan Nica), former finance minister Mr. Mihai Tanasescu and ex-government secretary Mr. Serban Mihailescu (National Anticorruption Directorate, 2014c). The complex bribery and money laundering mechanism allowed the former ministers to shun statutory public auctions procedures for IT services in order to make room for inflated Microsoft licences and purchase computers and software from private distributors at a market premium price. In addition, the

discounts offered by Microsoft became proceeds for middlemen. The former ministers resorted to a highly complex network of intermediaries in which companies would pay kickbacks through offshore accounts. Similarly, another contract that should have equipped schools with computers and software awarded to a Romanian company (Siveco) stipulated costs at 50% above market prices. The complex nature of the rent-extracting scheme, its longevity throughout four subsequent governments, as well as the complexity of patron-client networks hints at the DNA's difficulty to eradicate such networks in spite of its enormous struggle (National Anticorruption Directorate, 2014d).

It goes without saying that the ACA so strongly promoted by Brussels was implanted in an institutional environment where corruption is constituting its own "informal political system" (Scott, 1972, p. 2). Romania, known for its "folklore of corruption" presents a fundamentally different institutional environment than countries in which corrupt practices are uncommon (Myrdal, 1968, p. 940). According to Manion (2004) an equilibrium shift from rampant corruption to clean government is extremely difficult, however by contrasting successful anti-corruption institutional development in Hong Kong with China's two decades of failed anti-corruption reform, she demonstrates that equilibrium shifts are plausible. Such equilibrium shifts that bring along a change in actors' preferences are highly unlikely in countries with rampant corruption in which "the volume of corruption and average costs of corruption to the corrupt are inversely related as expected payoffs from corruption must take into account the chances of detection and punishment" (Manion, 2004, p. 12). According to Manion (2004) corruption in such countries is more profitable just merely based on the fact that it is more common as well as the existence of an inverse association between a surge in corrupt activities and a decrease in the likelihood of detecting and punishing the latter.

However, what happens in countries in which ACAs are successful in terms of higher prosecution and conviction rates shedding light on surging corruption costs but at the same time corruption stays pernicious? The latter would constitute a new equilibrium, albeit a dangerous one, in which successful anti-corruption institutional development produces high levels of conviction but fails to eradicate deeply, ingrained patronage politics that leaves corrupt actors' preferences unchanged. In situations such as this, the ACA has to consistently fight for its survival as it tries to eradicate a corrupt elite that is relentless in its attempts to undermine successful anti-corruption reform. Unfortunately, many ACAs that were established in the post-communist context fit this in-between equilibrium, establishing a "warrior" like atmosphere in which they are trying to undermine the regime that established them in the first place.

Consequently, the institutions praised by Brussels and internationally admired for their spectacular number of indictments are successfully fighting corruption without the capacity to eradicate it. From a path-dependent perspective, while the new anti-corruption agencies are successful in establishing lock-in effects via the high number of investigations, such developments fail to be permanently embedded in an institutional environment dominated by corruption. Negative externalities undermine such lock-ins in order to re-establish initial path inefficiencies (e.g. the corruption-ridden status quo). Empirical evidence within the new EU member states supports the argument above.

A study carried out by ANTICORRP (2015) shows that EU countries that have opted for a special anticorruption agency fail to combat corruption more effectively than countries that try to undermine corruptive practices through their regular legal system. Moreover, the study reveals a strong association between the independence of the judiciary and decreased levels of corruption. Thus, the existence of an independent judiciary showed statistically significant

results in the fight against corruption in contrast to the effectiveness of ACAs in eradicating the latter. However, in countries where the judiciary lacks independence anti-corruption institutional reform entailed the establishment of an independent anti-corruption agency. Nonetheless, often such ACAs become the target of political control, as has occurred in many member-states.

The Commission's latest anti-corruption report singled out five successful ACAs within the EU (the Slovenian Commission for Prevention of Corruption, the Latvian Bureau for Prevention and Combating of Corruption, The Croatian Bureau for Combating Corruption and Organized Crime attached to the State Attorney General's Office and the Central Spanish specialised anti-corruption) among which the Romanian National Anti-Corruption Directorate (DNA) received the highest praise. The European Commission (2014e) emphasized its "notable track record of non-partisan investigations and prosecutions into allegations of corruption at the highest levels of politics, the judiciary and other sectors such as tax administration, customs, energy, transport, construction, healthcare, etc." (European Commission, 2014, p. 14).

The latest report assessing Romania's progress under the Cooperation and Verification Mechanism (CVM) continued to express admiration for the institution's spectacular number of indictments. It is a recognition on what one of the most problematic countries of the EU also was able to achieve through the establishment of one of the most effective anti-corruption institutions earning a level of international acclaim that quite few domestic institutions can replicate in the post-communist context.

Similarly, Slovenia's anti-corruption agency (the KPK) established in 2002 went through several institutional changes in the last thirteen years. The KPK is responsible for administrative investigations, preventative measures, as well as research and awareness-raising activities. In 2010 the KPK's powers were extended allowing the institution to significantly increase its

independence and the number of investigations it could carry out. However, according to the 2013 Group of States against Corruption (GRECO) report, changes introduced in early 2012, in which the government decided to move the coordination of the prosecutors' office from the Ministry of Justice to the Ministry of Interior have raised doubts about the institution's operational independence (GRECO, 2014). GRECO was alarmed by such irresponsible transfer jeopardizing prosecutors' independence and increasing their vulnerability to improper influence.

However, new amendments to the law on state administration introduced in 2013 reinstated the prosecutors' offices under the umbrella of the Ministry of Justice (European Commission, 2014c). Nonetheless, a lack of financial and human resources as well as insufficient support from other authorities prompted the resignation of the ACA's leadership.

Likewise, Latvia's Corruption Prevention and Combating Bureau (KNAB), established in 2003 has experienced equal vulnerabilities threatening the efficient functioning of the institution. In 2008, following the controversial dismissal of the anti-corruption agency's head, the institution had to weather a period punctuated by instability and in-institution conflict between the remaining staff and a newly appointed director. Two years later, the 2010 austerity measures prompted 20% of the KNAB's employees to desert the agency. According to recent reports, recurrent internal conflict raises doubts about the institution's future and most importantly its political independence. GRECO's Third Evaluation Round noted several institutional pitfalls regarding the KNAB's independence. First of all the anti-corruption agency is under the direct supervision of the Prime Minister while the head of the institution is appointed and dismissed by the Parliament following the government's recommendation. Moreover, the institution's budget is proposed and decided by the Parliament, whose members the KNAB should potentially investigate. GRECO recommended Latvia to set up an external supervisory body to increase the

ACA's independence and undermine political forces that would try to capture it. While Latvia responded to the latter request by setting up a commission to assess candidates for the institution's leadership position, it failed to adopt legislative measures that would tackle more urgent problems, such as the institution's serious underfinancing or the government's direct role in supervising the agency's activities.

The third successful anti-corruption agency singled out by the Commission's recent Anti-Corruption Report is Croatia's Bureau for Combating Corruption and Organised Crime (USKOK). The Commission noted that while the ACA is "carrying out" important high-level corruption investigations, there is an increased reliance and emphasis on repressing corruption instead of focusing on preventative efforts. More importantly, similarly to other post-communist countries favouritism in public administration as well as low integrity standards in politics endanger the institution's efficient functioning (European Commission, 2014a). The common denominator for the above-mentioned post-communist countries that decided to establish ACAs is judicial malpractice inherited from the communist regime that significantly hinders the efficiency of anti-corruption agencies.

According to Karklins (2002) while the extent and pattern of corruption can widely differ from one post-communist country to another, the systemic features across the region reveal that corruption is rooted in the "preceding regimes and the accompanying transition from them" (p. 22). As Page (2006) underscores that "some processes do not depend on the entire path, but on the initial history or on the early path" (p.104). Consequently, it is crucial to understand the post-communist institutional context in order to comprehend how a post-communist typology of corruption can distort the workings of a political system. According to Scott (1972) corruption represents a hidden political arena and when the former dominates a regime or defines the rules

of the game, any analysis that ignores it will be misleading. Therefore if we conceptualize of corruption according to the famous formula developed by Klitgaard (1988) in which corruption equals monopoly plus discretion minus accountability it would be parsimonious to ignore the roots of post-communist corruptive practices entrenched in the institutional monopolies that characterized the communist political regime. Similarly, Sajó (2002) claims that corruption in Eastern Europe is structural “in the sense that it is part and parcel of the region’s evolving clientelistic social structures” (p. 1).

Thus, an analysis of corruption needs to come hand in hand with an understanding of clientelistic ties that are connected to the previous communist nomenklatura. Similarly, Karklins (2002) sustains that it is pivotal to understand the extent to which actors retain monopolies over decision-making as well as the extent of discretionary decision-making in addition to the level or lack of accountability the system is able to generate. In order to understand the peculiar nature of Romania’s corruption, it is important to examine how the distribution of power according to status manifests itself in a post-communist context (Jowitt, 1993).

Unfortunately, the progress made by the National Anti-Corruption Directorate and the National Integrity Agency of bringing high-level corruption cases to court is simultaneously offset by the judiciary’s diminished capacity to handle such cases in an effective manner. Thus, the failure to eradicate high-level corruption lies more within the serious shortcomings of the Romanian Justice System than the efficiency of anti-corruption agencies. The lack of meritocracy, the executive's corrupt power and the judiciary’s inefficiencies are all *early-path dependent* characteristics originating in the communist system.

The EU has criticised Romania’s under-performing justice system numerous times. The obstinacy against radical reforms owes to the fear that traditional patron-client relationships may

be shattered as a result. Inconsistent jurisprudence and protracted-to-prescription corruption trials are pathologic characteristics of this faltering system. A 2011 study exposed the extent to which trials were delayed: these ranged from 491 to 2284 days, with an average of 1539 days (HotNews, 2012e).

While the Small Reform Law has removed the widely abused objection of unconstitutionality, there are numerous other weaknesses that undermine the effective conviction of high-level corruption cases (Parliament of Romania, 2010b). The new penal code, that took effect in February 2014, promised to significantly shorten penalties for corrupt offenders, thus, automatically decreasing their statute of limitation. Moreover, Romanian judiciary standards are systematically undermined by corruption scandals within the latter. Instances where the political elite acts like a favour-dispensing machine persisted unrelentingly in 2014. Especially the executive's undue influence over the justice system hints at a constant prerogative of placing itself above the law.

4.3 Romania's post-communist justice system

The first years following the fall of Ceausescu's dictatorial regime were characterized by an absence of dialogue over the role of the justice system allowing for old communist mentalities to persist. The role of the judiciary and its importance was relegated to a marginal if not irrelevant position while important Constitutional provisions (Article 143) created a balance between gate-keeping and status quo political interests (Iancu, 2009, p. 194). The Constitution required as a precondition for appointment to the Constitutional Court eighteen years of experience in either the legal or the academic sphere guaranteeing the domination of judiciary by

cadres from the former regime. Moreover, Law nr. 58/26 on the judicial organization and Law nr. 60/26 on the organization and functioning of the magistracy both dating back to the year of 1968 constituted the basis on which the post-communist justice system continued to function. Meritocratic recruitment remained a foreign concept, as promotions to courts were contingent on the sheer obedience of the members of the judiciary to the executive power. Like the old communist elite, the old judiciary maintained its power relations intact as “many of the judges who served the previous political regime remained on the bench” (Open Society Institute, 2001, p. 354). Moreover, it took two years after the collapse of Ceausescu’s regime to amend the Romanian Constitution in the direction of separating judicial power from the other state powers (Coman & De Waele, 2007).

According to Shefter (1994), clientelism can create strong path-dependence, especially, when it thrives during the formative periods of a given political system. The Constitutional provisions such as Article 143 and other legislation guaranteed the self-reinforcing permanence of post-communist institutional structures that solidified clientelistic ties. Not surprisingly, the transition from a Communist regime was still characterized by strong politicization of the judiciary in which nomenklatura judges and Communist party cadres monopolized control of the country’s judicial, executive and legislative powers.

Page (2006) refers to processes relating to the initial history or on the early path as *early path dependence*. Schwartz (2004) underscores the importance of critical junctures with contingent outcomes in which the mechanism triggering a critical juncture can be conceptually differentiated from the mechanism that sustains that outcome. The distinction is very important given that some processes do not depend on the entire path, but are shaped by path's early history. Liebowitz and Margolis (1995) emphasize the lock-in capacity of historical events

leading to path dependent processes where the marginal adjustments of individual agents may not ensure optimization or alter suboptimal outcomes. Page (2006) also describes such significant historical events as *strong path dependence*, in which early decisions, actions and choices gain importance over time. The Romanian judiciary and its communist legacy exhibit all the above-mentioned path dependent characteristics, which seriously curtail its role in the fight against corruption.

The structure of the judiciary follows a combination of the French and Italian models and is composed of district courts, tribunals, appeal courts and the Supreme Court (The High Court of Cassation and Justice (ICCJ)). The Romanian Constitutional Court and the Superior Council of Magistracy play additional roles in examining legislation's constitutionality and guaranteeing judicial independence. The constitution adopted in 1991 re-established the Superior Council of Magistracy (CSM) and, contrary to what it had been during Communism, it was endowed with important roles such as the appointment, promotion and oversight of the judiciary. Nonetheless, the CSM did not become independent from the executive as its budget and agenda were controlled by the Minister of Justice (Piana, 2010). According to Coman and De Waele (2007), the fragile organizational and political capacity of the Superior Council of Magistracy allowed for the perpetuation of the Ministry of Justice's continuous influence.

As already discussed in the previous chapters, in the light of the 1999 pre-accession negotiations, the European Commission intensified the monitoring process in the areas of anti-corruption institutional development and reform of the judiciary. However, reform was stalled due to political gridlock and only the 2003 and 2004 constitutional and judicial reforms restored to some extent the independence of judicial verdict. The latter strengthened the independence of the Superior Council of Magistracy, eliminated the highly damaging *recurs in anulare*, abolished

the right of the Parliament to reverse Constitutional Court decisions and curbed the Ministry of Justice's influence. Previously to the above-mentioned changes, the CSM had to consult with the Justice Ministry before proceeding on matters of nomination and promotions or wait for the former's recommendation.

The 2004 reform package stripped the Justice Ministry of its powers to nominate and promote magistrates and transferred the latter to the CSM, the institution responsible to protect judicial independence. However, shortcomings such as CSM magistrates' ability to retain office and at the same time perform their responsibilities on a part-time basis led to serious conflicts of interest and undermined the independence of the institution. The reforms introduced in 2003/2004 as well as Monica Macovei's appointment turned out to be critical junctures in the development of an independent judiciary. Monica Macovei's appointment as the Minister of Justice marked an important turning point in which legislative standards approximated EU standards through encompassing legislation such as the Law on the Superior Council of Magistracy, the Law on the Organization of the Judiciary and the Law on the Statute of Magistrates. Her ferocious fight earned the Commission's full support and echoed in statements such as Franco Frattini's acknowledgement that a "big part of the success of Romania's EU accession was achieved as a result of Macovei's work" (Pop, 2007, paragraph 4). However, her efforts were undermined quickly when the Romanian Senate passed a motion calling for Macovei's dismissal. According to Demsorean, Parvulescu, and Vetrici-Soimu (2008) the results obtained during the Macovei era demonstrate that the Romanian judiciary has accomplished an important step forward. Others, such as Carey (2004) believe that the effectiveness of EU pressures on Romania's judicial system has been limited in scope due to the ongoing prevalence of domestic politics. Similarly, Mendelski (2011) argues that while substantial progress in

Romania's judicial capacity has been achieved, judicial impartiality remains relatively unaffected, as existing power structures stay intact.

Johnson and Radu (2013) evaluate whether legislative developments designed to make the judiciary more independent have actually resulted in changes promoting impartiality, transparency and a higher level of accountability. The semi-structured interviews carried out with a random sample of judges and prosecutors shed light on the former's appreciation about the changes resulting in the sole capacity of the CSM to terminate, promote or discipline magistrates. At the same time, numerous judges pointed to the predominant influence of the executive over the justice system. Prominent grievances such as the abuse of politician's own media outlets to discredit the judiciary and exercise pressure on magistrates to indirectly influence particular cases reveal a strong media bias in favor of power holders. Media-generated pressures against the independence of the judiciary remain intractable phenomena in Romania as emphasized by the European Commission's CVM reports.

As Chapter five will demonstrate, Romania's transition saw the transformation of the state-owned media monopoly into an industry dominated by private outlets. In the early nineties, this industry attracted foreign investors in search of new opportunities in an opening market. Soon enough an overall disenchantment with the poor standards of professional ethics combined with undue personal influence and decreasing revenues awoke them to a reality dissimilar to that of a Western country, causing them to gradually abandon the Romanian market. Since then, press and broadcasting outlets have been dominated by "media moguls" with strong political interests and affiliations such as Mr. Voiculescu, who relinquished the Romanian Senate seat twice in a move to prolong his court proceedings or Mr. Sorin Ovidiu Vantu, who is currently serving a one-year jail sentence for blackmail. This situation has led to the entrenchment of

professionally unethical news media characterized by either servility or viciousness which, rather than inform the public, serve as an instrument of propaganda and manipulation.

4.4 The lack of judicial independence and pernicious corruption within the Judiciary

The risk of political interference in senior appointments has been Brussels' key concern with regards to judicial independence (European Commission, 2015b). Throughout the years, the CVM reports have underscored the necessity of transparent and merit-based selection procedures given that partisan recruitment processes, partisan appointments and dismissals have been a common practice throughout the post-communist period. Establishing strict rules for meritocratic recruitment and promotion can be seen as a strong signal from the state that norms of integrity and impartiality are respected. According to Rothstein and Teorell (2008) impartiality is in fact the basic norm defining ethical and trustworthy institutions. Scholars have put forth numerous policy initiatives on how to fight corruption based on Weberian ideas. Dahlstrom and Lapuente (2014) suggests that an administration recruited based on meritocracy creates an inauspicious environment for corruption while Rauch and Evans (2000) prove that an administration with strong esprit de corps undermines corruptive practices. However, there is no such concept as meritocratic recruitment in the Romanian judiciary.

The lack of meritocracy, can be traced to *early-path dependent* processes established during the communist system. Thus appointments continued to be highly politicized, punctuated by conflict and a persistent fear that a newly elected leadership will initiate changes that might subvert the progress attained by previous leaders. All these factors point at a fragile institutional environment in which the anti-corruption agency's success is primarily determined by its

leaders' eminence. What the Commission underscored in many of its CVM reports was the fact that a decisive component of the DNA's efficiency lied in the successful appointment of its leadership. Reputable figures such as Mr. Daniel Morar contributed immensely to the ACA's outstanding results.

Thus, the 2013 nomination of the General Prosecutor and the new leadership of the DNA as well as the Directorate for Investigating Organised Crime and Terrorism (DIICOT) constituted a pivotal moment in which Romania could have demonstrated that integrity, impartiality and a depoliticised appointment process based on meritocratic selection criteria has replaced old patterns of politicised nominations inherited from the communist past. Unfortunately, this was not the case, given that the Ponta government has willingly failed to design transparent and effective selection criteria for the recruitment of the most outstanding candidates. The Commission (2014d) vehemently criticized the appointment procedures of the highest officials of these institutions as an “essentially a political choice, rather than the result of a procedure designed to allow scrutiny of the candidates' qualities and a real competition” (p. 19). Thus, much like in the past, the 2013 appointments to key positions in the judiciary caused controversy and debate. A protracting appointment process revealed a failure to attract excellent candidates for the positions of the General Prosecutor, Chief Prosecutor of the DNA and director of the Organized Crime and Terrorism Directorate. Indeed, the appointments of Mrs. Laura Codruta Kovesi as head of the DNA and of Mr. Tiberiu Nitu as the Prosecutor's General Office attracted controversy.

At the same time, serious friction arose within the CSM over the election of a prosecutor as President of the Council. Mrs. Oana Schmidt Hăineală became the first prosecutor to chair the Superior Council of Magistracy (CSM) receiving 10 votes against the eight that went to her rival

Judge Mircea Aron (Mungiu-Pippidi, 2013). The CSM Department of Judges demanded the annulment of these results ignoring the provisions of the Romanian Constitution (Law 317/2004) on the status of the magistrates. The term "magistrate" encompasses both prosecutors and judges and equally entitles them to run for the highest positions of the CSM.

As a result, the Superior Council of Magistracy declined the motion of revocation by a majority of eleven votes against seven. Soon after, the CSM made again headlines with its decision to recall two judges, this time, with an absolute majority vote, the first in the Council's history of motion recalls. Yet, at the beginning of April, Romania's Constitutional Court (CCR) declared the CSM action unconstitutional. Moreover, the Superior Council of Magistracy made headlines with its decision of recalling two judges: Mr. Cristi Danilet and Mrs. Alina Ghica on the 26th February 2013 (Micu, 2013). The decision came following a vote in which the Council voted overwhelmingly for the motion of recalling both judges to make it the first time in the history of the CSM for such an event to occur (Micu, 2013). The process was condemned by Mr. Daniel Morar for deeming the decision political and proves that the CSM is susceptible to political pressure (Micu, 2013). The vote of the CSM was informed by several reported complaints from judges and courts around requesting the removal of both judges. Mr. Danilet and Mrs. Ghica unsuccessfully fought the process on grounds of illegality (Micu, 2013). Amidst the requests for the dismissal of both judges, the Association of Romanian Magistrates (AMR) claimed that the delay in recalling the two judges was "unacceptable" in due process (Micu, 2013, para. 3). Former Justice Minister and current PNL Vice President, Mr. Chiuariu, declared that the actions of the AMR were strictly political, as the Association may have used its party connections (Micu, 2013). Nonetheless, the recalling by the CSM of the judges for motives other

than the failure to successfully observe their responsibilities is injecting uncertainty in the judicial system.

