

**Why the UK should Reform or Exit the  
European Arrest Warrant:  
Problems and Excesses of the Romanian  
Anti-Corruption Fight**

**Produced by The Hampden Trust in association with  
The Freedom Association and Economic Policy Centre**

*The Hampden Trust*



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## Preface

While the United Kingdom is now heading for Brexit, it is increasingly clear that a majority of Britons voted for such a change not simply out of concern over such matters as immigration and the direction of travel in European Union economic policy, but often out of a concern to maintain sovereignty and the high quality of justice and rule of law associated with the United Kingdom and its constituent parts. Indeed, there is evidence that above immigration and economics, concerns with rule of law, control and justice were of paramount importance for many voters.

This reality makes this report all the more relevant and timely. As the United Kingdom renegotiates its relationship with continental Europe, how should it move forward in its relations with those European countries where legal and judicial practices still remain parlous? What should the United Kingdom do with systems such as the European Arrest Warrant? And what of countries, like Romania, that despite all manner of protestations and assertions to the contrary, still clearly have so far to go in improving their practices when it comes to the basics of due process, human rights and even prison conditions?

This paper is intended to be helpful. In making specific recommendations on how countries such as Romania have to reform by placing quality of due process and human rights over the sheer volume and quantity of cases its frequently over-zealous authorities bring, it is hoped that a reformed EAW system might be salvageable. However, if countries such as Romania are not prepared to make substantive and demonstrable improvements, then clearly, the United Kingdom would have no alternative but to opt out of such an unjust and poorly designed system.

## Executive Summary

- As the United Kingdom heads towards Brexit and the complex issues around legal separation, this report makes an important contribution to the debate by pointing out that not all EU national legal systems are equal in standard or fit for ongoing arrangements of reciprocity in areas such as extradition.
- Focusing on Romania (but also mentioning others in the region) this report points out that there is often a persistent and unacceptable lack of separation between the institutions of politics, the economy, and the secret state. In judging Romania's quest for anti-corruption in recent years, three key international measures - the Legatum Institute's Prosperity Index 2015, the Fraser Institute's Economic Freedom of the World Report 2015, and the Heritage Foundation's 2016 Index of Economic Freedom – all suggest that a new approach is urgently required.
- Despite seemingly vigorous anti-corruption reforms spanning the last 12 years, the Legatum Institute in 2015 found that 85.2% of those surveyed in Romania believed that corruption in government and business remained widespread. Only 41.4% had confidence in the judicial system and a mere 26.7% had confidence in the national government.
- The Fraser Institute continues to rate Romania very poorly on its legal system and property rights, and gives a damning assessment of Romania's judicial independence. Both the reliability of Romania's police force and the protection of property rights in the country are shown to have remained consistently poor over the last 15 years. Indeed, the Fraser Institute's 2015 report shows that the impartiality of courts in Romania has actually declined since 2000, along with the integrity of the legal system and the legal enforcement of contracts.
- The Heritage Foundation's 2016 Index of Economic Freedom goes further, highlighting a sharp decrease in Romania's commitment to property rights in the last year alone and expressing ongoing concern about the lack of rule of law in the country holding it back: 'Lingering institutional shortcomings make it difficult to enhance respect for the rule of law. High levels of corruption exacerbated by a relatively inefficient judicial system weaken the prospects for dynamic long-term development.' The report concludes: 'Romania has struggled to meet

the European Union's anti-corruption requirements amid resistance from much of the political class. The courts are under resourced and subject to chronic corruption and political influence.'