Electing a new President and Vice-President for the CSM, on January 6th 2014, proved less contentious compared to the previous year. Nonetheless, this act created new risks associated with the appropriate functioning of the CSM as the sole guarantor of judiciary independence, given that the President of the Superior Council of Magistracy notifies the Romanian Constitutional Court over a decision's unconstitutionality. Mrs. Oana Schmidt-Haineala exercised this option in October 2013, when she informed the CCR about the Senate's refusal to adopt the High Court (ICCJ) decision on Senator Mora Akos Daniel's incompatibility (HotNews, 2013f). Yet, the situation was also problematic given the few candidates for the top positions (one for the position of the President, two for the Vice-Presidency) and the non-transparency of the process. Already in December 2013, the National Union of Romanian Judges (UNJR) had solicited the CSM members to disclose their intent of running for one of the positions in addition to publishing their management platforms ahead of time (Consiliul Superior at Magistraturii, 2014b).

In addition to a lack of meritocratic recruitment, the government's undue influence over the justice system shows a constant prerogative of placing itself above the law. The most blatant scandal illustrating this tendency was the initiation of the replacement procedures against DNA prosecutors Mr. Lucian Papici and Mrs. Mariana Alexandru, soon after they commenced formal investigations against Deputy Prime Minister Dragnea whom Senator Valer Marian had accused of election fraud (Astefanesei, Ghica, & Cicau, 2013).

Mr. Dragnea was formally charged on the 7th of October 2013 by the High Court of Cassation and Justice on a 527-page corruption file containing only circumstantial evidence

(National Anticorruption Directorate, 2013b). The Prime Minister attacked Mr. Papici by pretending that the latter was "executing orders" and his investigations had clear political motivations. The lack of transparency of the act of removing the two prosecutors was simply indefensible. Furthermore, such events also betray the system's flawed design exemplified by the vulnerability of the prosecutors to the arbitrariness of their superiors through a practice of replacement without motivation. This pressure has the potential of discouraging them from investigating and prosecuting corruption involving high political figures.

Moreover, instances such as Prime Minister Ponta's interference in the Lukoil tax evasion and money laundering case seriously undermines judiciary's integrity (Baias, 2014). During the 2012 coup d'état (as Council of Europe official labelled it), members of the Constitutional Court faced extreme political pressures and in some cases even death threats (Baias, 2014). For instance, Mr. Aspazia Cojocaru had filed a complaint at the prosecutor's office after receiving death threats in early July 2012 (Nielsen, 2012). In addition, Chief Constitutional Court judge, Mr. Zegrean, turned to the European Commission and the Council of Europe for help to protect its independence from political pressure by Ponta's government. In an official letter to the EU bodies, Zegrean revealed there have been threats to the court's judges (Verseck, 2012). In January 2015, the president of the Constitutional Court (CCR), Mr. Zegrean expressed his concerns over pressures exerted on the CCR from various state institutions on its nicknamed "Big Brother law" ruling that found Romania's cybernetic security law unconstitutional. It would have served the purpose of allowing the Romanian Intelligence Service (SRI) to tap into servers without a judiciary warrant.

Furthermore, judicial independence and successful anti-corruption reform as a goal is unattainable if there is judicial corruption and the Romanian judiciary standards are

systematically undermined by corruption scandals. Corruption within the Judiciary consistently erodes its credibility in the fight against corruption. Judicial complicity, influence peddling and receipt of undue benefits continue to be a serious problem. The September 2014 arrest of the High Court of Cassation and Justice (ICCJ) member, Prosecutor Angela Eugenia Nicolae (National Anticorruption Directorate, 2014a), and the January 2015 scandal involving CCR judge Toni Grebla are prominent instances of a phenomenon that affects the highest Court levels (National Anticorruption Directorate, 2015b).

In January 2012, transcripts of recordings revealed the extent to which the Justice System is marred by clan politics when the head of Iasi Tribunal was discussing how two judges would “take care” of his case (Marinescu, 2013). Oradea’s Appeal Court Judge Mr. Mircea Puscas is facing corruption charges for requesting from a person facing numerous charges a payment of 51,500 Euros (HotNews, 2013c). Judge Petre Podea from Prahova’s Tribunal is investigated for influence peddling (România Curată, 2013). The Judge of Arges’ Tribunal, who is responsible for Mr. Constantin Nicolescu’s (President of County Council Arges-PSD) corruption file, is also facing corruption charges (HotNews, 2012a).

In March 2013, another corruption scandal erupted within Romania’s Judiciary, when two judges, Mrs. Antonela Costache and Mrs. Viorica Dinu from the Bucharest Tribunal were arrested for influence peddling and bribery revealing the existence of a bribery mafia and a manipulable case allocation system within Romania’s justice system (HotNews, 2013d). The two judges have been charged for intervening in three different criminal cases for obtaining favourable decisions. The case sheds light on two outrageous occurrences. First, corruptive networks within the judiciary have a code of honour reinforcing the system’s survival and calculability (Stefan, 2013). Second, the randomised case allocation system (which should

allocate cases randomly to judges) can be easily manipulated in a number of ways, due to serious flaws in the IT system and/or the corrupt aspirations of the people operating it. The recent arrest of Prosecutor Angela Eugenia Nicolae from the High Court of Cassation and Justice (ICCJ) accused of influence peddling throws light on the fact that corruption reaches the highest level of the Romanian Courts.

In April 2014, the corruption scandal of Judge Stan Mustata and three accomplices who had set up an organized crime ring in which lucrative bribes were exchanged for influence in favourable court rulings was uncovered (Burlă, 2013). This case illustrates yet again the vulnerability of the justice system to corruption, while, at the same time, brings along a positive development. Whereas in the past such clientelistic networks were able to cope under more transparent conditions, nowadays, the perpetrators of these practices face the risk of being uncovered. Overall, such developments have induced the corrupt judges' fear as well as their hostility towards the National Anti-Corruption Directorate (Stoica, 2013). The judiciary figures prominently as a force invigorating self-reinforcing processes against a status quo in which corruption dominates. Negative externalities successfully sabotage the efficiency of anti-corruption agencies. The lack of meritocracy, the executive's leverage and the judiciary's corruption exhibit *early-path dependence* that have arisen during the communist system. New institutional structures such as the DNA find it challenging to uproot particularism if the justice system is still plagued by early path inefficiencies. In addition, there are numerous postponement tactics that further procrastinate court proceedings.

4.5 Delaying tactics

Statute of limitation rules applicable to corruption offences often present shortcomings that would obstruct the investigation and adjudication of corruption cases. For instance, as already discussed above, the cat and mouse games played by Voiculescu in which he repeatedly resigned from the Romanian Senate over a rejection of a tax evasion amendment served the purpose of prolonging his trial. Moreover, by giving up his position, the High Court of Cassation and Justice (ICCJ) had to renounce competence in favour of the Bucharest Tribunal further delaying the court proceedings and raising the danger that his case might go beyond prescribed time limits before a verdict could be reached (Attila, 2012).

Despite such manoeuvres, an encompassing study carried out by Transparency International (TI) (2010b) on statute of limitations found that Romania's limitation periods regarding SoLs are adequate for corruption offences. Instead, according to TI (2010b), it is the criminal procedural system that creates problems inhibiting the fight against high-level corruption even by delaying or blocking court proceedings. According to TI (2010b), the solution to overcome the former difficulties and to undermine interminably protracted high – corruption trials nearing prescription lies not necessarily in the augmentation of the limitation periods, but in the improvement of the procedural system. The following table corroborates TI's findings.

Table 4.2: Romania's Statutes of Limitation

	Period of limitation until end of investigation or initiation of prosecution (in years)	Relative period of limitation until end of prosecution or sentence (in years)*	Absolute period of limitation until end of prosecution or sentence (in years)**
Active Bribery of Official	5	5.5	7.5
Abuse of Public Functions	10	8	15
Money Laundering	10	8	15
Passive Bribery	10	8	15
Trading in Influence	8	7	12
Defalcation/ Embezzlement	10	6	15
Obstruction of Justice	4.5	6	4.5
Bribery of Foreign Public Official	8	6	12

*The relative period of limitation is five years plus the length of the sentence. The figures are calculated based on the lowest penalty. Relative periods of limitation in contrast to absolute periods can be extended through suspension or interruption.

**We speak of an absolute period of limitation if no further extensions are possible under any circumstances.

Source: Transparency International. (2010b). *Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries*. Retrieved from:

http://archive.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

According to Table 4.2, Romania's statute of limitation rule falls in the average interval ranges compared to other EU member states. Nonetheless, there are some exceptions. Offences under the Active Bribery of Officials and Obstruction of Justice categories were the shortest (7.5 and 4.5 years) among those fifteen EU Member States who have introduced SOLs in their domestic legislation. However, for crimes committed under four categories (Abuse of Public

Functions, Trading in Influence, Defalcation/Embezzlement and Bribery of Foreign Public officials) Romania has introduced the most extensive absolute period of limitation. For the remaining corruption categories, the country positions around the 50% percentile of the rest of the EU countries.

The peculiarity of the Romanian anti-corruption law (Law nr. 78/2000) lies in its definition of special penalties for corruption offences, which indirectly lead to special limitation periods. For example, the limitation period for prosecution is five years plus the length of the penalty to be executed. Thus, if the latter period is shortened, the overall SoL decreases while, at the same time, the probability that the prescription period will be reached surges. The new Criminal Code that entered into force in 2013 decreased the level of penalties for some corruption offences, and, therefore, it shortens automatically their statute of limitation.

While it is important to extend and better define the grounds for interruption and suspension of SoLs, it is far more important to have a consistent and stable criminal policy for corruption-related offences. According to Transparency International (2010b), the Romanian judiciary should be adequately equipped to investigate, prosecute and try corruption cases in order to close the extensive procedural gaps, leading to the completion of the limitation period. However, a more radical stance, such as abolishing or drastically extending SoLs could counterweigh the criminal procedural system's shortcomings causing interminably protracted high-level corruption investigations and trials. For instance, the immunities regime as will be discussed in the subsequent chapter, in addition to mutual legal assistance (MLA) and extradition requests are far more damaging than SOLs. In order to effectively prosecute corruption-related offences involving MPs, (former) Ministers, (former) Prime Ministers and the President, immunity should constitute a ground for suspending or interrupting the SoL period.

Consequently, if the Romanian parliament refuses to lift immunity, high-level corruption offenses risk reaching their prescription period. Moreover, MLAs and extradition request do not provide ground for the suspension or interruption of SoLs.

ANI's 2010 legal framework (Law nr. 176/ 2010) (Parliament of Romania, 2010a) introduced absolute periods of limitation, requiring the integrity agency to complete investigations within three years of a public official's end of the term in office (Mako, 2011). Thus, numerous cases eligible under Law nr. 144/2007 (Parliament of Romania, 2007) have been closed or were nearing their prescription period. Interviews carried out at the National Integrity Agency reveal that since 2010 approximately 154 cases have been closed and other 200 cases have been affected, out of which approximately 20% of the cases included Members of Parliament.

Taking into account ANI's limited pool of human resources providing for a rate of one inspector per 106 cases (National Integrity Agency, 2012), a three year SoL constitutes a very serious limitation obstructing the agency's efficiency. Such statistics undermine TI's (2010b) conclusion that SoLs in Romania are "adequate for corruption offenses" (p. 33). Moreover, the new penal code, that took effect in February 2014, promised to significantly shorten penalties for corrupt offenders, thus, unquestionably decreasing their statute of limitation. For instance, a sentence for abuse of public office decreased from the current maximum of fifteen years to a maximum of five. Thus, the National Anti-Corruption Directorate estimated that up to twenty corruption files might be prescribed.

There are countless impediments to corruption cases' efficient prosecution as the criminal procedural system generates numerous opportunities to block and delay court proceedings. The Small Reform Act introduced in 2012 (Law nr. 202/2010) has removed the objection of

unconstitutionality, being one of the widely used methods to block high-level corruption cases. Table 4.3 reflects the number of cases reviewed by way of objection of unconstitutionality since 1992. The radical decrease from 8823 cases in 2009 to 4759 cases in 2010 and subsequently to 1261 cases in 2012 can be credited to the success of eradicating the extensively used objection of unconstitutionality.

Table 4.3 Objections of Unconstitutionality

YEAR	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Objection of Unconstitutionality	24	88	116	132	292	570	179	246	384	432	539
YEAR	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
Objection of Unconstitutionality	573	728	1039	2458	1836	2856	8823	4759	1663	1261	

Consequent, concrete review by way of objection of unconstitutionality
Source: Constitutional Court Activity from Establishment until July 31, 2012.

The objection of unconstitutionality is nonetheless only one of the many reasons why trials protract interminably. Other methods such as the exception of illegality, an absence or frequent replacement of defence lawyers or the need for expert reports are the most prominent manipulation tools. Similar to the objection of unconstitutionality, another widely used delaying tactic was contesting the legality of administrative documents. This is an extremely potent tool, given that after invoking an exception of illegality, cases were automatically suspended.

Fortunately, the Small Reform Act has undermined the practice of suspending criminal law proceedings through raising an exception of illegality.

However, there are no limits to when these exceptions can be raised as this manoeuvre can be exercised at any time. Thus, in addition to interminably protracted corruption trials, infinite reviews undermine the principle of legal certainty. Moreover, the absence or frequent replacement of defence lawyers constitutes another prominent delaying tactic. The frequent replacement of defence lawyers in court also encourages exceptions that have been previously rejected. Furthermore, there is a serious shortage of experts and the need for additional expertise results in delayed proceedings. Unfortunately, there is no available statistics on the average duration of investigations and court proceedings given that the database of court decisions is updated less frequently. However, a study by SAR (2010) found that medium level corruption cases are handled by courts roughly in three years, while high-level corruption cases are lagging for longer periods of time. In addition, an anti-corruption study carried out by a prominent anti-corruption media outlet, found that the extent of delays ranges from 491 to 2284 days, with an average of 1566 days (HotNews, 2012e).

Table 4.4 Delays in Trial

Name of the defendant	Number of Days since Sent To Trial	Position
Mr. Radu Mazare and Mr Nicusor Constantinescu	1440	Mayor of Constanta and County Counsellor
Mr. MironMitrea	1309	Minister of Transport

Mr. Dumitru Dragomir	1613	Deputy (PRM)
Mr. Serban Bradisteanu	2023	Senator (PSD)
Mr. Ionel Mantog	2220	Director of SOE
Mr. Adrian Năstase	1953	Former Prime Minister (case "Aunt Tamara")
Mr. Serban Mihailescu	2339	Former Minister of Coordination under ex- PM Nastase
Mr. Adrian Năstase	1357	Former Prime Minister (case "Quality Trophy")
Mr. Adrian Năstase	2152	Former Prime Minister (case "Zambaccian I)
Mr. Dan Voiculescu	1400	President of PUR
Mr. Decebal Traian Remes	1578	Former Minister of Agriculture and Rural Development (PNL)
Mr. Dinu Patriciu	2218	Former Deputy (PNL)
Mr. Codrut Seres and Mr Zsolt Nagy	1248	Former Minister of Economy and Trade and Former Minister of Communication
Mr. CristianPoteras	582	Former Mayor of Bucharest Sector 6
Mr. Tudor Chiuariu and Mr Zsolt Nagy	659	Former Minister of Justice and Former Minister of Communication
Mr. George Becali	1386	European Parliament (PRM)
Mrs. Monica IacobRidzi	520	Minister of Youth and Sport (PD-L)
Mr. Gheorghe Falca	1806	Former Mayor of Arad
Mr. Nicolae Mischie	2670	Ex- President County Council Gorj
Mr. Mihai Necolaiciuc	1707	Former General Director CFR
Mr. Dan Pasat	545	Deputy (PNL)

Mr. Antonie Solomon	930	Mayor of Craiova
Mr. CatalinVoicu	867	Senator (PSD)
Mr. Marian Oprisan	2313	President Country Council Vrancea (PSD)
Mr. George Copos	2312	Entrepreneur
Mr. Marinica Cazacu	1577	Prefect of county Ialomita (PD)
AVERAGE	1566.31	

Source: HotNews. (2012e). *Dosare anticoruptie*. HotNews. Retrieved from <http://anticoruptie.hotnews.ro/>

Among the aforementioned officials, only former Prime Minister Năstase and former mayor of Arad, Mr. Nicolae Mischie have been convicted by the year of 2012. Mr. Ionel Mantog has received a sentence on probation and Mr. Serban Mihailescu has appealed his conviction (HotNews, 2012e).

The personal experience of many magistrates remains plagued by the perception that promotions to the Court of Appeal or the High Court of Cassation and Justice lack transparency as there are no clear guidelines over what constitutes a successful interview for the above mentioned positions. When asked about the serious backlog of certain cases, judges listed the lack of resources, the low pay and long hours of work as the most important impediments. A study carried out the by the Open Society Institute found that the shortage of judges and supporting staff coupled with insufficient training has caused significant case backlogs, which, in turn, has emboldened corruption (Open Society Institute, 2001). Moreover, formal adoption of EU legislation resulted in serious negative repercussions when in 2003 changes to the Civil Procedure Code transferred responsibility for all appeals to the High Court of Cassations and Justice. The latter created an extraordinary backlog of cases, reaching 35,800 by 2004 that prompted the government in May 2004 to return to the status quo and reassign the responsibility

for second appeals to tribunals and regular court of appeals (Demsorean, Parvulescu, & Vetrici-Soimu, 2005).

Conclusion

While anti-corruption measures have become more effective since Romania's EU accession the systemic nature of Romania's corruption remains untouched. The country's first anti-corruption agency reinforced the fact that anti-corruption efforts are unavoidably political and a corrupt elite can easily get away with ceremonial initiatives such as setting up an agency that has absolutely no scope for independent action. In the case of the National Anti-Corruption Prosecutor's Office, it is not surprising given the regime's rhetorical commitment to curb corruption that the institution covered up instead of exposing and eradicating high-level corruption. While the National Anti-Corruption Prosecutor's Office's successor, the National – Anti Corruption Directorate, circumvented the problem of political capture, the multifaceted nature of Romania's corruption as well as the complexity of patron-client networks hints at the institution's difficulty to act effectively against these networks.

What follows is an equilibrium situation in which, on the one hand, ACAs are successful in carrying out high-profile prosecution cases and conviction rates but on the other, fail to dismantle deeply ingrained patronage networks. In situations such as this, the ACA struggles for survival as it seeks to defeat a corrupt elite that is relentless in its attempts to undermine successful anti-corruption reform. Many ACAs that were established in a post-communist context fit this in-between equilibrium that gives rise to a warlike atmosphere in which they are trying to undermine the regime that established them in the first place. Consequently, the

institutions praised by the EU and other international organizations for their spectacular number of indictments are successfully fighting corruption without the capacity to eradicate it.

As discussed in the chapter, the EU countries that have opted for a special anticorruption agency fail to combat corruption more effectively than countries that seek to undermine corruptive practices through their regular legal system. Other studies reveal a stronger association between the independence of the judiciary and decreased levels of corruption. Thus, the existence of an independent judiciary shows statistically significant results in the fight against corruption in contrast to the ineffectiveness of ACAs at eradicating corruption. A common feature many post-communist countries establishing ACAs share is an inherited judicial malpractice that significantly inhibits the efficiency of anti-corruption agencies. Thus, an analysis of corruption must come hand in hand with an understanding of clientelistic ties that go all the way back to the communist nomenklatura.

As the chapter has shown, the progress made by the National Anti-Corruption Directorate in bringing to court high-level corruption cases is simultaneously offset by the judiciary's diminished capacity to handle such cases in an effective manner. Therefore, the failure to eradicate high-level corruption lies more within the serious shortcomings of the Romanian Justice System than the inefficiency of anti-corruption agencies. As discussed in the chapter, there are countless impediments to the fair and speedy prosecution of corruption cases and they originate in a criminal procedure system that generates numerous opportunities to block and delay court proceedings. The chapter considers Romania's judiciary as a negative externality that has the capacity of reinforcing the original path inefficiencies due to significant *early path dependent* processes. Early path dependent processes encompass communist and post-communist structures that have hindered the development of a judiciary built on the principles of

meritocracy and independence. The chapter demonstrated that a corruption-plagued judiciary becomes a negative externality that strengthens clientelism in defiance of new institutional structures, such as the National Anti-Corruption Directorate.

Unfortunately, without an efficient judiciary, anti-corruption agencies are strongly hindered in their fight against corruption. The risk of political interference in senior appointments has been the EU's main concern with regard to judicial independence. Throughout the years, the CVM reports have underscored the necessity of transparent and merit-based selection procedures given that politically motivated recruitment processes, partisan appointments and dismissals have been a common practice throughout the post-communist period.

Romania's institutions are devoid of such meritocratic recruitment processes at any level of the judiciary. Instead, appointments continue to be highly politicized, punctuated by conflict and a persistent fear that a newly elected leadership will initiate changes that might subvert progress attained by previous leaders. These phenomena point at a fragile institutional environment in which the anti-corruption agency's success is primarily determined by its leaders' profile and notoriety. Moreover, instances where the political elite acts like a favour-dispensing machine are still far too frequent. In addition to a lack of meritocratic recruitment, the government's undue influence over the justice system hints at a constant prerogative of placing itself above the law. Such events also betray the system's flawed design exemplified by the vulnerability of the prosecutors to the arbitrariness of their superiors through a practice of replacement without motivation. This pressure has a potential to discourage them from embarking boldly on the investigation of cases that involve high political figures.