- Similarly, recent decisions by the UK's Crown Prosecution Service suggest that Romania's rhetoric on the success of its judicial reforms are not being matched by results. Following UK High Court litigation in which concern over overcrowding in Romania's prisons had been expressed, Romania gave assurances to the British government on prison conditions for those extradited to the country. These assurances were later found to have been breached in a number of cases, prompting the CPS to adjourn all pending Romanian cases until Romania could assure British authorities that those extradited would not risk being subjected to 'inhuman and degrading treatment'.
- On the basis of the concerns expressed by leading commentators, think tanks and observers, this paper makes the following six recommendations:
  1. The Romanian domestic intelligence service and national anti-corruption directorate (SRI/DNA) nexus must stop exerting undue influence over Romania's judiciary by pressurising courts and judges. The extraordinarily high conviction rates in excess of 90% raise alarm bells concerning the parlous state of defendants' rights.
  2. The DNA should place quality over quantity in its work. With 10,947 cases on its books, yet only 131 prosecutors on its payroll in 2015, it is unsurprising that concerns are increasingly being expressed about the DNA's work. Too many cases are tainted by wilful and improper actions, and such concerns must be addressed by ensuring that prosecutions adhere to the highest standards of investigation and legal practice. Moving forward, quality must be placed over quantity and volume.
  3. The Romanian national anti-corruption directorate, the DNA, must avoid being a political player; it must not fall into the age-old trap of believing it speaks for ordinary citizens. Perceived political opportunism in prosecutorial cases run the risk of backfiring with adverse, dire and unintended consequences: not least for the development and future of Romanian democracy.

4. A renewed focus on quality by the DNA should be accompanied by comprehensive reform of Romania's court and prison system. The basic principles of an independent judiciary, innocence until proven guilty, habeas corpus and trial by jury should all be clearly adhered to. Without this, comments about the corruption of the anti-corruption drive and the political nature of a number of corruption convictions will remain. Likewise, Romania's prison system must also be overhauled to address issues concerning overcrowding and the inhuman treatment of prisoners.
5. In future, extraditions to Romania under the European Arrest Warrant should receive additional legal scrutiny from extraditing countries such as the United Kingdom; particularly around the matters of fair trials, political interference in the legal process and assurances over human rights for those being extradited.
6. Should Romania fail to take adequate steps to improve the quality of its judicial decisions, extraditions to Romania under the European Arrest Warrant system should be halted either for good or until Romania reaches basic international standards hopefully at some point in the mid-2020s. The leaders of the anti-corruption drive in Romania increasingly rely on external sources for support and legitimacy. International opprobrium may be the only effective means to force progress and support those within Romania who are unhappy with the current trajectory of judicial and legal development.

## I Introduction

This paper sets out to:

- Examine the role of the issue of corruption in the post-Communist political life of Romania. This first section will look at how the issue of corruption and political efforts to confront it provide a thread of continuity from the period immediately after the revolution of 1989 until the present day.
- Look at the record, methods, and effectiveness of the two recent attempts to address the issue of corruption in Romania.
- Evaluate the role and attitudes of the international community (EU, national governments, and the United States) towards corruption in Romania.
- Compare the nature of the anti-corruption drive in Romania with those that have taken place in recent years in neighbouring countries, and seek to examine whether Romania follows the same pattern as these states or has its own anti-corruption model.
- Look at the effects of the anti-corruption drive on the Romanian parties and the political system.
- Suggest possible future developments in Romania in relation to the anti-corruption drive.



## II Governance and Corruption in Post-Communist Romania

In the period after the Second World War, Romania was governed by a hard-line Communist regime under the leadership of Gheorghe Gheorghiu-Dej (1901-1965). After a brief period of 'liberalisation' from 1965 to 1968, his successor, Nicolae Ceausescu, reverted to governing Romania through an extreme form of national communism. Under Ceausescu's 'sultanist' form of governance the political and economic spheres were fused. The *securitate* (secret police) and their web of informers provided Ceausescu with a crucial mechanism of control. In this situation, where it was hard to tell who was a *securitate* informer, fear of their presence could be as significant a factor as actual surveillance.

During the 1970s, Ceausescu's policy of independence from the Soviet Union ensured that Western governments were ready to largely view his regime sympathetically in spite of the excesses committed by his government within Romania. Ceausescu received a knighthood during a state visit to the United Kingdom in 1978. By the 1980s, however, Ceausescu's government had become increasingly isolated internationally, and afflicted by internal social, ethnic, and economic discontents.

On 18/19 December 1989 demonstrations broke out in Timisoara in Transylvania (western Romania) when the *securitate* attempted to evict Lazlo Tokes, a dissident Protestant clergyman from the Hungarian minority. In this multi-ethnic town, Romanian and Hungarian demonstrators united against the representatives of the regime. By 20 December, *securitate* and army units had, in spite of using live ammunition on the demonstrators, failed to regain control of the town and had been forced to withdraw.