In addition, judicial independence and successful anti-corruption reform as a goal is unattainable if the latter is countered by judicial corruption. While the judiciary's weaknesses poses a serious threat to the fight against corruption, there are still numerous other institutional pitfalls that challenge the success of anti-corruption agencies. The subsequent chapter will discuss the problematic immunities regime and the media's role in shielding a corrupt elite and perpetuating clientelistic ties.

CHAPTER FIVE

The Political Elite's Fight against ACAs

Introduction

While the previous chapter discussed the judiciary's weaknesses and its undermining potential, there are still numerous other institutional pitfalls that challenge the success of anti-corruption agencies. In Romania, the immunities regime became the political elite's most powerful instrument in subverting anti-corruption institutional development and obstructing the justice system. Accordingly, the Romanian Parliament persisted relentlessly in the disturbing habit of legislating loopholes that facilitate corruptive practices or delay prosecutorial work by postponing immunity-lifting for MPs. The European Commission has often criticized the Romanian Parliament's unpredictability with regards to immunity lifting. This unpredictability leaves the National Anti-Corruption Directorate with "little success in persuading Parliament to accede to requests from DNA for the lifting of immunity of Members of Parliament to allow for the opening of investigations and the application of preventive detention measures" (European Commission, 2015b, p. 10).

The Parliament's recent decision on Prime Minister Ponta's immunity serves to demonstrate how potent this instrument can be. In Ponta's case, legislators voted 231 to 120 to keep the PM's immunity and rejected the DNA's request for conflict of interest investigations into the PM's ministerial appointments. The premier is also suspected of money laundering and tax evasion between 2007 and 2008. President Klaus Iohannis criticized the Romanian Parliament and referred to the decision as the ultimate proof of irresponsibility and defiance of

citizens that converts the legislature into the Prime Minister's 'shield' (Borger, 2015). While the latest decision has been heavily criticized by the European Union, it does not come as a surprise that a country which succeeded in protracting the prosecutors' investigations of a former Prime-Minister (Năstase) will adopt the same stance to protect its new "client." Thus, anti-corruption institutional development is offset by political manoeuvres.

Despite robust inter-party competition, a consensus prevails that state oversight institutions and anti-corruption agencies should have their mandates curtailed to allow the political elite to retain opportunities for illicit enrichment. Thus, the fight against corruption unites and further nurtures clientelistic ties, a puzzling phenomenon that has been ignored by the European Union. In order to understand this, it is necessary to shed light on the nature and functioning of post-communist political parties and their relationship with the state. The relatively weak states inherited from the communist period offer the political elite opportunities for various forms of rent-seeking within state institutions. The chapter at hand will examine the various routes through which corrupt-elite networks tend to expand and self-perpetuate, while simultaneously keeping new political actors out of the political arena.

As discussed in the second chapter, it is crucial to distinguish between political systems that are based on particularistic resource distribution characterized by a concentration of power in the hands of a small elite and universalism. In Romania, the mode of social organization characterized by the regular distribution of public goods on a non-universalistic basis mirrors the vicious distribution of power at the central and local levels of government.

By applying a path-dependent framework, chapter four argued that the capacity of the Anti-Corruption Agencies to uproot clientelism is undermined by a corrupt and inefficient judiciary. As a negative externality, the judiciary actually reinforces initial path inefficiencies

and locks in a status quo dominated by corruption. Other negative externalities, such as the immunities regime, an inefficient ombudsman and corrupt media discourage the fight against corruption and minimize ACAs' chances of success. Like the judiciary's development during the post-communist transition, these negative externalities can all be traced to early path-dependent processes rooted in communist and post-communist structures. This chapter will shed light on how the immunities regime, corruption at the local levels of government and the media reinforce particularism.

The chapter is divided into six parts. The first part will present the problematic immunities regime while the second part will discuss why Romania's parliament continues to be dominated by "ex-spooks, dodgy businessmen and their sons and daughters" (The Economist, 2012c, para. 1). The third part of the chapter will shed light on the powerful role of path dependence and how the peculiar impact of Romania's post-communist transition resulted in a nexus of clientelism and corruption both at the central and local levels of government.

Thus the chapter will demonstrate how clientelistic ties are perpetuated at local and central levels of government through particularistic resource distribution as well as trace their path-dependent roots to a power–elite reconfiguration determined to preserve its initial advantages. The last two parts of the chapter will discuss other deficient accountability mechanisms such as the ombudsman's office, the NGO sectors and the role of the media, and demonstrate why they are unable to fulfil their watchdog potential and become key actors in the fight against corruption.

5.1 The Immunities Regime

Parliamentary immunity is essential in any democracy as a means to ensure the independence and freedom of expression of MPs and the separation of powers between the executive and legislative branches. Moreover, it serves an important role in preventing the judiciary from arbitrary interference with the work of the legislature. However, shielding parliamentarians from undue pressures can quickly become a highly problematic cause of serious delays in the prosecution and investigation of corruption cases. Particularly in post-communist countries, the immunities regime often undermines the fight against corruption.

It serves the purpose of sheltering a corrupt political elite while nurturing their clientelistic ties. According to Wigley (2003) parliamentary immunity poses a serious problem as it allows MPs a greater scope to pursue their own personal and political interests, “over and above that which is made possible simply by their position of influence” (abstract). While research on parliamentary immunity and its ramifications on anti-corruption agencies’ success is still in its initial stages, findings suggest a positive correlation among the cluster of post-communist countries with problematic immunities regimes and weak (or unimplemented) legislation on parliamentary integrity. Thus, integrity questions become even more important as the immunities regime turns into an ethical issue, once it becomes systematically abused by those it is supposed to shelter.

Members of the Romanian Parliament enjoy immunity from arrest, detention or search, as provided by article 72 of the Constitution. According to the official legislation, “deputies and Senators benefit from parliamentary immunity, the purpose of which is to ensure their protection against abusive judicial prosecution, and the guarantee of their freedom of thought and action”

(Parliament of Romania: Chamber of Deputies, 2015, para. 1). There is no provision in the Romanian constitution providing immunity for judges and prosecutors. There are, however, immunity protections at the legislative level. According to Law no. 303/3004 Art. 95 (1), the Superior Council of Magistracy (CSM) is responsible for waiving judges' and prosecutors' immunity (Consiliul Superior al Magistraturii, 2012). The power to lift immunity was transferred from the Minister of Justice to the CSM in 2003 in order to limit the political interference in judicial affairs and to increase magistrates' independence (Ghinea & Stefan, 2011).

Moreover, the immunity of judges and prosecutors is a far less problematic issue than the immunity granted to ministers and MPs. MPs can be detained or searched without a previous approval by the Chamber only in cases of flagrant offences. In these situations, the Minister of Justice is compelled to immediately inform the president of the Chamber on the detention or search of the MP under investigation (Parliament of Romania: Chamber of Deputies, 2012).

Table 5.1 Immunities Regime

The scope of persons enjoying immunities is limited to:	Against	Lifted by
<i>The President</i>	The President's immunity is only indirectly defined by the Constitution which allows prosecution only for the offence of high treason (Art. 84 of the Constitution).	
<i>Members of Parliament (Deputies and Senators)</i>	against temporary arrest, arrest and search	Lifted by the chamber to which they belong

<i>The Prime Minister and Ministers (Ex- Ministers included)</i>	against criminal investigation	Lifted by the chamber to which they belong if they are also MP's or by the President (see Law on Ministerial Responsibility discussion)
<i>Judges and Prosecutors</i>	against temporary arrest, arrest and search	Lifted by the respective Section of the Superior Council of Magistracy

Source: Chamber of Deputies: How Parliament of Romania works: Parliamentary Immunity. Retrieved from: <http://www.cdep.ro/pls/dic/site.page?id=120>

However, MPs who occupy a current or former ministerial position enjoy immunity for offences committed in relation to their ministerial duties, and such cases pose serious difficulties. While parliamentary immunity can be justified by the necessity to protect the legislative branch, the government's immunity granted by Law no. 115/1999 constitutes a much broader immunity than the one granted for MPs. According to Article 109 Paragraph (2) of the Constitution, only the Chamber of Deputies, the Senate and the President have the right to demand legal proceedings be taken against members of Government, regulated by the Law on Ministerial Responsibility (Legeaz.net, 2012). The latter came into force in April 1999 and experienced numerous amendments. In 2004, according to Article 20, the Law on Ministerial Responsibility (LMR) further extended its protective umbrella to former members of government (Drept Online, 2007).

Mahoney (2000) and Thelen (1999) have identified particular feedback loops or mechanisms of reproduction that can reinforce initial path inefficiencies. For instance, the Law on Ministerial Responsibility became a critical piece of legislation that reproduced path inefficiencies by shielding the political elite from the institutions combating corruption. The Law on Ministerial Responsibility was amended five times in a time interval of fifteen months,

significantly delaying and obstructing several corruption investigations (Drept Online, 2007). In November 2006, the National Anti-Corruption Directorate initiated investigations against ex-Prime Minister Năstase in the “Zambaccian” and “Quality Trophy” corruption cases. As an automatic response, Mr. Năstase immediately requested the revision of the latest 2005 amendments to the LMR that, following GRECO’s first evaluation round, removed former ministers’ immunity.

The Constitutional Court rejected Article 23, paragraph 2, of the LMR as unconstitutional, allowing former members of government to enjoy immunity again. Thus, the DNA’s investigation against the ex-prime Minister and numerous former ministers such as former Minister of Defence Victor Babiuc (HotNews, 2010), ex-Minister of Economy and Commerce Ioan-Codruț Șereș (HotNews, 2015b), former Minister of Public Works and Transport Miron Mitrea (HotNews, 2015a) and former Minister for the Coordination of the Government’s General Secretariat Petru Șerban Mihăilescu (HotNews, 2012d) were undermined. Later that year, in October 2007, the government amended the LMR via Emergency Ordinance No. 95/2007 and established a Commission composed of five judges elected by the CSM to review DNA prosecutors’ request (The Constitutional Court of Romania, 2007). However, the Constitutional Court found the amendment unconstitutional, giving President Băsescu the sole power to approve investigations against the aforementioned ex-ministers.

After the President’s approval in 2008, another amendment followed in March 2008, stipulating that former ministers who were still MPs (deputies or senators) would not be prosecuted solely on the decision of the President, but instead require an additional lifting of their immunity by the Parliament. One month later in April 2008, the Chamber of Deputies attempted to change the latest amendment and demand the additional consent of the Minister of

Justice next to a presidential request to investigate former members of government when holding a deputy or senator position. The CCR rejected this request in April as unconstitutional.

However, when the DNA asked the Parliament for a consecutive time to initiate investigations against the above mentioned former ministers, the Parliament decided to increase majorities for lifting immunity, requiring an absolute majority in the Senate and a two-third majority in the Chamber of Deputies. The CCR struck down the latter agreeing to decisions of lifting immunity to be based on a majority of members present in either Chamber, in order to circumvent the lack of quorum problem. Thus, years of *inter-institutional infighting* and legislative amendments only served the purpose of sheltering corrupt MPs and former ministers, including former-Prime Minister Năstase. However, Democratic-Liberal Sports and Youth Minister, Mrs. Monica Iacob-Ridzi (România Curată, 2010b), Mr. Dan Păsat (România Curată, 2010a) and Mr. Mitrea (former Minister of Transportation) have all benefited from an extensive parliamentary network prepared to shield them from investigation.

More importantly, procedures for lifting immunity do not require either Chamber to provide justification. Consequently, the Romanian Parliament can decline to lift immunity in an unpredictable fashion and protect corrupt MPs or ministers from ongoing criminal investigations. Following the publication of the 2015 CVM report, DNA chief prosecutor Laura Codruta Kovesi expressed her disappointment with the serious difficulties the anti-corruption agency faces when investigating MPs or ministers for whom the Parliament has voted to keep immunity. A vote unaccompanied by justification conveys disdain by members of parliament towards the course of justice. Moreover, a series of high-profile prison sentences and arrests suggest that anti-corruption efforts are producing tangible results while the immunities regime once again proves an efficient shield preventing investigation of corrupt MPs. Greater transparency in votes on

immunity questions would be an important step to provide the public with access to information on the voting records of MPs on such issues. Moreover, the Romanian Parliament should act promptly and within a set time interval to the DNA's investigation requests.

In mid-February 2015, after a tearful plea from National Liberal Party (PNL) Senator Varujan Vosganian, the Parliament voted in favour of his immunity and against the request of DIICOT (Diicot, 2015). A vote in favour would have given green light to his prosecution. However, only a minority of 25 senators approved the prosecutors' request. Mr. Vosganian was charged with damaging the Romanian economy by negotiating a favourable gas price for an indebted chemical company (InterAgro) at the expense of the state-owned Romanian natural gas producer Romgaz. While Mr. Vosganian gave up his position as Minister of Economy, his resignation did not lead to prosecution as long as he continues to hold a parliamentary position and to be shielded from any further investigation by virtue of his senatorial immunity.

Similarly, on March 25th, 2015, the Romanian Parliament dismissed the DNA's request to lift immunity for Social Democratic senator and former transportation minister Dan Sova; out of 151 votes, 79 were cast in favour of the request and 67 against it, with five votes declared invalid (National Anticorruption Directorate, 2015d). This event rekindled talk surrounding abuse of immunities as an umbrella for corrupt MPs that undermines democratic norms and standards. The US Embassy used uncompromising language with respect to Parliament's abuse of the immunities regime and advised it to desist from such habit. Similarly, British and Dutch embassies expressed their disappointment over the latter developments. On the same day, the Senate voted to lift the immunity of Social Democrat Darius Valcov, accused of receiving 2 million euros in bribes during his time as a mayor of Slatina in exchange for preferential contracts (National Anticorruption Directorate, 2014f). The Lower Chamber stopped judicial

investigations even in the case of MP Laszlo Borbely (former environmental minister) in beginning of March 2015 (National Anticorruption Directorate, 2014e).

Proposals in early 2013 to introduce so-called “super immunity” to the Statute of MPs is another prominent example of legislators’ efforts to pervert the course of justice. The controversial provisions, ruled as unconstitutional by the CCR, gave Members of Parliament additional powers in terms of demanding further evidence from the Justice Minister before approving the search, detention, arrest or initiation of criminal proceedings against any MP. It was an initiative that undermined the authority of the judiciary *vis-à-vis* the legislative branch. Such amendments, despite Prime Minister Ponta’s guarantee that Parliamentary Immunity would remain untouched, served the sole purpose of shielding corrupt MPs.

Thus, the Romanian Parliament relentlessly persisted in its disturbing habit of legislating loopholes to facilitate corrupt practices or delaying prosecutors’ work by postponing immunity-lifting for members. On December 10th, 2013, widely labelled as Romania’s “black Tuesday”, the Lower Chamber voted in favour of a number of amendments to the Criminal Code which nearly proved to be disastrous for Romania's Justice System (Stiri, 2013a). The two most dramatic changes included the attempt to eliminate MPs and the President from the scope of the definition of public officials while introducing a number of amendments narrowing the scope of criminal law provisions on conflict of interest. In conflict with the principle of equality before the law, by eliminating MPs and the President from the notion of public servants, they would no longer be subject to the Criminal Code (Parliament of Romania, 2012b). This development would have significantly undermined the DNA's function as such amendments would halt ongoing investigations and pending trials. Most probably, it could have also led to the release of those MPs who have already been convicted.

The second abrupt move where the parliament attempted to decriminalize conflict of interest alarmed the Commission and alerted it to decreasing levels of integrity and anti-corruption standards among elected officials (Parliament of Romania, 2011). Narrowing the scope and application of criminal law provisions on conflict of interest would have meant that Members of Parliament and other functionaries (such as ministers, mayors and public servants) would no longer be investigated for cases involving a conflict of interest. This could have been especially detrimental in light of amendments exempting public procurement contracts from the conflict of interest rules, a sector that, as of this writing, stands as a champion at squandering Romania's public resources through corruption.

Moreover, such changes would contribute to a paralysis of ANI's work and could have undermined numerous investigations against MPs, elected officials and civil servants. The sinister effects of these amendments motivated thousands of people, NGOs and other civil society organizations to protest throughout the second half of December. At the same time, domestic and international pressures to withdraw these amendments were mounting. Given this public outcry, the decision on a general amnesty and pardon law was postponed (Consiliul Superior al Magistraturii, 2015). The latter stipulated the pardoning of large categories of criminals, due to an "overcrowding phenomenon" in Romanian jails (Parliament of Romania, 2013b). The High Court of Cassation and Justice (ICCJ) notified the Romanian Constitutional Court about the changes that were introduced to the Penal Code (The Constitutional Court of Romania, 2013). Fortunately, the CCR ruled in mid-January 2014 finding all above mentioned amendments unconstitutional.

The fight against the immunities regime continued even into 2015, when five NGOs and think-tanks (Expert Forum, Freedom House, Group for Social Dialogue and Romanian Centre

for European Policies and Societatea Timisoara) wrote an open letter urging the Romanian parliament to stop exploiting the immunities regime as a shield for corrupt MPs whose standard tune is that the DNA's investigations are politically motivated. Moreover, there is a demand for more transparency so that votes on immunity questions do not remain secret and the public has access to information on MPs' behaviour when immunity issues are tabled before the legislature. MEP Monica Macovei also recommended that the Romanian Parliament should act promptly, within a time interval of 48 hours, in response to the DNA's investigation requests. Moreover, Macovei argued that Members of Parliament should have a right to review corruption files, a privilege currently reserved to members of the judiciary (Macovei, 2014).

According to the Parliament's Declaration no. 2/2012 on supporting the implementation of the new National Anticorruption Strategy 2012–2015, the Parliament committed itself to adopting an anticorruption legal framework that would allow a prompt lifting of immunity within 72 hours, strengthening the integrity of the members of Parliament (Parliament of Romania, 2012a). The imprecision that characterizes the immunities regime locks in a sub-par status quo, in which immunity lifting becomes a powerful instrument in the hands of a political elite determined to block the investigations of the National Anti-Corruption Directorate. The locked-in outcome generates self-reinforcing processes that, in the long run, weaken the effectiveness of anti-corruption instruments. Like the judiciary, the immunities regime becomes a negative externality reinforcing the initial path.

5.2 The Corrupt Parliament

While the above mentioned practices reveal the extent of abuse of the country's legal system by elected MPs, it also raises questions as to why the Romanian electorate would support the re-election of shady candidates. The 2012 Parliamentary Election shed light on a disquieting problem: corrupt candidates regained their seats effortlessly. Currently, the Romanian Parliament has 23 MPs facing investigations, having corruption cases pending, or awaiting final sentencing. It does not come as a huge surprise that the latter group would mobilize forces to undermine processes that jeopardize their clientelistic ties as well as their illicit enrichment opportunities.

According to Mrs. Monica Macovei's statement, "we [Romanians] have MPs who have been arrested, collaborated with the Securitate, are incompatible and face serious conflict of interest allegations" (Ziare, 2012). By the end of 2011, the National Integrity Agency found that 8% of Romanian MPs (37 MPs, of which nine were Senators and 28 Deputies) had serious wealth, conflict of interest and incompatibility problems (Efrim, 2011). A study by the Institute for Public Policy (IPP) corroborated these findings and revealed that between 2008 and 2012, 22 MPs have been sent to trial, 42 have been investigated by the National Integrity Agency for showcasing significant gaps between their moderate incomes and extraordinary wealth and 11 deputies were caught on tape while voting for their missing colleagues in different legislative acts (Efrim, 2011).

According to the 2010-2011 Global Corruption Barometer the Romanian Parliament is perceived to be the most corrupt institution (Transparency International, 2011). Similarly, the 2008 Gallup poll found that 88% of the Romanian citizens have little or no confidence in the Parliament that they themselves have elected (Big, 2008).

According to Karklins (2002), corrupt-elite networks tend to expand and self-perpetuate because their members have strong incentives to block non-corrupt individuals and keep them out of the political arena. Undermining elections is one widely used practice in the post-communist world to form collusive networks and limit political competition. For many democratization scholars, the hope has been that increased accountability to voters and their power at the ballot box to “throw the rascals out” would undermine corruption as corrupt Members of Parliament would be punished for their illicit deals directly by the voting electorate. Recent research challenges the notion that electoral accountability is a deterrent to corrupt behaviour, that is, the idea that corrupt politicians will be voted out of office by the electorate (Vaz Mondo, 2015).

Similarly, research carried out in Europe reveals that in many countries with high levels of corruption voters fail to punish corrupt politicians (Manzetti & Wilson, 2007). The Economist (2012b) documented the tragic nature of an electorate that would reinforce Romania’s “strident political environment, dominated by ex-spooks, dodgy businessmen and their sons and daughters” (para. 1). Mr. Voiculescu, seeking re-election during 2012 December’s Parliamentary elections, received close to 70% of the votes in the Bucharest College (4th Sector) where he was pitted against a 34-year-old talented IT expert named Iulian Craciun (FC) (Mixich, 2012). The Economist (2012c) published a special article on the “uneven fight” between the two and shed light on how Mr. Craciun’s disability was ridiculed by Voiculescu’s media outlets, which cautioned the former to “stay at home and take care of his health”. Similarly, the now convicted populist Dan Diaconescu’s People’s Party (PP-DD) received a dauntingly high vote share of 14%. Mr. Diaconescu, in addition to his corruption and electoral fraud charges had put forward

an electoral campaign built on numerous irrational campaign promises followed by senseless slogans.

Therefore, in Romania electoral accountability fails to act as a deterrent for corrupt behaviour, given large scale voter apathy and a party system that suffers from a high cartelisation due to a complex legal framework that discourages new parties and actors from entering the political scene. A new party must have at least 25,000 founding members from at least 18 counties with a minimum of 700 per county. While parties can appeal their registration rejection to the court, these appeals are quite infrequent. This legislation gave rise to serious lock-in effects. Therefore, it is not surprising that, for the last two decades, the same corrupt political parties have dominated Romania's political field (Romanian Academic Society, 2010).

The current electoral law serves as a mechanism to disincentivise the creation of new political parties, both through the formal signature requirements and other financial and legal caveats that make it difficult for newcomers to establish themselves and mount a challenge against the current parties. A new draft legislation proposed by the Alliance for a Clean Romania (ARC) would have eliminated these stringent rules by reducing the registration signatures to 500 citizens hailing from ten counties. The major parties have met this proposal with disdain and, during the 2014 Presidential elections, only one candidate (Mrs. Monica Macovei) supported the initiative (Bred, 2014).

The second referendum on impeaching President Băsescu demonstrated the extent to which even referendums are rigged to the advantage of power-holders. On August 21st, 2012, the Romanian Constitutional Court confirmed the July 29th referendum outcome in favor of the impeached President, as voter turnout fell short of the required 50% plus one of the referendum law, revealing the general apathy of the voting public. The Social Liberal Union (USL)

immediately contested these results, arguing that turnout exceeded 46.24% due to a continually shrinking electorate since 2002. Interestingly, these concerns did not surface during local elections held in June 2012, when turnout rates were calculated based on the 2002 Census. As such, this request was an ex-post attempt to alter the rules of the game and make them friendlier for the Social Liberals. Similar dubious attempts, such as calls to remove registered voters with expired identity cards or those living abroad, came under fierce criticism by the international and national media.

Moreover, the 2014 Presidential elections ended in a disaster and resulted in a blatant infringement of civil rights, raising serious concerns about electoral fraud (Stan, 2014). The poor performance of the Ministry of Foreign Affairs and the Central Electoral Bureau caused thousands of diaspora Romanians to endure long line-ups and excessive waiting times (for up to eight hours) before they could exercise their right to vote. Few polling stations were installed abroad and moreover, the voting of the diaspora Romanians was made burdensome through the imposition of unreasonable barriers. At the end of the day, ignoring requests from several embassies, the Central Electoral Bureau refused to extend the deadlines beyond 9 o'clock PM.

Although the Minister of Foreign Affairs was not indifferent to critics accusing him of discouraging diaspora voting, he still claimed that there was no legal basis to grant the Foreign Ministry a power to add further polling stations, a stance that The Central Electoral Bureau publicly opposed. Consequently, numerous diaspora protests ensued against the government, which was perceived to act against the right to vote. News about the government's actions and the citizens' reactions spilled over to the media quickly enough to compel the former to issue injudicious declarations.

The first round of presidential elections also saw the highest number of voters on supplementary lists, a phenomenon concealing the risk of massive voter fraud through multiple casts. Several denunciations against the Premier's team attributed its success in seven of the top ten counties to rampant electoral tourism (Ionașc, 2014). Special legislation passed by the Mr. Ponta government during the summer allowed voting in any district previously associated with high frequency of fraud. The opposition, led by Mr. Iohannis, challenged the unilateral decision on voting dates at the Constitutional Court, but lost. Law no 370/2004 on electing a Romanian President is very vague on details.

Hence, the discretion of government was wide and the consultation procedures largely ignored. Romania's new president, Mr. Iohannis, expressed a determination to bring changes to Romania's party financing legislation that would provide for better transparency and accountability. Throughout 2013-2014, Social Democratic Deputies proposed a draft legislation amending article 11 of Law 334/2006 on the financing of political parties, electoral campaigns and NGOs (Parliament of Romania, 2006a). Instead of bringing simplification and transparency, the amendment was served with the purpose of enhancing its opacity.

According to Young (2008), despite multi-party antagonism, "there appears to be a consensus in Parliament that state oversight institutions should not attack any MP, regardless of political orientation" (p. 117). Anti-corruption expert Laura Stefan argues that the "compromise among politicians is not to let matters get to prosecutors" (Young, 2008, p. 117). Thus, the fight against corruption unites and further nurtures clientelistic ties, a puzzling phenomenon that has been ignored by the EU and demands a path-dependent explanation in which the country's communist heritage is taken into account. Like in the judiciary's case, the early decisions, actions

and choices of the post-communist political elite locked in policy solutions that reveal early path dependent features.

5.3 Post-Communist Elites and the Absence of Power-Elite Reconfiguration

The symbiotic relationship between post-communist political parties and state structures allows us to understand the behaviour of the power holders. In this respect, Prime Minister Ponta is no exception. The survival of his party is closely connected to its control of the resources of the state. Following the favourable immunity vote for Ponta, Andrei Taranu, Deputy Dean of the Political Science University in Bucharest, summed up the dynamics behind the political struggle in one powerful statement, stating that “[he] expect[s] Ponta to hang on to power for as long as he can -- otherwise he and his party will lose everything” (Timu & Vilcu, 2015, para. 4).

The logic of a zero sum game incorporated in Taranu’s statement excellently captures Romanian politics’ peculiar nature, specifically, political parties’ relationship with the post-communist state. Kopecky (2008) suggests that it is impossible to understand the nature and functioning of post-communist political parties if their relationship with the state is overlooked. Accordingly, “the relatively weak states inherited from the communist period offer parties and elites opportunities for various forms of rent-seeking within state institutions” (Kopecky, 2008, p.1). He identifies three critical variables that define the peculiar dynamics and relationship of political parties with the state in the post-communist era. First, political parties in the post-communist region are not embedded in society. Second, post-communist parties played a special role in rebuilding state institutions after the fall of communism. Such a privileged position has automatically put them at a comparative advantage in the power competition of defining and

moulding the rules of the game, which has, in turn, cemented their position within state institutions. Moreover, significant historical events, such as the transition from communism to democracy and all associated phenomena, are marked by strong path dependence, that is, by early decisions, actions and choices becoming significant factors over time (Page, 2006). O'Dwyer (2004) argues that post-communist states were reconstructed after communism by political parties who enjoyed great discretion in crafting laws and institutions that would cater to their interests. Grzymala-Busse (2007) found that “direct extraction of state resources and the building of new channels for such extraction” (p. 2) trumped any other considerations. Such channels would lock-in institutional and legislative structures that continue to reinforce early path inefficiencies that privilege the post-communist elite.

The EU widely ignored the unsettled institutional environment that allowed the post-communist elite to loot state resources and abuse their position of power through designing weak supervisory organs. Thus, as Kopecky (2008) argues, “in the absence of institutions that limit state exploitation, incumbent parties can continue to extract state resources in order to maintain electoral advantages and to avoid prosecution for past wrongdoing” (p.20). According to McFaul (2002), CEE countries followed very different trajectories of democratization owing to their peculiar power struggle configurations between democratic and communist forces. While the 1989 Romanian revolution led to the fall of Dictator Ceausescu, it failed to bring about the radical break from the past that many Romanians have longed for. As many scholars argue, it remains an undeniable fact that the main beneficiaries of the regime “change” were a small political elite composed of communist era secret police members and upper echelons of the Romanian Communist Party (PCR). This nomenklatura was formed the National Salvation Front (NSF) and led by Iliescu, a famous PCR elite serving as Minister of Youth and Secretary under

Ceausescu. It won the elections in 1990/1992, thereby gaining access to valuable political and economic capital that further solidified its position. As discussed in the first chapter, the delayed privatization process facilitated rent-seeking by this post-communist elite who took control of the legislature and perpetuated its networks through the preservation or enhancement of their communist era influence.

Moreover, the ambiguity of the post-communist political context made the privatization process a hotbed for corruption and mismanagement. Kaufmann and Siegelbaum (1996) note that privatization tendered a substantial wealth of the economy for sale or transfer from the state to private interests, while the regulation and oversight of the process had been largely crippled. During this transitional opacity, between unworkability of the old rules and the establishment of new ones, corruption reached endemic levels as the power-holders were not only playing the game, but also determining its rules (Kaufmann & Siegelbaum, 1996). As demonstrated, in strong path dependent processes, the weight of early history matters more given that early decisions become increasingly important over time (David, 1994).

According to Iancu (2009) post-communist transition in Romania was marked by a “violent uprising, followed by a long period of social convulsion and rule by well-consolidated post-communist elites” (p.193) in which constitution-making was determined by the desire to preserve post-communist power configurations. The latter led to the creation of an “exceedingly cumbersome legislative process” through emergency ordinances allowing “prerogative law-making by the executive” (Iancu, 2009, p. 194). As will be discussed later, an excessively high recurrence of Emergency Ordinances as well as an ombudsman’s office unable to guarantee control and oversight over incompetent policy making are still path-dependent characteristics of a faltering system.

Similarly, Romania's complex legal framework that discourages new parties from entering the political scene can be traced back to the clever manipulation techniques introduced by the National Salvation Front. In order for the NSF to secure its advantage and win the elections in 1990, it introduced two important legislative manoeuvres when designing the Party Campaign Financing legislation (PCF). First, given that the NSF controlled the financial resources of the former Communist Party, it significantly decreased state subsidy for other contending parties. To counter its rival's capacity (e.g. Ion Ratiu's National Peasant's Party), the NSF majority passed legislation prohibiting donations from foreign sources. Moreover, as will be discussed in the last part of the chapter, the NSF-controlled media failed to provide equal access to parties, favouring the former's exposure in the media.

As Kopecky (2008) suggests, the provided state subsidy served the sole purpose to encourage the proliferation of political parties, as the 1990 party registration law established an extremely low membership requirement (251 members). The latter led to the creation of more than 70 parties "as a form of electoral clientelism in order to overwhelm the public with choices" (Kopecky, 2008, p. 8) a public that had undeniably no choice for decades under Ceausescu's totalitarian regime. It does not come as a surprise that the NSF gathered over 68% of the vote-share, with its leader Iliescu receiving 85% of the votes. However, once the NSF consolidated its power, the rules of the game changed in favour of the power holders. Thus the electoral threshold was raised to 3% by 1992, and the number of required members to establish a party increased exponentially from 251 to 10,000 (Kopecky, 2008). Today, as previously discussed, a new party must have at least 25,000 founding members, resulting in the domination of the same corrupt political parties. Electoral laws serve as mechanisms to disincentivise the creation of new political parties and mount a challenge against the current parties. From a path-dependent

perspective, the Party Campaign Financing legislation locked in a sub-par solution generating a sub-par outcome that has created a comparative disadvantage for the small parties.

Initially, adaptive expectations based on the low membership requirement increased the number of parties. Yet, as their power position consolidated, the major parties raised the threshold, thus creating a self-reinforcing process that would guarantee the exclusion of competing political parties and actors.

Among the established political parties, the largest and best structured is the ruling Social-Democratic (PSD) party that inherited many NSF (former communist) members. Left of center are the Democratic Liberals, who used to enjoy a high level of popularity during former President Băsescu's leadership. The National-Liberals (PNL) appeal to the center-right of Romania's political spectrum. However, constant frictions within parties' internal decision-making processes reveal low levels of institutionalization, high levels of political incoherence and the predominance of clientelistic interests. For instance, the Social Liberal Union (USL), a coalition between the Social Democrats (PSD) and the National Liberal Party (PNL), cobbled together identities from all ends of the political spectrum. The PNL, representing the political right, merged with the left-wing PSD in order to fight President Băsescu. Yet, the stability of this coalition turned out to be fragile given the failed impeachment referendum and the National Liberals' cozy alliance with the President a few years prior. These divergences aggravated in 2013 when Mr. Ponta defended his decision to nominate Mrs. Kovesi as the Head of the National Anti-Corruption Directorate without consulting his party's ally, liberal party leader Mr. Crin Antonescu.

Overall, parties fail to be inclusive and open in their internal decision-making processes as they continue to be dominated by opportunistic short and long-run calculations. Consequently,

the dissolution of the Social-Liberal Union (USL) on the eve of the 2014 European Elections was not just a coincidence. Eager to magnify their number in the polls, the Liberals accused the Socialists of welching on their original deals. Apparently, the straw that broke the camel's back was the replacement of deputy Prime Liberal Minister Daniel Chitoiu, who had been accused of corruption. The replacement candidate Klaus Johannis, a new and charismatic ethnic German mayor of Sibiu, was perceived by Ponta and his party as a rival and, therefore, his nomination rejected. What followed the breakup were Mr. Antonescu's negotiations with center-right parties to gather support for his Presidential campaign and his pleading the Liberal Free Alliance group of the EP to join the European People's Party. Opinion polls and European elections alike showed a rift between a public on the center left that blamed the Liberals for the breakdown of the coalition and a public on the center right that would not forgive the Liberals for a coalition with the Socialists. At the end of the day, the defeat of Antonescu as party leader paved the way for a fusion of the center right parties into one.

The situation is far worse for the Democratic Liberals, whose decline started with their abysmal vote share during the December 9th, 2012 Parliamentary elections and President Băsescu's declaration shortly thereafter to migrate to the Popular Movement. Romania's political system is characterized by chronic political migration acting as a disequilibrium trigger. According to recent statistics, during the past four years, 20% of Romanian MPs (approximately 52 deputies and 28 senators) have changed political party affiliations. Throughout 2008 to 2012, MPs migrated in two political waves, mostly motivated by their party's electoral support or intra-party squabbling. Thus, as support fluctuated, in the first wave of spring 2010, MPs abandoned the Social Democrats and National Liberals to join the Democratic Liberal Party. Conversely, the Democratic Liberals' vanishing popularity in March 2012 reversed the trend. Political migration

is a perverse novelty associated with the electoral reform of 2008. It is a far cry from its underlying rationale of introducing constituency seats in order to enhance the elected MPs' accountability. On the contrary, many Members of Parliament justify their floor-crossing in terms of a direct relationship with the electorate rather than through the party. In this way, personal interests displace group loyalty. Given the relatively fragile post-communist state structures, state institutions become a source of rent-seeking. Consequently, public offices are "staffed by people who live from politics rather than for politics" (Kopecky, 2008, p. 3) and access to resources is conditioned by the political position one holds. Moreover, legislative decisions such as Emergency Ordinances serve to lock in power arrangements that will promote a distribution of public goods on a non-universalistic basis.

The Government's decision to adopt Emergency Ordinance nr. 55/2014, which introduced measures regulating the functioning of the local public administration, ignited a heated debate about local governance (Parliament of Romania, 2014). The ordinance exempted local officials from the provisions of Law nr. 393/2004 on the Status of Locally Elected Officials, which states that local or county councilors and mayors will lose their mandate if they migrate to another party.³¹ The highly controversial OUG 55/2014 gave mayors and county and local council members a firm 45-day deadline to change their political affiliation. The initiation of this act prompted a strong outcry from both the opposition parties, and civil society petitioning the government against its adoption on grounds of public interest.

Moreover, the conflict which erupted between the National Integrity Agency (ANI) and local county council presidents and mayors continued throughout 2014 (Stiri, 2014). The Ponta government had promised that by changing the law through the Parliament, all incompatibility

³¹ The restrictions on political migration in local public administration are present in Article 9, para. 2 (h) and Article 15, para. 2 (g) of Law 393/2004.

charges brought against local officials by ANI would be dropped. Going in this direction, on October 1st, the Senate approved a draft law, which would remove all provisions that forbade locally elected officials from holding senior positions in commercial entities subordinated to them in their capacity as public officials (Dadacus, 2014).

ANI criticized the Parliament's intent of exempting local officials from the incompatibility restrictions and reproached the Government and Parliament over the fact that it had been not consulted on the content and repercussions of the draft law. Moreover, it warned that the law's adoption would affect ongoing trials leading to their termination. The major stake is control over local public utility companies, which administer multi-million euro budgets and EU funds. Implementation autonomy in the sub-national units is often curtailed by fiscal measures enforced from the central level. Discretionary financial transfers and investment projects to municipalities and counties following partisan lines have persisted since the fall of communism. However, the prevalence of partisan lines does not guarantee stability. The breakup of the Social Liberal Union (USL) and the creation of a new majority heavily impacted administration and politics at the local level. Over 83% of county and local councils were either unable to meet the necessary quorum or rejected all PSD-backed projects. The latter contributed heavily to forestalling public investment projects, many of which were EU-funded.

Most often, sub-national politics reflect the dynamics occurring in the national central institutions, while the national power-holders make the most of their might to influence to their advantage politics at the local level and nurture clientelistic ties. For instance, PM Ponta claimed that Emergency Ordinance nr. 55/2014 (allowing local mayors and county and local council members to swap their political affiliation) was necessary to resolve the policy-making impasse in the local government caused by the majority shift in the Parliament. Vice Prime Minister Liviu

Dragnea called for a legal remedy to a situation in which a significant number of local officials were de facto working for other parties. Several NGOs instead suggested the most commonsensical democratic solution: the organization of early elections in the problematic areas. A United States Embassy statement showed concern about the pre-electoral timing and the issuing of non-transparent emergency ordinances. As previously discussed in chapter one, Romanian mayors and commune commissioners reaped enormous benefits throughout a restitution process that, in the wake of the communist state's retreat, left an institutional vacuum as well as a weak central government unable to exercise control over lower levels of government. To this day, corruption at the local levels of government reinforces the centers' powers while nourishing deeply entrenched clientelistic ties.

5.4 Corruption at the Local Levels of Government

According to Roper (2006), the use of patronage in Romania extends throughout the various levels of government. Similar to the French model, the Romanian government appoints a representative for each of the 41 counties. The latter individual, referred to as the prefect, has become a key political player in extending the central government's influence to the local levels. The comparative advantage of the prefect vis-a-vis the locally elected mayor is guaranteed through the supply of substantial budgetary resources, as well as the prefect's significant powers to dismiss mayors. The law of Local Public Administration, passed in 1991, was used by centrally appointed prefects to dismiss mayors from the opposition, guaranteeing "a mechanism [for the post-communist central government] to extend party patronage to cities and rural communes" (Kopecky, 2008, p. 8). In contrast, while opposition mayors were dismissed, mayors

from the ruling party were backed up by the prefect. As a response, opposition mayors who were marginalized decided to switch party affiliation to gain access to resources distributed through particularistic ties. Consequently, in 2000, while the Social Democrats won approximately 30% of the local elections, four years later in 2004 the post-communists were able to control via mayors' party switching 70% of local government administration (Freedom House, 2005).

Thus, as discussed in the first chapter, it is crucial to identify political systems that are based on particularistic resource distribution, characterized by a concentration of power in the hands of a small elite, a hazy boundary between the public and the private and the enshrinement of corrupt practices as informal norms. According to Mungiu-Pippidi (2006), the latter stands for “a mode of social organization characterized by the regular distribution of public goods on a non-universalistic basis that mirrors the vicious distribution of power within such societies” (p. 87). This stands in stark contrast to societies where the state grants fair and equal treatment as well as access to all its citizens. Such an “equal” prevailing norm creates very different incentives as well as dissimilar corruptive behavioural patterns than in societies where access to public goods and services become a function of personalized connections.

Several attempts throughout the years to limit the authority and powers of prefects, such as the 2003 Constitutional revision to amend mayor's subordination to the former or the 2005 Local Administration legislation that forbade prefects to hold party membership, seem only half-hearted approaches to undermine party influence. Substantial financial resources through government contracts and prefect's local media influence reinforces their comparative advantage. Thus, the Local Public Administration law created power relations that further strengthened the prefect's key position and the political centers' influence. As the process furthered, these local actors became more powerful and wealthy by holding on to their original

position and locking-in the given path. To this day, the lack of transparency leaves ample room for local and regional contracting authorities to employ favouritism in public resource allocation. A study by the Romanian Academic Society (SAR) found extremely high gross profit rates for domestic contracting companies in contrast to multinationals, reflecting a high likelihood of preferential treatment with the former (Romanian Academic Society, 2010). Similarly, a study by the Institute for Public Policy (IPP) revealed that 90% of Romanians consider the public procurement process to be riddled with corruption (Moraru, Iorga, & Ercus, 2012).

According to Law 544/2001, contracting authorities must disclose public procurement contracts to the interested public. Nonetheless, public officials continue to behave arbitrarily, ignoring legislation and withholding information about public resource allocation. Not surprisingly, cases involving corruption public procurement see particularly slow progress in court (European Commission, 2012a). The Romanian Parliament persisted relentlessly in 2014 in legislating loopholes that facilitate corruptive practices. The amendments made to Law 215/2001 which brought changes to Art. 65 and Art. 104 [7] allow mayors and county council presidents to delegate official responsibilities, such as the signing of contracts, to their subordinates. The latter is a clear attempt to circumvent the ban on the participation of elected officials' related companies in public procurement contracts. Moreover, the legislation hampers the capacity of the National Integrity Agency and DNA to investigate mayors and county council presidents on conflicts of interest or eventual abuse of office, as the responsibility will fall on the shoulders of their subordinates.

Throughout the years, the reform of Romania's state-owned enterprises (SOEs) has been considered the most critical effort aiming at an improved public sector governance. Deficiencies in the management of SOEs are quite severe, allowing widespread discretionary allocations on

the balance sheets. A technique of misappropriating funds include public procurement contracts overstatements, where state-owned enterprises conclude non-competitive purchase contracts at above-market prices with favored partners. Another is the sale below market prices to favorable partners. Such practices give rise to opinions that favor privatization, on the assumption that such discretionary allocations would decrease significantly if profitability would be the main driving force and if shareholders would keep a tight grip on the management. According to Simina (2014), many public contracts continue to be awarded to party donors through uncompetitive procedures that lead to single bidding. More importantly, the public procurement sector is the main route through which public officials redistribute funds to their political clientele. Therefore, a non-transparent public procurement process also guarantees the continuation of sub-par lock-in effects while reinforcing long established power arrangements.