By 21 December the demonstrations had spread to Bucharest. On the morning of 22 December, amidst chaotic scenes on the streets of the city, Nicolae Ceausescu and his wife Elena had fled from the capital. They were captured later that day near the town of Tirgoviste, around fifty miles from Bucharest. After a brief trial, presided over by, amongst others, *securitate* Colonel Virgil Magureanu, Nicolae and Elena Ceausescu were executed on the afternoon of 25 December 1989.

On the evening of 22 December 1989 a meeting of crucial importance to the future political development of Romania took place in the offices of the Central Committee of the Communist Party. At this meeting a group of Communist Party officials headed by Ion Iliescu, formed themselves into a provisional government, the National Salvation Front (NSF). The NSF would

later claim that this move acted to save the revolution by convincing key figures in the army and the *securitate* that it was safe for them to defect from the regime to the side of the revolutionaries. However, others have suggested that far from saving the revolution, the formation of the NSF acted to hijack the revolution by allowing Communist Party officials to take control of what had begun as a popular uprising.

It is a peculiarity of politics in Romania that both the main centre-left party, the Social Democratic Party, and the main centre-right party, the National Liberal Party (PNL) are, in their current organisational forms, lineal descendants of the National Salvation Front. This element of organisational continuity from the Communist period, extending across the political spectrum, may go some way towards accounting for the on-going interconnection between political and economic life which exists in Romania.<sup>1</sup>

On 23 January 1990, the NSF announced that it was transforming itself into a political party which would contest the forthcoming presidential and parliamentary elections. The elections, held on 20 May, cemented the control by the NSF of Romania's political and economic life. Ion Iliescu was elected as President of Romania with 85% of the vote. In the parliamentary elections the NSF gained 67% of the vote. The elections were also contested by two 'historic' political parties, the National Liberal Party (PNL) and the National Peasants Christian Democratic Party (PNTCD). However, these hastily reconvened formations enjoyed limited electoral success. The PNL gained 10.6% in the presidential elections and 7.06% in the parliamentary elections. The PNTCD secured 4.3% in the presidential elections and 2.5% in the parliamentary elections.

In the period immediately before and after the elections young student activists sought to challenge the NSF control of the state through a series of demonstrations in central Bucharest. On 13-15 June 1990, Ion Iliescu, Romania's new president, staged a show of force calling in miners from the Jiu valley to disperse the protesters, an event which came to be known as the *Mineriada*. Four people were killed and over a thousand were injured during

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<sup>1</sup> The period of Nicolae Ceausescu's rule in Romania and the events of the December 1989 Revolution are discussed in:

*The Romanian Revolution of December 1989* Peter Siani-Davies Cornell University Press, 2005;

*Romania in Turmoil – A Contemporary History* Martin Rady I B Tauris, 1992;

*The Rise and Fall of Nicolae and Elena Ceausescu* Mark Almond Chapman, 1992;

*Romania after Ceausescu: Post Communist Communism?* Katherine Verdery and Gail Kligman in *Eastern Europe in Revolution* edited by Ivo Banac Cornell University Press, 1992

the course of the miners' intervention.<sup>2</sup> On 21 October 2015 Ion Iliescu appeared in court along with former intelligence chief, Virgil Magureanu, and former Defence Minister, Victor Stanculescu. The Romanian authorities had been criticised in 2014 by the European Court of Human Rights (ECHR) for their failure to bring the organisers of the *Mineriada* to justice.<sup>3</sup>

In March 1992 a major split took place within the ranks of the NSF. Petre Roman, the former Prime Minister who had been forced to resign in September 1991, retained control of the NSF organisationally. In May 1993, Roman's NSF renamed itself as the Democratic Party. Following the split Ion Iliescu formed the Democratic National Salvation Front (DNSF). In July 1993 the DNSF merged with a number of other leftist parties and renamed itself as the Social Democratic Party of Romania (PSDR).