Moreover, unlawful discretion in the allocation of public budgets across local levels of government is a widespread phenomenon. For instance, political parties have beefed up Romania's Disaster Relief Emergency Fund (DREF) to channel resources to partisan mayors or electoral campaigns. In the spring of 2012, Prime Minister Ponta promised to end the tradition of clientelistic distribution. However, only a few months later, the PDL representative denounced "discretionary payments" for 69 partisan communes. Other sources of discretionary allocations include funds for roads (county and rural), schools, rural water systems (HG 577/1997) and bridges (OG 7/2006). Romania's Environmental Fund (EF), designated to sustain and develop environmental protection projects, remains an opaque source of financing. In December 2012, the DNA received an alert about improprieties committed between January 1st, 2009 and July 2012 within the Environment Fund Administration. Lack of accountability, competition and transparency diverted these resources and turned them into attractive rents. Merely 25% of

Romanian localities are able to cover their wage expenses from revenues alone, creating a serious dependence on discretionary allocations. Moreover, wage expenses exceed revenues by twofold in 25% of localities, a phenomenon reinforcing path inefficiencies (Expert Forum, 2013).

Consequently, such ill design that leaves two-thirds of localities in (or near) bankruptcy is the main reason why the former are dependent on discretionary allocations. Surprisingly, independent mayors enjoy the highest shares of discretionary resource allocation. Assuming that the governing party's partisan mayors would be the most successful in attracting clientelistic allocations, this result is puzzling at first. However, the explanation is quite straightforward: in 2006, the government adopted Law 249/2006 to limit political migration among mayors and representatives elected at local levels. Prior to this introduction, up to 50% of locally elected officials were political migrants, shifting parties for government funds that were distributed strictly following party lines. Since its coming into force, mayors have circumvented Law 249/2006 by masking their political affiliation as "independents" and attracting the highest share of funds (Parliament of Romania, 2006b).

Moreover, while Romania's anti-corruption institutions are proving to be successful in penalizing corrupt officials at the highest level of government, in local fora such as town councils and city halls, corruption trials have strengthened political careers rather than ending them. In remote areas, the relationship to local officials is characterized by euphoric support for corrupt mayors who willingly re-distribute the proceeds of their illegal deals. For instance, Mayor Nicola Matei's popularity peaked soon after serving a jail sentence on bribery charges (Odobescu, 2013). This further buttresses the second chapter's argument, that relationships that

characterised the communist regime did not simply peter out. In rural areas we still find similar patterns of corruption which also characterised communist times.

5.5 Preventing Corruption: the Role of the Ombudsman and NGO Sector

Other accountability mechanisms to prevent corruption and guarantee control and oversight, such as the ombudsman's office or the role of the NGO sector, are crucial in any democracy. While the ombudsman does not have direct competencies when it comes to the fight against corruption, he or she has the ability to bring corruption-related offences to the attention of the public. In Romania, the institution was not established until 1997 "due to lack of political interest to pass the necessary implementing legislation, and was shrouded in quasi-obscurity thereafter" (Iancu, 2009, p. 194). The Romanian Ombudsman's competences, such as the capacity to challenge a non-promulgated law at the Constitutional Court (CCR) and refer laws and ordinances to the CCR on grounds of unconstitutionality, are necessary for the integrity of the democratic process in a country known to make frequent use of Emergency Ordinances. In 2012, the Social Liberal Union (USL) removed the Democratic Liberal Ombudsman Mr. Gheorghe Iancu, and the Ombudsman's position remained vacant until the hasty appointment of Mr. Anastasiu Crisu in January of 2013.

The European Commission drew attention to Mr. Crisu's potential partisan affiliations when the latter received Social Liberal Union's full support. Not surprisingly, Mr. Crisu proved to be extremely inept at controlling the powers of the executive and safeguarding the system's checks and balances. Throughout 2013, an excessively high recurrence of Emergency Ordinances (GEO) dominated government's policy making. The number of Emergency

Ordinances rose from 95 in 2012 to 114 in 2013 (Parliament of Romania, 2013a). Out of all the issued OUGs, the Ombudsman challenged only one of them at the CCR, the emergency ordinance on insolvency. Given this discouraging track record, and the elevated number of GEOs (currently 68 for 2014), the approach of the Ombudsman elected in 2014 was decisive. However, in spite of petitions from both opposition parties and civil society, Ombudsman Victor Ciorbea failed to bring before the Court the highly controversial GEO 55/2014, which imposed on mayors and county and local council members a firm 45-day deadline to change their political affiliation. This act invited criticism against Ciorbea who was seen by opposition and civil society as merely a Government servant (HotNews, 2014b).³² The Ombudsman has taken to the Court only the election GEO, while on the other three, with reasons or no reasons, has declined authority. These path inefficiencies are reinforced by a phenomenon of non-transparency related to the sporadic monitoring of the governance structures.

Romania's institutional arrangements of governing are monitored only sporadically. It goes without saying that there is a strong positive correlation between such lack of good governance practices, macroeconomic outcomes and corruption. The WEF and WB indicators consistently relegate Romania to the world's lowest ranks in terms of particularism and favoritism in resource distribution (World Bank, 2015a).³³ Very few ministries or public institutions had published their activity reports, despite the fact that delays or failure to guarantee decisional transparency violate existing laws and regulations. In terms of enforcement of the

³² Aside from GEO no. 55/2014, three other laws were especially problematic to the extent that the Romanian Civil Society has invited the Ombudsman to bring them before the Constitutional Court. The draft law amending GEO no. 111/2011 on electronic communications, compelled Wi-Fi networks providers and pre-paid telephone cards salesmen to gather personal data from their customers. GEO No. 49/2014 radically reforms the current Education Law. GEO No. 45/2014 overhauls the electoral process in anticipation of the presidential elections.

³³ The Control of Corruption (CC) scores range from negative 2.5 to positive 2.5, the latter score reflecting strong-governance performance, while the former indicating the reverse. Within this interval Romania's scores remain in the negative interval, reflecting a high level of "state capture."

legislation on decisional transparency, a 2014 SAR report showed that half of the central authorities had failed to publish the “transparency reports” or posted incomplete ones (Romanian Academic Society, 2014a). In addition, there was very little litigation against Ministries for failing to comply with Law 52/2003. Such practices not only disregard the law-entrenched citizen’s right to information about the allocation of public funds, but also contribute to a deteriorating policymaking process by creating a vacuum of indicators and data. Evidence-based policy making requires indicators on good or bad governance practices. Indicators on fiscal transparency, administrative capacity, government favoritism and state capture are necessary to register developments and assess the risk of corruption in the above mentioned areas. The absence of these quantitative indicators makes it extremely difficult to tackle those deficiencies that stimulate corrupt practices. It is intolerable, for instance, that Ministries, prefects and municipalities use their discretion to postpone the publication of their activity reports, in violation to the existing laws and regulations.

Moreover, NGOs’ involvement in the formulation of relevant government policies remains largely absent. A high recurrence of emergency ordinances as well as a consultation process kept at a minimum informs government policy making. In 2012, NGO and civil society organizations articulated their disappointment at the Romanian Senate’s lack of transparency regarding the appointment of Mrs. Daniela Ciochina at the Superior Council Magistracy as a civil society representative (Ghergut, 2012). Eighteen NGOs and think-tanks have spent approximately two months designing a competitive and transparent procedure to create a set of fit candidates. Yet, the Senate widely ignored these efforts. Similarly, amendments to the anti-discrimination law in April 2013 disregarded NGOs’ request for a public hearing prior to the amending process. Law 52/2003 on transparency in decision-making in public administration

stipulates that a request for a public hearing filed in due term bind authorities to invite all parties for consultation. In other instances, the government's policy formulation by other stakeholders is a mere formality. For example, in January 2013, the draft law recommending changes to the Statute of MPs was forwarded to the National Integrity Agency (ANI), Prosecutor's Office, and the President and Government for an opinion. However, the Parliament passed the law before these institutions could offer any input (Stiriong, 2012).

Despite these challenges, NGOs and think-tanks are quite effective in denouncing government inefficiencies and in formulating policy alternatives. There is a surge of civil society-initiated internet platforms which enable citizens to report their day-to-day experiences with petty or high level corruption. For instance, the Alliance for Clean Romania fosters an interactive dialogue between the general public and anti-corruption institutions. Nonetheless, at some point, the civil society showed signs of fatigue towards a government's policy dialogue that denoted a lack of genuine interest. Research conducted recently confirmed the 2013 figures on the sustainability of the non-profit sector. 79% of Romanian NGOs considered funding essential to their survival. In early August 2013, the Social-Democratic Deputy Mr. Mihai-Bogdan Diaconu proposed legislation to amend article 11 of Law 334/2006 on the financing of political parties, electoral campaigns and NGOs (HotNews, 2013a). The provision on the elimination of any type of international financing has attracted considerable criticism among the poorly-resourced NGO sector. Such cuts in financing abilities would have proven detrimental to their effective functioning.

In September of 2014, the Minister for Social Dialogue invited a handful of prestigious NGOs to form a permanent advisory group that would assist the PM and relevant ministries in the discussion and management of several social topics. The initiative under the name "Coalition

for the Development of Romania” was conceived as the civic counterpart of the existing business coalition and asserted itself as an institutional channel for collaboration between Government and civil society. While most civil society representatives expressed a clear demand to increase decisional transparency, they did not necessarily agree on the terms suggested by the government officials. Thus, actual consultation remained limited throughout 2013 and 2014, with emergency ordinances used on a regular basis.

5.6 The Media’s Role in Undermining the Fight against Corruption

The role of the media is critical in promoting good governance and controlling corruption. Numerous studies show that an important component of a country’s anti-corruption agenda encompasses an effective media that is capable of raising public awareness, in addition to investigating corruptive acts in an un-biased and un-politicized fashion (World Bank, 2012). The distinguishing characteristics of an effective media in contrast to one that is captured by political or private interests are conditional on the existence of a professional and ethical group of investigate journalists, freedom of expression and access to public information. According to Arnold and Lal (2012), the media can play a vital role in unveiling corruptive acts and proposing solutions if it is empowered to become an agenda setter, gatekeeper and, most importantly, a watchdog endorsed to frame public discourse.

Dahlstrom (2015) stresses the importance of freedom of expression, as well as how technological constraints impairing the circulation of information conditions anti-corruption policy’s success or failure. His findings reveal that freedom of information has a positive impact on corruption if informational infrastructure is in place allowing the media to disseminate

information on corruptive practices. Similarly, Brunetti and Weder (2003) find that press freedom has a significant effect on levels of corruption.

While the pivotal role of investigative journalism and a free media's importance in the fight against corruption is empirically confirmed, instances of "cash for news coverage", that is, the existence of a captive and corrupt media cannot be disregarded. Jakubowicz (2005) sheds light on the disenchantment of post-communist countries, who shared visions and expectations of a media scene where everyone would "speak with their own voice" (p.1) after decades of being silenced by the totalitarian regime. Unfortunately, expectations of a socially controlled media that would inspire pluralistic public debate were shattered. Instead, Sparks (1998) maintains that "certain features of the structures of society are more clearly illuminated through media transformation," (p.16) or the lack thereof.

Accordingly, media reform can be conceptualized as an indicator of political change if "the shift from communism to the new order in the region is really one of a shift between fundamentally different systems, then one would expect that to be registered particularly clearly in the mass media" (Sparks, 1998, p. 17). However, as Jakubowicz (2005) concludes, unfortunately post-communist countries in Central and Eastern Europe failed to achieve a radical democratization of their media-system in which media ownership, management and content are independent and socially representative instead of politicized and captured by private interests. According to Roper (2006) one sector especially vulnerable to the use of patronage displaying erosive effects on state autonomy is the mass media. Such media patronage in the form of politically motivated appointments to institutions overseeing broadcast media, as well as state-run outlets, are disastrous as they undermine oversight of public service broadcasting organizations and pluralism of content. Some CEE countries such as Hungary, Latvia, Lithuania,

Slovenia and Croatia have integrated their civil society to a greater extent in these oversight roles, while other countries such as Romania are characterized by a complete “Berlusconization” of their television media as the majority of stations are owned by politicians investigated for corruption (Jakubowicz, 2005).

While an independent media can play an important role in the fight against corruption, in Romania media bias in favor of power holders and media-generated pressure against the independence of the judiciary remain intractable phenomena, as emphasized by the European Commission (2013). The latter shed light on the pervasiveness of the Romanian media’s politically motivated attacks targeting judges and prosecutors with the aim of undermining or discrediting ongoing anti-corruption investigations and trials. The attacks are more pronounced when corruption cases involve important political figures who either own the given media outlets or have important ties to the latter. Such attacks range from media outlets accusing judges or prosecutors (and their families) of corruption, manipulation or embezzlement, to fabricating stories that serve to challenge magistrates’ credibility as well as their public reputation.

From a path– dependent perspective, the Romanian media has become a negative externality that, rather than challenging a corruption-ridden status quo, further reinforce the given path. Likewise, in the 2014 Anti-Corruption Report, the Commission lamented the significant deterioration of objective reporting, in addition to the rise of journalism that is “often overruled by the vested interests and political affiliations of the media outlets’ owners” (European Commission, 2014b, p.5) and driven to intimidate those who are committed to the fight against corruption. Several legal ordeals that journalists and media owners faced in 2014 have further shaken trust in media honesty. Romania’s media outlets are still in the grip of a few highly controversial public figures facing corruption charges. Mr. Voiculescu, the founder of the

Intact media group, resigned in 2012 from the Romanian Senate in order to draw out his court proceedings. Nonetheless, Voiculescu, who received a ten-year prison sentence in 2014 for money laundering and fraud, is only the tip of the iceberg (National Anticorruption Directorate, 2014h). Dinu Patriciu, owner of the Adevărul media, as well as Sorin Ovidiu Vantu, owner of the Realitatea-Cașavencu media group, are currently serving jail sentences for blackmail. Moreover, undercover secret service agents who infiltrated the press and journalists on the payroll of the intelligence services to distort information have been hard to swallow by an already sceptic citizenry. Robert Turcescu was the first to acknowledge himself as an agent live on the television network he was working for (Business Review, 2014).

Romania's biased media and the pressure they exert on actors committed to the fight against corruption have been undeniable problems in the country. The disputed issue, however, is the cause of such vulnerability to political pressure. The European Commission cites the lack of regulation, specifically poor implementation of legislation regulating access to information as well as limits to media freedom, compounded by Romania's lowest internet penetration rates within the European Union. For instance, Law 544/2001, also referred to as the Freedom of Information Act (FOIA), ensures citizens' access to public information. The remit of the law extends to create obligations for all central and local state institutions as well as those public companies where the state is the majority shareholder. Not only do ministries, central agencies, and local governments have to comply with Law 544, but so do public universities, hospitals, and many off-budget central and local public companies. The underlying assumption in FOIA is that any institutions making use of public funds or exerting public regulatory power must be accountable to the citizens. However, this process has yet to take root in the Romanian institutional culture. Indeed, gray areas of applicability invite public and legal disputes by the

civil society in order to set precedents and invigorate the already codified procedures. Institutions are responsible for reviewing their existing information and compiling a list of sensitive and problematic documents that should be immune to publicity (World Bank, 2012). Personal data, national defense and public order classified information, public authorities' deliberations and documents of national economic and political interest have been exempted from free access.

Hence, privacy and secrecy considerations trump the transparency principle. In this context, the judiciary oversees the information classification procedures and evaluates their validity. NGO advocacy programs testing Law 544 were instrumental in bringing successfully strategic litigation to court and, through this venue, even non-transparent institutions have been eventually compelled to open up to the public. Like the judiciary in the post-communist transition, the media as a negative externality reinforcing path inefficiencies can be traced to early path-dependent processes originating in communist and post-communist structures.

The EU fails to understand the intricacies behind Romania's captured media as well as the serious repercussions of increased regulation. The latter ignores the enforcement problem as well as its risk in terms of increasing government control. Given that the media can be considered a valuable tool of manipulation to serves the interest of the political elite, a surge in state regulations will exacerbate the problem. Bare sets of regulations miss the mark, as it is pivotal to have a path-dependent understanding that encompasses the country's communist heritage to understand how the press has developed and how it reached its current status.

Unfortunately, the Commission's recurrent recommendations encouraging the country to increase regulation not only miss the mark, but further aggravate the problem. Thus, the aim of the last part of this chapter is to provide an analysis demonstrating that while regulations existed, they could not be correctly enforced, shedding light on a serious implementation gap. The

subsequent section will also demonstrate that as the economic model of press corporations failed and revenues decreased, politically affiliated individuals (“media moguls”) started to control these corporations. In addition to media mogul influence, the government’s own licensing and regulatory bodies, such as the National Broadcasting Council (CNA), were politically staffed to maintain control over the press industry (Ghinea & Mungiu-Pippidi, 2010).

The relationship between the government and the press is really a war between two political entities: one currently in government and controlling the regulation, and another that is maintaining ownership of the media. Thus, recommendations such as increasing or reviewing regulations, as recently indicated by the European Commission in its CVM reports, fail to take into account the intricacies and ownership patterns that developed and allow for significant judicial pressures. Under current conditions, the media is incapable of fulfilling its watchdog, agenda setting and gatekeeping roles that would permit the former to play an important part in monitoring governance, informing the public, framing discussions as well as fighting corruption through proliferating investigative journalism. The chronic politicization of Romania’s media through its owners’ tendency to serve partisan interests calls for immediate attention and remedies. Relationships between the state, journalists and the media owners should be redefined. Stringently enforced regulations must put an end to cross-ownership and media concentration. Finally, an increasing flow of economic resources could improve both the quality and outlook of the industry.

5.6.1 The Communist Heritage

Romania's transition from communism to democracy saw the transformation of its formerly state-owned media to a private industry (Ghinea & Mungiu-Pippidi, 2010). Unfortunately, the criminal code inherited from the Communist regime contained numerous provisions that served to undermine freedom of speech, particularly investigative journalism. Ten years after the fall of communism, this legislation has led to a total of 300 to 400 cases being registered against journalists who have attempted to uncover corruption cases (Freedom House, 2003). It took twelve years for an Emergency Ordinance issued in 2002 to abolish the ill-famed two-year maximum prison sentence for insult while reducing the prison sentence for libel from three to two years. Thus, a badly-written criminal code established a significant lock-in effect narrowing the path in which the media could emerge as a change agent.

Similarly, civil servants' insult or defamation carried a seven year prison sentence in addition to post-communist vague provisions such as "offense against authority" that could lead to a five year imprisonment. The Emergency Ordinance reduced the former to just four years while eliminating the latter altogether. Provisions on libel and insult remained intact with a prison sentence attached to them, thus, reinforcing the status quo of a highly self-censored and intimidated media reminiscent of the communist era. In May 2013, Representatives on Freedom of the Media from the Organization for Security and Co-operation in Europe (OSCE) expressed their concern over a Constitutional Court decision that prevented the decriminalization of speech offenses in Romania. Accordingly, the inclusion of insult and libel in the Penal Code undermined freedom of speech (Organization for Security and Co-operation in Europe, 2013).

In 2003, the Independent Center for Journalism carried out an analysis in which approximately 60% of Romanian journalists admitted to lawsuit threats from political actors and how such intimidating efforts put an immediate halt to their investigative work. Lawsuits against journalists as well as media outlets aim to undermine the media's watchdog potential and any form of investigative journalism. For instance, by 2002 over 130 lawsuits were pending against journalists of the Romanian newspaper Ziarul as retribution for critical articles targeting local government officials. Moreover, lawsuits are accompanied by well-crafted strategies of intimidation and bullying to encourage self-censorship like the ones characterizing the pre-1989 totalitarian regime (Freedom House, 2004). Such self-censorship is further reinforced by a lack of protection from journalists' superiors or use of direct force against journalists. In March 2003, hundreds of journalists marched on the streets of Timisoara accusing Social Democratic local officials of orchestrating violent attacks against journalists investigating the former's corrupt deals (Freedom House, 2004).

Other destabilizing techniques (in instances when intimidation and violence manoeuvres fail) include efforts to block the distribution of newspapers containing compromising information. In 2004, when newspaper outlets such as Romania Libera and Evenimentul Zilei published transcripts revealing corrupt deals between PSD party members, many issues either disappeared from the market or reached readers with missing pages (Freedom House, 2005). Domestic and foreign media watchdogs, such as Reporters Without Borders, have often reported on episodes of violence exerted by politicians against journalists. The latter does not exclude former President Băsescu, who often showcased a very hostile attitude towards the media, publicly attacking journalists while employing a harsh derogatory language or describing the media as a "security threat" in 2010 (International Press Institute, 2010). Since the country's

2012 political turmoil, Romanian politicians' hostility against the media has increased significantly. Such hostility has ranged from domestic politicians criticizing Romanian journalists working for the international media to accusing them of being the president's "anti-Romanian agents" paid to delude the international audience (The Economist, 2012f). Moreover, the center-left Social Liberal Union (USL) filed a penal complaint, based on the article that sanctions spreading false information threatening national security. While the latter allows for a wide interpretation, such violations can be punishable by up to a five-year prison sentence. Consequently, such provisions in the Romanian Penal Code are still seriously limiting to freedom of speech.

In 2012, the political antagonism between pro- and anti-presidential forces migrated, in extreme forms, into the realm of the media. Moreover, members of the political class could hardly conceal their hostility towards Romanian journalists. Partisan conflicts (especially between pro- and anti-presidential forces) are still reflected, in all their fierceness, in the mass media realm. While the 2011 Civil Code, the Broadcast Law and the Laws on the Organization and Functioning of the Public Media Services have advanced the cause of media freedom, the Parliament has not relented in its efforts to control the media outlets. For instance, the parliamentary majority in 2012 chose to disregard Law 41/1994, which used the principle of a party vote weight in the parliament to allocate the seats in the public broadcasting corporation board. Through a legislative ploy, the Social Democrats and Liberals robbed the Liberal Democrats of the right to nominate their candidates for the board, a right which had to be reinstated by the Constitutional Court. Changes in parliamentary majority are usually associated with the wholesale removal of the public media's management staff, as a distrustful citizenry stand indifferent (The Economist, 2012f).

While the EU adopted a relatively passive stance on Romania's dismal state of investigative journalism and the practically non-existent free press, in 2004 the member of the European Parliament Emma Nicholson unleashed a heavy critique against the state of affairs and urged the country to amend its criminal code in order to decriminalize insult and slander. Following the country's EU membership, in 2006 amendments to the criminal code decriminalized libel leading to halt numerous criminal lawsuits against journalists. However, by the end of the year the Constitutional Court reversed these amendments and sided with critics who argued that the re-criminalization of libel is necessary in order to protect the political elite's reputation. It took the parliament two more years to revisit the matter and only in 2010, twenty years after the fall of communism, was Romania able to overrule harmful communist legislation (Law. Nr. 3/1974) and decriminalize defamation.

Despite such positive developments, attempts in 2008 by two MPs to amend broadcasting legislation in order to coerce news coverage to include a minimum of 50% of "positive updates" or more direct attempts to limit press freedom, such as Social-Democrat Serban Nicolae's 2015 attempt to introduce a bill that would imprison journalists who disclose information related to corruption cases, demonstrate that the political elite continues to employ purposive legislative maneuvers to curb investigative journalism. Serban Nicolae's proposal of a three-year incarceration penalty for those who make public information about ongoing criminal investigation constitutes a serious threat to media freedom and the right to information, in general, and, investigative journalism, in particular. It is exactly the primacy of the right to information that the civil society is vindicating in its opposition to Nicolae's proposal, which, in spite of the societal outcry, reached the agenda of the Chamber of Deputies (Butu, 2014).

In addition to anti-journalistic legislative practices, the role of the Romanian Secret Service and the undeniable clout held by former officials of the communist regime were returned to the forefront during the latest presidential campaign. The latter, punctuated by scandal rather than substance, opened the door for new revelations, in the form of secret spy stories such as allegations made by President Băsescu disclosing that PM Ponta is a former undercover agent working for the Romanian Foreign Intelligence Services (SIE). Moreover, the president also accused a latecomer in the Presidential race, SIE director Teodor Melescanu, of using cover-up techniques to conceal the real number of former secret agents in the Romanian government. Romanian journalist Robert Turcescu's admission of being an undercover agent for Romanian military intelligence sparked serious controversy and revitalised the dialogue over the stigma of security work.

Similarly, in 2006 the official spokesperson for the Romanian Intelligence Service (SRI) admitted to a journalist that the SRI backed up and provided cover for several secret service agents who worked as journalists (Freedom House, 2005). The latter is still strongly associated with Romania's communist past, which has still in place an obscure network of secret agents whose connections and access to information put them at a comparative advantage and allowed them to play a central role in the post-Communist order. All of these issues raised new questions about the role of the Romanian Parliament in revisiting legislation when it comes to the extensive number of secret agents and their role in the media. Moreover, evidence released in 2005 by the Romanian newspaper *Evenimentul Zilei* shed light on some public television correspondents' and TV broadcasters' strong Securitate ties.

The creation of the "Coalition for a Clean Press" (CPC) by civil society organizations such the Romanian Academic Society, together with Active Watch and the Center for

Independent Journalism, was a response to a negative perception in the Romanian society about the quality of media work. The transparency of media corporations' funding sources was a key motivation underpinning the initiative, and the CPC called on all of them to post the names of their shareholders and advertisers. Only five percent of the appealed showed a willingness to report. A comprehensive study reveals the roots of public distrust in the media (Romanian Academic Society, 2014b).

Non-transparent financing and shareholding, state-sponsored advertisements tendering in favour of pro-government media, inactive regulatory bodies, government-initiated criminal investigations against journalists and their employers and politicians who are concurrently media owners are all factors fostering a sense of disenchantment in the citizens. Moreover, allegations of secret service agents turned journalists or journalists turned informers have contributed to shattering public trust in the integrity of the means of mass communication.

According to Sajó (2003), the media in post-communist countries are dominated by “politics of permanent scandal” (p. 175). The latter is punctuated by unending controversy while lacking substantial reform in which scandals morph into arenas of political struggle causing the public to adopt an untrusting and detached outlook (Romanian Academic Society, 2014). Thus, as Coronel (2010) suggests, once the media swaps its watchdog role and turn into a “scandal monger” (p. 2), the latter's agenda moves away from informing and mobilizing to amusing and titillating the public. In Romania, partisan media coverage of government's decisions and action is rudimentary and biased. The majority of media outlets focus exclusively on political scandals instead of in-depth policy analysis. A number of TV channels such as the parochial Antena 3 or the heavily indebted OTV channel have come under the European Commission's scrutiny. The European Commission voiced its disapproval over the politically motivated attacks against the

judiciary aired by some sections of the media. Nonetheless, there is a clear minority of mass media brands, such as HotNews.ro (an online news source founded in 1999), that have achieved higher quality and less partisan in-depth information. In addition, internet penetration rates surged to 56.3% and social media outlets provide a new platform for Romanian citizens to access information (Internet World Stats, 2015).

While candidates and parties should have equal opportunities of access to the media and other means of communication, media coverage of the political process remains partisan and unbalanced. The Parliamentary elections in 2012 further fueled these phenomena. Indeed, the President and the Prime Minister employed the Romanian media platform to attack and humiliate one another (Negrea, 2012). While Mr. Ponta voiced his commitment to a civilized interaction with his opponent, he did not refrain from labeling the President “the last communist of Europe, the last Securitate member” (Antena 3, 2012, para. 1). In response, Mr. Băsescu compared the PM to former dictator Ceausescu (The Economist, 2012e).

Similarly, the two electoral campaigns in 2014 contributed to strengthening political control over the media. Political partisanship trumped issue debate. This control has increased public distrust, especially, in the aftermath of the 2013 distorted coverage of the environmental protests. The inability to organize public televised debates between presidential contenders prior to the first round of the November 2014 presidential elections discloses candidates’ and parties’ lack of fair access to the media. However, Mr. Iohannis and his supporters harnessed the power of social media to magnify the voices of Romanians’ living abroad. The dissatisfaction of a large proportion of diaspora voters directed against Mr. Ponta was an opportunity for Mr. Iohannis, of which he made best use through a powerful social media campaign. It remains to be seen what

will be the mobilizing power of the social media in future elections, and what would be its potential in reshaping Romania's political spectrum.

5.6.2 Media Patronage and Media Moguls

Media patronage, in the form of politically motivated appointments to the National Audiovisual Council (CNA) has particularly negative effects on the mass media. The CNA is the institution responsible for issuing television and radio broadcasting licenses as well as monitoring legislative compliance. In its attempt to remain in control of the media, the government's control over entities like the broadcasting regulatory body in order to favour its allies and harm its opponents has endured tenaciously since the fall of communism. The CNA is composed of eleven members who are either allies or protégés of political parties, mainly the Parliament, rather than overseers with an interest in upholding the regulations (International Research and Exchanges Board, 2010).

Such political leanings are achieved because there are no rules regulating the appointment of members to the CNA, hence, each political party controlling the Parliament may dismiss or appoint any of the eleven members according to its own agenda (Smiloy, 2012). The National Audiovisual Council was originally established by former President Iliescu to guarantee total control over the state owned television channel TVR in the wake of Romania's first "democratic" elections in 1990. Iliescu established the CNA just before the elections in order for the former to oversee media campaign coverage and guarantee that the opposition's messages would not reach the electorate. Thus, the membership composition of the council was predominantly dominated by the NSF and messages from other political parties were shown only

during inconvenient times, mostly late in the evening so that voters would be unlikely to be exposed to them.

Unfortunately, as Leeson and Coyne (2005) suggest, twenty-five years after its establishment the National Audiovisual Council's appointment process is still subject to political corruption, giving way to wide-ranging control over the substance of media-provided programs. Accordingly "government leaders appoint their friends to the council, who in turn refuse to grant broadcasting licenses to media outlets that might be critical of the ruling party" (Leeson & Coyne, 2005, p. 20). In some instances, however, CNA members act promptly to stop government's interference. For instance, in 2012, the government planned to adopt in a truly clandestine fashion an emergency ordinance to modify Romania's Audiovisual Law. As an immediate response, CNA member Mr. Valentin-Alexandru Jucan expressed his concerns over attempts to undermine the institution. After Hotnews.ro pressed for further information, the Government slightly modified the original draft, excluding segments that would have stirred scrutiny from the European Commission, such as the desire to dismiss CNA members directly by the Parliament. Nonetheless, the outrage within the CNA has been enormous, encouraging five out of eleven members to contact directly the European Commission in order to express the CNA's apprehension about the above-mentioned plans (HotNews, 2012c).

In other instances, such as in 2014, the CNA failed to meet its obligations due to the rigidity of its members. The CNA paralysis occurred right in the heat of the presidential campaign (Sipos, 2014). Meanwhile, the National Anti-Corruption Directorate was investigating the members of the CNA's management team. Instances of corruption, incompatibilities or conflict of interest are not uncommon, given that in August of 2013, the National Integrity Agency declared former President of the National Audiovisual Council Răsvan Popescu and

CNA member Christian Mititelu in conflict of interest situations, in addition to the allegation that Mr. Popescu had received 15,000 Euros in bribes from Mediapro (National Integrity Agency, 2013).

Moreover, the Romanian government also exercises complete control over the Romanian Television Corporation through the Parliament's prerogative to veto the board's annual activity report that automatically leads to the dismissal of its members. While the board composition should be decided by the president, the government and the Parliament, the requirement that the latter has to approve the annual activity report (originally designed to enhance the Board's accountability) allows the Parliament to abuse this right for the purposes of controlling the membership composition of the board. Funding of media organizations in Romania are nontransparent, coming mainly from offshore havens and government advertising. The economic crisis exerted enormous pressure on the independence of the press. Partisan coverage, the absence of electoral debates and media-intimidating amendments to the Criminal Code may all be traced to a depressed and fragile business environment. Furthermore, the lack of ethics within the profession is not surprising given that less than 20% of those who enter the profession graduated from journalism programs (Freedom House, 2005).

The vulnerability of Romanian media to political influence can be traced back to a meager advertising market that fails to generate central or local stations' revenue. Especially at the local level, the level of debt translates to direct government control. Both public and private media outlets had a strong government bias due to their increased reliance on the latter's financial assistance (Freedom House, 2005). Moreover, the majority of advertising contracts belong to state-owned enterprises, creating a peculiar situation in which media outlets, in order to survive, are forced to compete in bids for such contracts. Such shortage-induced competition

often takes on the form of “gift giving”, sponsorship from media moguls or blackmail. While other Central Eastern European Countries, such as the Czech Republic or Hungary, spend four to six times more on advertising, the precarious financial situation in Romania invites direct political interference. Such control encompasses editors’ self-censorship through the screening of talk-show invitees to detect whether they are potentially anti-government (Freedom House, 2004). Despite the fact that an increasing flow of economic resources would significantly improve both the quality and outlook of the industry, other difficulties such as the lack of professionalism among journalists further erodes Romania’s media landscape.

Overall, censorship, both self-imposed and otherwise, is a serious impediment to the development of investigative journalism due to economic pressures in a country where journalists’ average salary is the lowest among all EU member states. Consequently, those in this field are required to rely on additional sources of income coming from the payroll of political patrons. While journalistic impartiality and professionalism should be based on media independence and the existence of a media market, in Romania, there is a genuine confusion as to what role journalists should play. Instead of a watchdog, agenda setting and gatekeeping role to monitor the quality of governance, frame discussions and play a pivotal role in the fight against corruption, Romanian journalists, unlike their counterparts in Western Europe, are hobbled by poverty, political control and corruption.

Given the conditions mentioned above, it does not come as a surprise that competent and professional journalists are an exception rather than a rule. Some scholars argue that post-communist countries lack any formal safeguards of internal media independence such as “editorial statutes, conscience clauses, effectively policed codes of conduct and codes of journalistic ethics, effective separation of editorial offices from sales or advertising departments,

or of media from other parts of business organizations they may be part of” (Jakubowicz, 2005, p. 9). While the lack of the above-listed criteria further deteriorates the condition, at the root of the problem lies the lack of market conditions guaranteeing resources for media independence. Thus, business and political interests prevail and direct government subsidies are used to foster dependence as well as political influence. Thus, in order to encourage investigative journalism, the prerequisite would incorporate the professionalization of journalism through upgrading skills and ethical requirements. However, the current setting encourages journalists to embrace partisanship and propaganda, writing against those committed to fight corruption since the former may easily become the protégées of media owners who face corruption charges.

Following the economic crisis, in 2011 the Romanian journalists’ federation MediaSind reported that approximately six thousand journalists had lost their jobs or had to endure significant wage cuts (Freedom House, 2011). In a harsh economic environment in which numerous journalists had to opt for freelancing or were laid off, investigative journalism quickly deteriorated to sensational tabloid style coverage. In addition to massive layoffs, advertising revenue decreased by 40% in 2009 and 15% in 2010 while at the same time, 50 local and national press outlets were shut down (Freedom House, 2010). The latter resulted in a situation in which journalists, as a way of adjusting against hardship, easily become the political elite’s or media owners’ “lapdogs” in which

they may perform a role approximating that of “watchdogs”, but not on behalf of society and the public interest, but on behalf of and in ways dictated by their masters, primarily reflecting power struggles and current (and changing) interests and alliances of particular oligarchs. (Jakubowicz, 2005, p. 9)

In Romania, the situation worsened further, as some media outlets and journalists engaged in politically motivated media attacks that were similar to organized bullying campaigns in which judges, prosecutors and even anti-corruption agencies were ridiculed and court decisions criticized. Thus, an illogical situation ensued in which journalists, instead of uncovering corruptive acts, turned against institutions fighting the former.

Kaufmann (2009) suggests that successful anti-corruption programs are reliant on knowledge, information, leadership and collective actions, stressing the importance of investigative journalism and the role of an independent media when it comes to disseminating information and shedding light on corruptive acts. Unfortunately, in Romania, due to the missing economic base that would guarantee the former's financial independence, the media has increasingly been at the mercy of its owners who keep them afloat as instruments for advancing their own political interests.

In the early nineties, Romania's media landscape attracted foreign investors in search of new opportunities in an opening market. Soon enough, an overall disenchantment with the poor standards of professional ethics combined with undue personal influence and decreasing revenues awoke them to a reality dissimilar to that of a Western country, causing them to gradually abandon the Romanian market. In 2011, the German media group WAZ announced that it would leave the Romanian market, a decision driven partly by the serious economic distortions caused by the sector's media moguls motivated to finance unprofitable media outlets to use them for their political interests. Since then, press and broadcasting outlets have been dominated by oligarchs with strong political interests and affiliations such as Mr. Voiculescu, who relinquished the Romanian Senate seat twice in a move to protract his court proceedings, or Mr. Sorin Ovidiu Vantu, who is currently serving a one-year jail sentence for blackmail. This

situation has led to the establishment of a new, professionally unethical media typified by either servility or viciousness that, rather than informing the public, serves as an instrument of propaganda and manipulation. The latter culminated in a preventative arrest of the head of Antena TV Group, Mr. Sorin Alexandrescu, following the blackmail accusations brought against him by the cable company RCS-RSD (HotNews, 2013e). Allegedly, the blackmail was engineered by the Voiculescu family (Stoica & Burla, 2013).

Following Mr. Voiculescu's ten-year sentence on money laundering, another prominent media owner and politician, Mr. Diaconescu, received a no-parole five-and-a-half-year final sentence reconfirmed by the Bucharest Court of Appeal beginning of March 2015 (National Anticorruption Directorate, 2015c). As such, Diaconescu joins the list of Romanian media owners serving jail sentences, next to other prominent figures such as Dan Adamescu (owner of Romanian Libera) (National Anticorruption Directorate, 2014g), Sorin Rosca Stanescu (owner of Ziu newspaper) (National Anticorruption Directorate, 2015a) or Adrian Sarbu (Mediafax Group owner) who is currently in preventative arrest. The prosecution of Dan Adamescu (on grounds of embezzling funds from his own insurance company to finance Băsescu's re-election campaign) as well as Sarbu's arrest (on charges of tax evasion, money laundering and embezzlement) are found by some to be politically motivated (Basham, 2015).

Meanwhile, the head of the CSM, Mrs. Oana Hăineală, expressed her concern over numerous Antena 3 programs exercising pressure on anti-corruption prosecutors (Revista22, 2013). Following the arrest of Gigi Becali, famous Romanian soccer club owner turned politician, numerous television channels who were paid by Becali launched serious defamation campaigns against the judges who issued the arrest warrant and found Mr. Becali guilty of corruption. Consequently, the chronic politicization of Romania's media through its owners'

tendency to serve partisan interests calls for immediate attention and remedies. Relationships between the state, journalists and media owners should be redefined while stringently enforced regulation should put an end to cross-ownership and media concentration. Such sturdy concentration of ownership exists, despite some legislation against the latter. While cross-ownership of print media is regulated, broadcasting regulations stipulate that a legal or private entity cannot capture a share larger than 30% of the market (Cafaggi, Casarosa, & Prosser, 2012). However, the latter threshold is easily circumvented by intermediaries. For instance, the Paunescu family acts as an intermediary for George Constantin Paunescu, and media mogul Sorin Ovidiu Vantu controls a media empire through intermediaries without actually exercising formal ownership (Ghinea & Mungiu-Pippidi, 2010).

Media moguls are committed to their channels as long as they cater to their political interests. A depoliticized, profitable and sustainable media is strongly discouraged by them. Thus, the current state of the media does not allow for it to become a change agent in the fight against corruption and the difficulties the Romanian media faces cannot be addressed by simple revisions of existing regulations as the Commission often suggests. While regulations are in place, the lack of financing, media moguls' domination and journalists' loyalty to the former all serve to undermine investigative journalism. An independent media is a critical element in any country's anticorruption program; in Romania, however, the media has become an instrument of an elite determined to destabilize anti-corruption agencies and challenge actors dedicated to the fight against corruption.

Conclusion

As discussed in this chapter, despite multi-party antagonism, a consensus prevails that state oversight institutions and anti-corruption agencies should have their mandates curtailed to allow the political elite to retain opportunities for illicit enrichment. The prevailing political compromise among the elite is to block or significantly delay investigations initiated by the National Anti-Corruption Directorate. Thus, anti-corruption institutional development is offset by political manoeuvres. The fight against corruption unites and further nurtures clientelistic ties, a puzzling phenomenon that has been ignored by the European Union.

By applying a path-dependent framework, the chapter demonstrated that negative externalities undermine ACAs' success. Early path –dependent processes, such as the unsettled institutional environment in the 1990s that allowed the post-communist elite to loot state resources and abuse their position of power through designing weak supervisory organs has predetermined Romania's trajectory and significantly hindered the efficiency of ACAs. This chapter shed light on the powerful role of path dependence and how the peculiar impact of Romania's post-communist transition resulted in a nexus of clientelism and corruption. While the 1989 Romanian revolution led to the fall of Dictator Ceausescu, the regime "change" endorsed a small political elite composed of communist era secret police members and upper echelons of the Romanian Communist Party (PCR) to rise to power.

This nomenklatura won the elections in 1990/1992, gaining access to valuable political and economic capital that further solidified its position. Complete control of the legislature allowed the perpetuation of its networks through the preservation or enhancement of their communist era influence. During this transitional opacity, between unworkability of the old rules

and the establishment of new ones, corruption reached endemic levels as the power-holders were not only playing the game, but also determining its rules. The latter led to the creation of an exceedingly cumbersome legislative process through emergency ordinances, allowing prerogative law-making by the executive.

This chapter shed light on the various routes through which corrupt-elite networks tend to expand and self-perpetuate while keeping new political actors out of the political arena. Undermining elections is one widely used practice in the post-communist world to form collusive networks and limit political competition. Thus in Romania electoral accountability fails to act as a deterrent for corrupt behaviour, given large scale voter apathy and a party system that suffers from a high cartelisation due to a complex legal framework that discourages new parties and actors from entering the political scene. This can be traced back to the clever manipulation techniques introduced by the post-communists in order to secure their advantages and win the elections in 1990. The two important legislative manoeuvres when designing the Party Campaign Financing legislation served the purpose of financially weakening contending parties through prohibiting donations from foreign sources, and encouraging the proliferation of political parties through an extremely low membership requirement.

However, once the post-communists consolidated their power, the rules of the game changed in favour of the power holders and the electoral threshold was increased, while the number of required members to establish a party surged significantly. This resulted in the decade-long domination of the same corrupt political parties, as electoral laws served as a mechanism to disincentivise the creation of new parties to establish themselves and mount a challenge against the current (corrupt) political actors.

Constant frictions within parties' internal decision-making processes reveal low levels of institutionalization, high levels of political incoherence and the predominance of clientelistic interests. Overall, parties fail to be inclusive and open in their internal decision-making processes as they continue to be dominated by opportunistic short and long-run calculations. Romania's political system is characterized by chronic political migration acting as a disequilibrium trigger. Many Members of Parliament justify their floor-crossing in terms of a direct relationship with the electorate rather than through the party. In this way personal interests displace group loyalty. Given the relatively fragile post-communist state structures, state institutions become a source of rent-seeking.

Consequently, public offices are staffed by people who live from politics rather than for politics, and access to resources is conditioned by the political position one holds. The use of patronage in Romania extends throughout the various levels of government, and sub-national politics mirrors the dynamics occurring in the national central institutions. National power-holders, in their turn, make the most of their might to influence to their advantage politics at the local level and nurture their clientelistic ties.

The law of Local Public Administration passed in 1991 was used by centrally appointed prefects to dismiss mayors from the opposition, guaranteeing a mechanism for the post-communist central government to extend party patronage to cities and rural communes. In contrast, while opposition mayors were dismissed, mayors from the ruling party were backed up by the prefect. As a response, opposition mayors who were marginalized decided to switch party affiliation to gain access to resources distributed through particularistic ties. Today independent mayors enjoy the highest shares of discretionary resource allocation given that in 2006 the government adopted Law 249/2006 to limit political migration among mayors and

representatives elected at local levels. Since its coming into force, mayors circumvent the law by masking their political affiliation as independents and attracting the highest share of funds. Discretionary financial transfers and investment projects to municipalities and counties following partisan lines have persisted since the fall of communism. Lack of transparency leaves ample room for local and regional contracting authorities to employ favouritism in public resource allocation. The regular distribution of public goods on a non-universalistic basis mirrors the vicious distribution of power where access to public goods and services becomes a function of personalized connections. Many public contracts continue to be awarded to party donors through uncompetitive procedures that lead to single bidding. More importantly, the public procurement sector is the main route through which public officials redistribute funds to their political clientele.

Unlawful discretion in the allocation of public budgets across local levels of government is a widespread phenomenon as political parties have beefed up public and EU funds to channel resources to partisan mayors or electoral campaigns. Moreover, while Romania's anti-corruption institutions are proving to be successful in penalizing corrupt officials at the highest level of Government, in local fora such as town councils and city halls, corruption trials have strengthened political careers rather than end them. In remote areas, the relationship to local officials is characterized by an euphoric support for corrupt mayors who willingly re-distribute the proceeds of their illegal deals.

Other accountability mechanisms to prevent corruption and guarantee control and oversight, such as the ombudsman's office or an efficient NGO sector involved in the formulation of the relevant government policies, are prominent absentees in the government's practices. A high recurrence of emergency ordinances as well as a consultation process kept at a

minimum informs government policy making. One sector especially vulnerable to the use of patronage displaying erosive effects on state autonomy is the mass media. Such media patronage in the form of politically motivated appointments to institutions overseeing broadcast media, as well as state-run outlets, are disastrous as they undermine oversight of public service broadcasting organizations and pluralism of content.

The media can play a vital role in unveiling corruptive acts and proposing solutions if it is empowered to become an agenda setter, gatekeeper and most importantly, a watchdog endorsed to frame public discourse. Unfortunately, in Romania the media becomes a channel for politically motivated attacks targeting judges and prosecutors with the aim to undermine or discredit ongoing anti-corruption investigations and trials. Romania's media outlets are still in the grip of a few highly controversial public figures facing corruption charges. This chapter outlined a path-dependent understanding that took into account the country's communist heritage to understand how the press has reached its current status and why the EU fails to understand the intricacies behind Romania's captured media. Under the current conditions, the media is incapable of fulfilling its watchdog, agenda setting and gatekeeping roles that would permit the former to play an important part in monitoring governance, informing the public, and framing discussions, as well as fighting corruption through proliferating investigative journalism.

CONCLUSION

The dissertation outlined the importance of contextualizing Romania's corruption by analyzing its evolution in a post-communist context, while refuting a parsimonious approach in which corruption is treated as an abstract phenomenon. The five chapters treated the consolidation of a corruption regime as a form of particularism unrelenting even in the context of the country's European Union accession. The dissertation brought to light the impact of multilevel governance on deep-seated patterns of corruption. Without the efforts of the EU, corruption would remain pernicious, yet Brussels' powerful incentives and sanctioning mechanisms failed to undermine corrupt practices in Romania.

For its part, the EU failed to develop a good understanding of Romania's corruptive practices and ignored the dramatic institutional changes and their significant path-dependent characteristics. As we saw, a path dependent theoretical framework is crucial for understanding how corrupt practices in post-communist societies are embedded in clientelistic structures and how they survive despite the country's EU membership.

Chapter one demonstrated how the EU's narrow problem definition created a path-dependent "lock-in" effect in the form of incremental legislative responses that produced significant inefficiencies.

Yet, no matter how influential, these lock-in effects could not prevent a departure from the initial parsimonious approach. Indeed, gradually but resolutely, the EU realized that challenging corruption required a more encompassing problem definition.

Unfortunately, as we could see, the EU failed to develop an arsenal of anti-corruption instruments. The first chapter pointed to the EU's limited powers in the field and a narrow

problem definition that construed corruption only in the light of its damages for the EU financial interest. This premise seriously circumscribed the reach and curtailed the effectiveness of the anti-corruption instruments. Only in 1999, the fight against corruption became one of the European Union's most important objectives and this acknowledgment ushered in a new era of institutional build-up. Moreover, the crisis triggered by the Santer Commission's resignation in 1999 revealed that corruption was not just a Member State but also an EU problem. It was an event that raised questions about the EU's institutional and legal capacity to combat corruption within its institutions. A corruption-plagued EU would have little credibility in taking the lead and coordinating the fight against corruption within its own Member States. Following the Santer Commission's resignation, the establishment of the European Anti-Fraud Office (OLAF) in lieu of the inefficient Anti-Fraud Coordination Unit (UCLAF) was an important development as the institution quickly became one of the most important independent administrative body in the fight against corruption. In sum, the Santer Commission resignation pushed the EU authorities to redefine corruption as a concept and problem and transform the then-prevailing approach.

Nonetheless, as we saw earlier, the protection of the European Community's financial interests exemplified by a policy development targeting fraud was still front and centre when many other prominent anti-corruption initiatives such as the one initiated by the Council of Europe or UNCAC had embraced a more complex and thoughtful approach to corruption. The dissertation revealed that the EU's failure to adopt a more multifaceted approach lessened its regulatory capacity in favour of lock-ins. The chapter presented the shortcomings of numerous conventions, such as the PIF Convention, whose seven-year time-lag between adoption and implementation seriously impaired its effectiveness. Other anti-fraud measures introduced during that period tried to tackle the problem of corruption only incrementally and none purported to

address the wider ramifications of corruption and its threat to the rule of law. The assumption, until 1998, was that anti-fraud measures should have only one function: that of protecting the financial interests of the Community. However, the European Parliament's request to adopt a more complex problem definition prompted the taking into account of new elements when conceptualizing corruption.

The first step in this new direction was taken in 1997 when Member States decided to adopt the Anti-Corruption Convention. The notion of damage to the European Community's financial interests had been replaced by a much broader problem definition. Moreover, the Joint Action adopted in 1998 re-defined corruption not just in terms of its distorting effect but it stressed its destabilizing effects on fair competition, transparency and the functioning of the internal market. The Framework Decision adopted in 2003 reconfigured the problem definition by moving away from the market and the European Community's financial interest to consider the individual and emphasize corruption's threat to the rule of law and sound economic development. As we saw, by the 2004 enlargement, the EU had already embraced a broader problem definition and a more comprehensive anti-corruption policy conscious of the impelling necessity to develop a new mechanism that would allow the countries' progress evaluation.

However, the EU institutions lacked a thorough understanding of corruption as a phenomenon in the post-communist transition countries and its relationship to the communist era. Romania's difficult accession is a prominent example of the EU's unpreparedness. In line with these considerations, the dissertation adopted a path dependent framework to explain why corruption in Romania persisted despite the country's promising EU membership.

Chapter two focused on a path-dependent understanding of Romania's preferred property restitution method and the multifaceted patterns of corruption it generated. The adopted path-

dependent framework highlighted the importance of increasing returns processes to understand the consolidation of certain paths. In line with the transitology literature's findings, the transitional experience of Romania was characterized by soaring corruption and clientelism. However, as we could see, the country also challenges the assumption that rents rising from an incomplete reform stage can easily dry up and will dissipate once markets deepen. The Land Law created strong institutional counter-stimuli undermining the effective restitution of old properties and allowed commune mayors and local commissions to hold tight to their positions and delay the restoration of ownership claims.

As we saw, early events such as the Land Law led to unpredictable outcomes that locked in initial path inefficiencies. Uncertainty over their future in office and the relationship to their superiors prompted commune mayors and local commissions to hold on to land. An exit in this instance would have entailed the loss of corruption gains in a restitution process, in which land constituted an important economic and political resource. Consequently, increasing returns processes led to inflexibilities and path inefficiencies. Moreover adaptive expectation conditioned actors' behavior, resulting in top-down patterns of corruption. The chapter demonstrated the importance of adopting a region-based perspective in the study of the post-communist transition, a perspective that is instrumental for understanding local actors' interests in controlling and maximizing their long-term rent-seeking opportunities.

While Romania's transition was punctuated by soaring corruption, the regional patterns of corruption challenge the assumption that the rents engendered through incomplete reforms will disappear once marketization deepens. The Land Law created strong institutional counter-stimuli undermining the effective restitution of old properties. Moreover, early path inefficiencies still play an important role in nurturing clientelistic ties at the local levels of

government. Such top-down corruptive patterns that the restitution process has generated and the ensuing circumstances influence Romania's local level politics to this day. As chapter five has demonstrated, discretionary financial transfers to and investment projects for municipalities and counties along partisan lines have persisted since the fall of communism. The regular distribution of public goods on a non-universalistic basis mirrors a distribution of power where access to public goods and services becomes a function of personalized connections and reinforces clientelism at local and central levels of government.

The chapter also argued that the transitology literature ignores that a shift from plan to market does not progress in uniform fashion throughout the different regions and sectors of a transition country. As a result, market opportunities will vary across localities and sectors. More developed regions will stand in sharp contrast with under-developed rural areas where the reach of the market is weak. These structural differences and locality –specific features also affect the configuration of authority at the local level. Thus, rural areas in Romania continued to exhibit “socialist-era mishandlings”. In contrast, housing restitution revealed that in the backdrop of an intrusive and corrupt political elite, the process will produce “bottom-up” corruptive patterns.

The post-communist politicians' preference to capitalize on housing restitution led to the disastrous situation of competing ownership claims, where both the tenants and the owners held titles to the same property. Consequently, property restitution dragged on for two decades mired in scandals and controversies. Despite Brussels' conditionality leverage over Romania's property restitution, the process is still lagging. Suboptimal and self-serving legislative decisions compelled the actors to reconsider their responses and proceed to out-bribe a corrupt justice system. In this instance, increasing returns are also pressured by negative externalities that further reinforce the original path and its corruption patterns. Indeed, the insidious conflict

between tenants and owners is proof of a corrupt political and legal system that perseveres in the original path.

Chapter three presented a thorough examination of Romania's anti-corruption institutional development along the lines of formal EU accession pressures. The chapter argued that in order to explain why Romania failed to adopt efficient anti-corruption measures it is essential to integrate two additional intervening variables to Schimmelfennig and Sedelmeier's external incentives model of governance. Moreover, the path-dependent literature portrays legislative and institutional reforms as irreversible processes. Yet, the progress of reforms is often vulnerable to the strength of clientelistic networks that seek to maintain the corruption-ridden status quo as the Romanian case reveals. In this vein, EU's conditionality limits and domestic veto players' determination to preserve the status quo played a pivotal role that conditioned EU rule transfer. The chapter underscored the country's failure to craft and implement enduring reforms that would prevail even in the aftermath of the accession. While two EU-backed Anti-Corruption Agencies entered the new institutional scene, numerous other negative externalities entrenched the elite's patronage position even inside the EU.

Unfortunately Brussels' approach to Romania's difficult accession case was deficient given the EU's naiveté in ignoring the implications of Romania's post-communist institutional context. This is especially evident in the post-accession phase, in which Romania's post monitoring through the Cooperation and Verification Mechanism and Anti-Corruption Reporting Mechanism turned out to be only marginally useful. The chapter embraced a path-dependent approach that treated EU's exogenous pressures as an externality with a potential to alter initial path inefficiencies. It argued in agreement with Page's (2006) view that negative externalities are critical features when accounting for the lock-in of sub-par solutions. From this perspective, the

chapter demonstrated that Brussels' scarce understanding of Romania's corruption as a negative exogenous externality reinforced particularism.

As we saw, the 1999-2004 period consisted of only superficial measures to tackle corruption. With a few exceptions in 2002/03, the gap between government rhetoric and action was blatant. The Năstase government was reluctant to fight high-level corruption, not least because of the ruling party's own patronage interests. Consequently, pre-negotiations were characterized by "minimal" or "rhetorical" commitments to eradicate corruption. However, the 2005 Accession Treaty introduced new pressures subjecting Romania to stricter EU conditionality. Olli Rehn, the new Commissioner for enlargement, unlike his predecessor, Günter Verheugen, was dissatisfied with the country's anemic anti-corruption reforms. With the establishment of the National Anti-Corruption Directorate, rule transfer was particularly effective during the two years preceding Romania's accession.

The establishment of the DNA and Minister of Justice Monica Macovei's relentless efforts against corruption represent critical junctures that challenged the status quo. However, weak post-accession conditionality coupled with uncertain domestic commitments to sustain anti-corruption provisions further reinforced actors' old corrupt habits. These negative externalities were the main factor entrenching the original path. The absence of accession rewards combined with a weak sanctioning mechanism eroded conditionality's effectiveness. The political elite decided to disregard the continuing anti-corruption reports and many politicians called for the termination of the monitoring process under the CVM mechanism. As the chapter demonstrated, the EU largely misunderstood corruption in Romania and underestimated the resourcefulness of a domestic elite determined to defend its privileges even

after EU accession. Macovei's dismissal, in particular, was a critical juncture marking a return to sub-par policy responses against rampant corruption.

Nonetheless, the accession process led to the establishment of the National-Anti-Corruption Directorate (DNA) and the National Integrity Agency (ANI), two extremely successful anti-corruption agencies that have brought along new developments. In line with North's (1990) argument, the two institutions generated significant lock-in effects that consolidated the reforms and prevented future reversals. They acted as an effective endogenous force against the phenomenon of corruption whence adaptive expectations created increasing returns processes firmly defying a corrupt elite determined to undermine them.

However, as chapter four demonstrated, independent anti-corruption institutions often fail to produce the expected results and increasingly face the risk of being plagued by patronage capture. Rampant corruption may undermine any anti-corruption initiative, and high indictment rates do not compromise patronage politics. Indeed, in Romania, the success of anti-corruption agencies has led the government to attempt their dismantlement and subject them to serious political pressures. While a series of high-profile prison sentences suggest that anti-corruption efforts are producing tangible results, the durability of such progress depends on the impregnability of the Anti-Corruption Directorate or the National Integrity Agency opposite an aggressive and all-powerful political elite. Moreover, successful anti-corruption institutional development can lead to high sentencing levels but fail to uproot well-established patronage networks. As chapter four outlined, in situations such as this, the ACA struggles for survival as it seeks to defeat a corrupt elite undermining successful anti-corruption reforms. Unfortunately, many ACAs that were established in the post-communist context fit this in-between equilibrium that gives rise to a warlike atmosphere in which they are assailing the regime that established

them in the first place. Furthermore, despite the DNA's success, other important externalities constrained state's capacity against clientelism, thus, reinforcing the initial path inefficiencies and locking-in a status quo dominated by corruption. In the Romanian context, the judiciary has strengthened rather than weakened the self-reinforcing processes of a corrupt regime. Thus, the progress made by the National Anti-Corruption Directorate to bring high-level corruption cases to court is simultaneously offset by the judiciary's diminished capacity to handle such cases in an effective manner. As we could see, the failure to eradicate high-level corruption owes more to the serious shortcomings of the Romanian justice system than the overall efficiency of the anti-corruption agencies.

The chapter highlighted the salience of *early path dependence* by giving an account of how communist and post-communist structures have obstructed the development of an effective judiciary. The absence of meritocracy standards, the corruption of a mighty government and the judiciary's inefficiencies can be traced all the way back to the communist system. These negative externalities bolstered clientelism even when increasing returns processes had framed a new institutional environment with a mission to punish corruption.

The EU has criticised the country's under-performing justice system numerous times. The obstinacy against radical reforms originates in an apprehension over the dissolution of traditional patron-client relationships. Inconsistent jurisprudence and protracted-to-prescription corruption trials are pathologic characteristics of this faltering system. From a path-dependent perspective, while the new anti-corruption agencies' investigative activity may entrench lock-in effects, such developments cannot germinate in an institutional environment where corruption reigns. Negative externalities undermine such lock-ins in order to restore initial path inefficiencies.

The first years following the fall of Ceausescu's dictatorial regime were characterized by an absence of dialogue over the role of the judiciary allowing for communist-era mentalities and habits to permeate the system. The Constitution required as a precondition for a prospective Constitutional Court appointee eighteen years of experience in either the legal or academic sphere guaranteeing the domination of judiciary by cadres from the former regime. Meritocratic recruitment remained a foreign concept as promotions to courts were contingent on the sheer obedience of the members of the judiciary to the government. Shefter (1994) argues that clientelism during the formative periods of a political system may cement an intractable path-dependence. Thus, as we saw, constitutional provisions such as Article 143 protected clientelistic networks by reinforcing post-communist institutional structures.

Such tradition, that is a lack of meritocratic recruitment processes at any level of the judiciary, is still predominant to this day. Politicized appointments are often mired in conflict and enveloped in a persistent fear that a newly elected leadership will initiate changes that might roll back the progress attained by previous leaders. All this points to a fragile institutional environment in which the anti-corruption agency's success is primarily determined by its leaders' profile and notoriety. New institutional structures find it challenging to defeat particularism in a context where early path inefficiencies affect the justice system. In addition, there are numerous postponement tactics that further procrastinate court proceedings.

While recognizing judiciary's role in reinforcing initial path inefficiencies, chapter five highlighted other negative externalities undermining ACAs' chances of success. These externalities include the immunities regime, an inefficient ombudsman and corrupt media. Like the post-communist judiciary, these negative externalities can all be traced to early path-dependent processes emanating from communist and post-communist structures. As the chapter

revealed, the immunities regime is highly detrimental as it locks in a sub-par status quo that shields the political class from the anti-corruption agencies. The 1990s unstable institutional environment and the constellation of elite-serving weak supervisory mechanisms have predetermined Romania's trajectory and its vulnerability to corruption. The 1989 Romanian revolution only led to the downfall of Dictator Ceausescu, but it did not materialize the citizens' dream of a radical break with the past. Romania's legislative hostility against new parties reflects the legacy of the intricate manipulation techniques introduced by the National Salvation Front (NSF). In order for the NSF to secure its advantage and win the elections in 1990, it introduced two important legislative manoeuvres when designing the Party Campaign Financing legislation.

However, once the NSF consolidated its power, the rules of the game changed in favour of the power holders and, by 1992 the number of required members to establish a party increased exponentially from 251 to 10,000. The requirement that a new party must have at least 25,000 founding members resulted in the domination of the same corrupt political parties. Electoral laws serve as a mechanism to disincentivise the creation of new political parties and threaten the survival of the existing small ones.

To this day, sub-national politics reflects the functioning dynamics of the national institutions, while the national power-holders steer politics at the local level through a scheme of perpetuating clientelistic networks. Many public contracts continue to be awarded to party donors through uncompetitive public procurement procedures that lead to single bidding, being this the main route through which public officials redistribute funds in favour of their political clientele. Moreover, as chapter five revealed, unlawful discretion in the allocation of public budgets across local levels of government is a widespread phenomenon as political parties squander public and EU funds to channel resources to partisan mayors or electoral campaigns.

Partisan allocation of resources hails from early path dependent processes, such as the Law on Local Public administration, which consolidated the prefect's key position and maximized the central government's influence. To this day, non-transparent procedures provide local and regional contracting authorities with an opportunity to control public resource allocation. In addition, legislative decisions such as Emergency Ordinances serve to lock in power arrangements that promote a distribution of public goods on a non-universalistic basis.

Chapter five has also demonstrated that other accountability mechanisms to prevent corruption and guarantee oversight, such as the ombudsman's office or policy-oriented NGOs are prominent absentees in monitoring government's practices. A sector that is particularly susceptible to the use of patronage is the mass media. From a path-dependent perspective, the Romanian media has become a negative externality that contributes to the maintenance of the corruption regime. Such media patronage in the form of political appointments to institutions overseeing broadcast media and state-run outlets challenges the norms of transparency, impartiality and pluralism. In Romania the media has become a site of engineered attacks against judges and prosecutors in an attempt to sabotage or discredit ongoing anti-corruption investigations and trials. Romania's media outlets are still in the grip of a handful of highly controversial public figures facing corruption charges.

The chapter outlined a path-dependent understanding that took into account the country's communist heritage in order to explain why the press has degraded in its current state and why the EU fails to understand the intricacies behind Romania's captured media. The chronic politicization of Romania's media through its owners' tendency to cater to partisan interests calls for immediate attention and remedies. The relations between the state, journalists and the media owners should be redefined according to norms prevailing in consolidated democracies.

Stringently enforced regulations must put an end to cross-ownership and media concentration. Finally, an increasing flow of economic resources can improve the quality of industry's output.

While the DNA's record is positive, the Romanian electorate continues to allow corrupt MPs to increase their political capital. The question of why the Romanian electorate supports the re-election of suspect candidates gains importance in the context of a Parliament that continues to legislate loopholes that incentivize corruptive practices. Enlightened citizens, new parties and credible political players have the power to restore the integrity in the legislative process. A viable democracy cannot be the outcome of constant electoral rule manipulation (either ex-post or ex-ante depending on the parties' preference). The solution is rather a legislation that decreases the damagingly high entrance threshold, thus, allowing new parties and actors to enter the political field. From this vantage point, the year of 2015 brought new positive developments. In the wake of the 2016 elections, several changes in legislation during this year have produced different effects. A 2015 measure lowered the stakes for the establishment of a political party (three members rather than 25,000 signatures) and this development promises to undercut the damaging lock-in effect coming from the 1990s. At the same time, there was enthusiasm about the reintroduction, in July 2015, of list voting for parliamentary elections replacing the controversial uninominal system. Moreover, a new legislation now forbids modifications in the electoral code one year prior to an election.

The DNA success story in terms of high levels of prosecution but inability to undermine clientelism should caution the European Union to revisit its parsimonious approach measuring successful anti-corruption institutional development only in terms of high conviction rates. New indicators such as indexes on good or bad governance practices, indicators on fiscal transparency, administrative capacity, government favoritism and state capture are necessary to

record developments and identify problems. The absence of these quantitative indicators makes it extremely difficult to tackle head on those deficiencies that generate corruption. Chapter one outlined the existing measures quantifying corruption and their serious limitations. As we could see, existing corruption indicators differ significantly in the aspects of corruption they claim to measure, in the methodology they employ and, especially, in the transparency of their assessments. It is important to move away from perception-based indicators and develop new indexes that are capable of capturing particularism and clientelism. While the World Bank has made progress in developing measures that are able to quantify state capture, measurements that would reveal the risk of corruption in certain areas would serve as a better proxy than indexes relying solely on subjective levels of perception.

More importantly, the EU needs to develop a much better understanding of corruption in post-communist countries and concomitantly depart from parsimonious assumptions that fail to encompass a path –dependent understanding of corruptive patterns. Especially in New Member – States, the EU needs to recognize that anti-corruption efforts are unavoidably political and a corrupt elite can easily get away with ceremonial initiatives such as setting up an agency that has absolutely no scope for independent action.

When it comes to future appointments to ACAs or the judiciary, it is crucial to establish selection procedures that ultimately attracts apolitical and outstanding candidates. The selection method has to be transparent and the selection criteria should be subject to stringent quantifiable standards. The above-mentioned changes would undercut the post-communist tradition of office allocation through clientelistic networks. The EU should play a more important role in providing guidance for the development of meritocratic criteria. In this regard, the Commission may devise

programs and organize workshops aimed at encouraging an apolitical selection process or promote the adoption of the best Western European practices by problematic CEE-s.

More importantly, progress in the prosecution and trial of high-level corruption must be accompanied by significant measures against state capture, government favoritism and political clientelism. There needs to be a code of conduct clearly stipulating that judicial decisions should not be sidestepped and negative integrity rulings must take effect immediately, suspending those who have enriched themselves through illegal venues, are in conflict of interests or have been found incompatible. Therefore, the immunities regime must be subject to transparency regulations with strict requirements on public accessibility to information, in particular, on the MPs behaviour when immunity issues are tabled before the legislature. In this respect the Romanian Parliament should act promptly to attend to the DNA's investigation requests, while the EU should set in motion a sanctioning mechanism against a problematic elite-friendly immunities regime.

The 2014 election of Mr. Iohannis, a new political player in a system whose main actors have lost all their capital failed to transform Romanian politics. However, 2016 promises to be a critical year for Romania as the new Prime Minister and former EU Commissioner Dacian Cioloş, tackles the challenges his first months in office. The popular unrest that unseated Ponta exemplified the exasperation of the Romanians with the pernicious corruption pervading all levels of governance in the country. The new PM will need to demonstrate a willingness and ability to confront corruption in any aspect. Ultimately, Romania's future will depend on the effectiveness, integrity and independence of the judiciary and efficiency of anti-corruption bodies. The 2016 local and general elections represent an opportunity for the main political parties to address the allegations of corruption and confront their unpopularity. Important issues

like corruption, economic development, the ongoing refugee crisis, the country's role in NATO, and administrative reforms are themes that will inform the programs and vision of campaigning political parties.

Appendix A

Public & Political Figures Mentioned

List of Political Figures	Relevant Information
Adrian Năstase	Born 06/22/1950. PCR (-1989), NSF (1989-1992), FDSN (1992-1993), PSD (1993-). Deputy (1992-2012), Prime Minister of Romania (2000-2004)
Adrian Ticau	Born 11/14/1970. PSD. Member of European Parliament (2007-).
Alexandra Athanasiu	Born 01/01/1955. PSD. Interim Prime Minister of Romania (December 13-22, 1999).
Antonie Solomon	Born 11/18/1955. PSD (2004-2008), PDL (2008-). Mayor of Craiova (2004-2012).
Augustin Zegrean	Born 03/29/1954. NSF (-1992), PD (1992-). Senator (1990-1992), Deputy (2004-2007), Constitutional Court judge (2007-).
Călin Popescu-Tăriceanu	Born 01/14/1952. PNL (1998-2014), PLR (2014-2015), ALDE (2015-). Leader of PNL (2004-2009), Prime Minister of Romania (2004-2008), President of the Senate (2014-).
Cătălin Voicu	Born 03/21/1965. PSD. Deputy (2004-2008, 2008-2012), adviser to Ion Iliescu (2000-2004).
Constantin Amarie	Born 04/26/1949. PSD (2004-2007), PD (2007-2008), PDL (2008-). Deputy (2004-2008).
Constantin Nicolescu	Born 09/01/1945. PSD
Corina Crețu	Born 06/24/1967. PSD. Deputy (2000-2004), MEP (2007-2014), European Commissioner for Regional Policy (2014-).
Corneliu Iacubov	PSD, Businessman, Head of FPP Moldova (1992-1996)
Costel Soptica	Born 02/18/1967. PNL. Deputy (2012-).
Crin Antonescu	Born 09/21/1959. PNL. Deputy (1996-2008), Leader of PNL (2009-2014), President of the Senate (2012-2014), President of Romania (July-August 2012).
Cristian Bușoi	Born 03/01/1978. PNL. Deputy (2004-2007), MEP (2007-).
Cristian Poteras	Born 07/29/1965). PNL (-2007), PDL (2007-).
Dan Diaconescu	Born 12/09/1967. PPDD (2011-2015, then absorbed into UNPR). President of PPDD (November-September 2010), Candidate in 2014 Presidential Election.
Dan Nica	Born 07/02/1960. PSD. Deputy (1996-2012), MEP (2014-).
Dan Pășat	Born 06/21/1969). PD (2000-2005), PDL (2005-2010). Deputy (2008-2012).
Dan Sova	Born 04/09/1973. PSD. Senator (2008-), Minister for Infrastructure Projects of National Interest and Foreign Investment (2012-).
Dan Voiculescu	Born 09/25/1946. PC. Senator (2004-2012, 2013).
Daniel Constantin	Born 06/26/1978. PC. Minister of Agriculture (2012-2015).
Daniel Funeriu	Born 04/11/1971. PDL. Minister of Education (2009-2012).
Darius Valcov	Born 03/25/1977. PD (-2007), PDL (2007-2012), PSD (2012-). Mayor of Slatina (2004-2012), Minister of Finance (2014-2015).
Decebal Traian Remes	Born 06/26/1949. PNL (-2002, 2005-), PNT-CD (2002-2005). Deputy (1996-2000), Minister of Agriculture and Rural Development (April-October 2007), Minister of Finance (1998-2000).
Dinu Patriciu	Born 08/03/1950; Died 08/19/2014. PNL. Founding member of PNL (1990), Businessman.
Dumitru Dragomir	Born 05/30/1946. PRM (2000-2008), Independent (2008-). President of Romanian Professional Football League (1996-2014), Deputy (2000-2008).
Ecaterina Andronescu	Born 04/07/1948. PSD. Deputy (1996-2008), Minister of Education (2000-2003, 2008-2009, 2012), Senator (2008-).
Elena Udrea	Born 12/26/1973. PNL (2002-2005), PDL (2006-2014), MP (2014-). Minister of Tourism (2008-2009), Minister of Regional Development and Tourism (2009-2012), Deputy (2008-).

Emil Boc	Born 09/06/1966. PDL. Prime Minister of Romania (2008-2012), Mayor of Cluj-Napoca (2012-).
Eugen Bejinariu	Born 01/28/1959. PSD. Prime Minister of Romania (December 2004).
Florentin Gust	Born 04/15/1979. PSD. Deputy (2008-).
Florin Pâslaru	Born 09/05/1959. PSD. Deputy (2012-).
Gabriel Oprea	Born 01/01/1961. PSD (2003-2009), UNPR (2010-). Minister of National Defence (2009-2012), Minister of Internal Affairs (2014-2015), Prime Minister of Romania (2015).
Gabriel Sandu	Born 09/08/1963. PDL. Deputy (2004-2008), Minister of Communications and Information Society (2008-2010).
George (Gigi) Becali	Born 06/25/1958. PNGCD (-2012), PNL (2012-2013). MEP (2009-2012), Deputy (2012-2013).
George Copos	Born 03/27/1953. PC (-2006).
Gheorghe Falca	Born 01/22/1967. PDL (2004-2014), PNL (2014-). Mayor of Arad (2004-).
Günter Verheugen	Born 04/28/1944. PSD. European Commissioner for Enlargement (1999-2004), European Commissioner for Enterprise and Industry (2004-2010).
Hildegard Puwak	Born 09/16/1949. PSD. Minister for European Integration (2000-2003), Deputy (1996-2004).
Ioan-Codruț Șereș	Born 08/02/1969. PC. Senator (2004-2008), Minister of Economy and Commerce (2004-2006).
Ion Iliescu	Born 03/03/1930. NSF (1989-1992), FDSN (1992-1993), Independent (1993-1996, 2000-2004) PSD (1996-2000, 2004-). President of Romania (1989-1996).
Ion Ratiu	Born 06/06/1917; Died 01/17/2000. PNT-CD. Candidate in Presidential Election (1990), Deputy (1990-1992).
Ionel Mantog	PDL, Head of PDL Gorj in 2006, Ministry of Economy (2006)
Jacques Delors	Born 07/20/1925). PS. President of the European Commission (1985-1995).
James Nicholson	Born 01/29/1945. IEN (1997-1999), EPP Group (1999-2009), ECR Group (2009-). MEP (1989-).
Janusz Lewandowski	Born 06/13/1951. PO (2001-). European Commissioner for Financial Programming and the Budget (2010-2014).
Klaus Iohannis	Born 06/13/1959. DFDR (1990-2013), PNL (2013-2014), Independent (2014-). Leader of PNL (2014), Mayor of Sibiu (2000-2014), President of Romania (2014-).
Laszlo Borbely	Born 03/26/1954. UDMR. Deputy (1990-1996, 2000-).
Liviu Dragnea	Born 10/28/1962. PSD. Minister of Administration and Interior (2009), Minister of Regional Development and Administration (2012-2015), President of PSD (2015-).
Marian Oprisan	Born 09/14/1965. PSD. President of Vrancea County Council (1995-1996, 2000-).
Marinica Cazacu	Prefect of county Ialomița (PDL)
Mihai Tanasescu	Born 01/11/1956. PSD. Minister of Finance (2000-2004), Deputy (2004-2007).
Mihai-Bogdan Diaconu	Born 10/09/1979. PSD (-2014), UPR (2014-). Deputy (2012-).
Mircea Beuran	Born 06/05/1953. PSD. Minister of Health (2000-2004).
Mircea Diaconu	Born 12/24/1949. PNL (-2014), Independent (2014-). Senator (2008-2012), Minister of Culture (2012), MEP (2014-).
Miron Mitrea	Born 08/08/1956. PSD. Deputy (1996-2008), Senator (2008-2012), Minister of Public Works and Transport (2000-2004).
Monica Iacob Ridzi	Born 06/30/1977. PDL. MEP (2007-2008), Deputy (2008-).
Monica Macovei	Born 02/04/1959. PDL (2009-2015), Independent (2015), ECR Group (2015-). Minister of Justice (2004-2007), Candidate in Presidential Election (2014), MEP (2009-).
Mora Akos Daniel	Born 12/19/2012. PNL. Senator (2008-2012).
Nicolae Ceaușescu	Born 01/26/1918; Died 12/25/1989. PCR. President of Romania (1974-1989).
Nicolae Mischie	Born 03/02/1945. NSF (1990-1992), PDS (1992-). MP (1990-1996), Senator (2000)

Olli Rehn	Born 03/31/1962. CP. European Commissioner for Enterprise and Information Society (2004), European Commissioner for Enlargement (2004-2010), European Commissioner for Economic and Monetary Affairs and the Euro (2010-2014), MEP (2014-2015), Minister of Economic Affairs (Finland) (2015-).
Paul van Buitenen	Born 05/28/1957. EG-EFA. MEP (2004-2009).
Petru Șerban Mihăilescu	Born 03/08/1944. PSD. Deputy (1996-2004), Senator (2004-2012).
Radu Mazare	Born 07/05/1968. PD (1995-1997), Independent (1997-2003), PSD (2003-). Deputy (1996-2000), Mayor of Constanta (2000-2015).
Ramona Mănescu	Born 12/06/1972. PNL (1990-), ALDE (2007-2014), EPP Group (2014-). MEP (2007-).
Relu Fenechiu	Born 07/03/1965. PNL. Deputy (2004-2014), Minister of Transport (2012-2013).
Rodica Stănoiu	Born 05/10/1939. PSD (2000-2006), PC (2006-). Senator (1996-2004), Minister of Justice (2000-2004).
Romano Prodi	Born 08/09/1939. PD-I. President of the European Commission (1999-2004), Prime Minister of Italy (1996-1998, 2006-2008).
Serban Bradisteanu	Senator PSD (2000-2004), medical doctor investigated for abuse of office
Serban Nicolae	Born 04/05/1968. PSD. Senator (2004-2008, 2012-).
Sergiu Andon	Born 09/12/1939. PC. Vice President of Conservative Party (1997-2000).
Sorin Rosca Stanescu	Born 09/08/1949. PNL (2012-2014 – expelled). Journalist, former director of newspaper Ziua.
Traian Băsescu	Born 11/04/1951. PD (1992-2004), Independent (2004-2015), Deputy (2015-). Minister of Transport (1991-1992), Mayor of Bucharest (2000-2004), President of Romania (2004-2014).
Tudor Chiuariu	Born 06/13/1976. PNL. Justice Minister (2007), Deputy (2008-2012), Senator (2012-).
Valer Marian	Born 08/02/1960. PSD. Senator (2008-).
Valerian Vreme	Born 1963. PDL (-2013), MP (2013-2015), UNPR (2015-). Deputy (2008-), Minister of Communications and Information Society (2010-2012).
Varujan Vosganian	Born 07/25/1958. PSD. Minister of Economy and Commerce (2007), Minister of Economy and Finance (2007-2008).
Vasile Emilian Cutean	Born 05/31/1965. PSD. Deputy (2004-2008).
Vasile Puscas	Born 07/08/1952. PSD. Romanian Chief Negotiator with the European Union (2000-2004), Deputy (2000-2008).
Verginel Gireada	Born 10/03/1968. PNL. Mayor of Mihai Eminescu (2004-2012), Deputy (2012-).
Victor Babiuc	Born 04/03/1938. PD (1992-2000; 2003-); PNL (2000-2002). Deputy (1990, 1992-2004), Minister of Justice (1990-1991), Minister of the Interior (1991-1992), Minister of National Defence (1996-2000).
Victor Ciorbea	Born 10/26/1954. PNT-CD (1989-2012), PNL (2012-2014). Ombudsman (2014-), Mayor of Bucharest (1996), Prime Minister of Romania (1996-1998).
Victor Ponta	Born 09/20/1972. PSD. Leader of PSD (2010-2015), Prime Minister of Romania (2012-2015).
Victor Yanukovych	Born 07/09/1950. POR. Prime Minister of Ukraine (2002-2005, 2006-2007), President of Ukraine (2010-2014).
Zsolt Nagy	Born 06/21/1971. UDMR. Minister of Communication (2004-2007)

Individual	Position/Role
Adrian Sarbu	Influential media owner – launched ProTV, owns MediaFax, former CEO of Central European Media Enterprises. Retained February 2015 for charges of abetting tax evasion, money laundering, and embezzlement
Alina Ghica	Former head of Superior Council of Magistrates
Anastasiu Crisu	Romanian lawyer; Ombudsman from January-December 2013
Angela Eugenia Nicolae	Former prosecutor from office attached to High Court of Cassation and Justice; arrested in 2014 for violation of judicial review
Antonela Costache	Judge, Bucharest Tribunal, arrested for bribery and influence peddling
Aspazia Cojocaru	Former judge of the Constitutional Court of Romania (2004-2013)
Bogdan Popovici	Founder and president of Forum Invest; owns 8 of 9 companies involved in “Quality Trophy” case regarding illegal fundraising for Năstase’s campaign
Christian Mititelu	Romanian journalist; previous director of Romanian department of BBC
Cristi Danilet	Romanian judge; member of Superior Council of Magistracy; previously worked in Cluj and Oradea courts
Dan Adamescu	Romanian businessman
Dan Secareanu	Former head of SIPI Constanta; accused of complicity in tax evasion, supporting an organized crime group, providing unauthorized people with classified information
Dana Năstase	Wife of Adrian Năstase
Daniel Morar	Romanian jurist; former Chief Attorney of the Romanian National Anticorruption Directorate; current judge on Romania’s Constitutional Court
Daniela Ciochina	Lawyer; chosen in 2012 as member of Superior Council of Magistracy by Senate
Doru Tulus	Romanian prosecutor involved in Quality Trophy and Zambaccian cases
George Constantin Paunescu	Romanian businessman
Gheorghe Iancu	Romanian lawyer; former Ombudsman (2011-2012)
Ilie Botos	Romanian lawyer; former head of office attached to High Court of Cassation and Justice (2003-2006)
Ioan Amarie	Romanian prosecutor; appointed head of National Anticorruption Prosecutor’s Office in 2002; member of Superior Council of Magistracy until 2005
Ion Tiriac	Romanian businessman; former professional tennis and hockey player
Ioniță Botoș	Former Chief of the Romanian Armed Forces; uncle of Ilie Botos
Irina Jianu	Former head of the State Inspectorate for Constructions; sentenced in 2015 for bribery
Laura Codruta Kovesi	Current Chief Prosecutor of the National Anticorruption Directorate
Lucian Papici	Attorney; investigated for illegal wiretaps and illegal operations with devices or programs in 2015
Marian Sintion	Former head of the General Anticorruption Directorate; current prosecutor in Prosecutor’s supreme court
Mariana Alexandru	Former prosecutor; leader of National Anticorruption Centre
Marina Popovici	Sentenced to prison in 2012 for money laundering and “Quality Trophy” case
Mihai Necolaiciuc	Previous director of the national Romanian Railways; indicted by DNA in 2009 for abuse of office against public interest
Mircea Aron	President, Superior Council of Magistracy

Mircea Puscas	Former Judge from Oradea Court of Appeal; sentenced to prison after accepting money from a businessman for a favourable outcome in court
Nicusor Constantinescu	President Constanta Council
Oana Schmidt Hăineală	Member of Superior Council of Magistracy; former CSM Vice President
Petre Podea	Justice; found guilty of influence peddling and bribery
Radu Nemes	Entrepreneur, tax evasion
Răsvan Popescu	Romanian journalist and writer; former spoken for President Emil Constantinescu; president of National Center for Anti-Corruption
Remus Virgil Baci	Former Vice President of the National Authority for Property Restitution; sentenced for corruption for having received bribes for emergency cases for property restitution
Robert Turcescu	Romanian journalist and media critic; host of political TV talk show
Sorin Alexandrescu	Presidential advisor for culture in 1998, a founder of Centrul de Excelență în Studiul Imaginii at the University of Bucharest in 2001
Sorin Blejnar	Romanian economist; former head of National Agency for Fiscal Administration; indicted in “Diesel” case in 2012; prosecuted in 2014 for tax evasion with petroleum products
Sorin Ovidiu Vantu	Romanian businessman; owner of Realitatea-Cațavencu media company; accused of tax evasion in 2009 by President Basescu; sentenced to prison in 2005 for using false documents and later in 2012 following accusation of blackmail
Stan Mustata	Judge; sentenced to over ten years in prison for receiving bribes and influence peddling
Tiberiu Nitu	Former Prosecutor General of Romania; suspected of complicity to abuse of office
Toni Grebla	Former Constitutional Court of Romania judge; forced to resign due to investigations of corruption
Valentin-Alexandru Jucan	Member of National Broadcasting Council; Secretary of State
Valerian Stan	Previous chief of prime minister’s inspection agency, dismissed by Ciorbea after publishing list of politicians residing in luxurious government-owned homes. Military officer, human rights activist, and civil servant.
Viorel Comanita	Former head of customs; detained in cases involved influence peddling, bribery, and aiding and abetting evasion in connection with importation of petroleum products
Viorica Dinu	Judge Bucharest Tribunal, arrested for influence peddling and bribery

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