In the parliamentary elections of September 1992 Ion Iliescu's organisationally weakened DNSF emerged as the largest party with 28.29%, but faced a strong challenge from the Democratic Convention of Romania (DCR), an opposition coalition consisting of the PNTCD, PNL, and a number of other opposition parties, which gained 20.16%, and Roman's NSF with 10.38%. Ion Iliescu won the presidential election with 61.4% of the vote defeating Emil Constantinescu of the DCR who gained 38.6% of the vote. Iliescu and the DNSF were only able to maintain themselves in government with the support of two ultra-nationalist parties, the Greater Romania Party led by Corneliu Vadim Tudor and the Party of Romanian National Unity led by Gheorghe Funar, the mayor of Cluj, who was heavily involved in the *Caritas* pyramid scam.<sup>4</sup>

The opposition parties including the Democratic Convention and the Social Democratic Union (Democratic Party and Social Democratic Party), contested the 1996 elections with a stronger electoral organisation and a message which focussed heavily on the corruption of the Iliescu government.

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<sup>2</sup> The events of the *Mineriada* are discussed in:  
*The President and the Miners: The End of a Privileged Relationship?* Mihai Sturdza Report on Eastern Europe 28, September, 1990;  
*The Miners Crackdown on the Opposition: A Review of the Evidence* Mihai Sturdza, 11 January 1991;  
A journalistic account of the June 1990 *Mineriada* is given in: *Prejudice and Plum Brandy* Alec Russell Michael Joseph, 1993 Page 113-132.

<sup>3</sup> *Romania's Ion Iliescu Faces Crimes Against Humanity Charges* BBC, 21 October 2015

<sup>4</sup> *No Need to Rig the Ballot* Noel Malcolm *The Spectator*, 3 October 1992

Petre Roman stated prior to the elections that:

*'Our best asset is that people are very disappointed with this government. Corruption is huge. The system is really rotten. Social promotion is based on party membership and many people live in incredible poverty'.<sup>5</sup>*

On polling day, Emil Constantinescu gained 54.4% of the vote to 45.6% for Ion Iliescu. At the parliamentary level the Democratic Convention gained 30.7% of the vote to 23.08% for Iliescu's PSDR, and 13.06% for the Social Democratic Union. These results meant that the 'historic' opposition and post-Communist USD were able to form a coalition government which should have been in a position to confront the Ceausescu legacy, including the issue of corruption.

The Democratic Convention led government from 1996-2000 was, however, characterised by in-fighting within its ranks, economic contraction, and a failure to deal with the issue of corruption. On 11 July 2000 Emil Constantinescu, the Romanian President, announced that he would not be standing for a second term. He stated that:

*'When I launched myself into the fight against corruption I discovered in Romania a mafia system in which a web of front operations was backed by the highest state institutions. We live in a world where everything is for sale – principles, ideologies, parliamentary seats. My place is not in this world.'<sup>6</sup>*

The parliamentary elections of 2000 witnessed a restoration of the old order and the almost total collapse of the historic non-Communist opposition. In the Presidential elections, Romanian voters were faced in the second round of voting, with an invidious choice between Ion Iliescu and the ultra-nationalist Corneliu Vadim Tudor, the leader of the Greater Romania Party. In the end Iliescu prevailed with 66.90% of the vote to 33.17% for Vadim Tudor. In the parliamentary elections the Social Democrats gained 36% of the vote, the Greater Romania Party 19.4%, the Democratic Party 7.03%, and the National Liberal Party 6.89%. The Democratic Convention, which was focussed on the PNTCD following the departure of the PNL, secured only 5.04% of the vote, an electoral blow from which they were unable to recover.

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<sup>5</sup> *The Pendulum Starts to Swing* Virginia Marsh *Financial Times*, 9 July 1996

<sup>6</sup> *Romanian Politics in Turmoil After President Quits* Marian Chiriac *Institute for War and Peace Reporting* 21 July 2000

In the 2004 presidential elections Traian Basescu, the Democratic Party candidate, campaigned strongly on an anti-corruption platform. He borrowed openly from the rhetoric and symbolism of the Orange Revolution which had recently taken place in neighbouring Ukraine. On polling day Traian Basescu won a narrow victory with 51.23% of the vote to 48.77% for Adrian Natase the Social Democrat candidate. Following the parliamentary elections Basescu was able to construct a new coalition government consisting of the Democratic Party, the National Liberals, the Democratic League of Hungarians in Romania, and the Humanist Party, later renamed as the Conservative Party, who had detached themselves from their electoral coalition with the Social Democrats.

During this period Basescu instituted the first major anti-corruption campaign (*see below*). He also set in motion a major ideological and organisational reconfiguration in Romanian politics. The Democratic Party had previously defined itself as a party of the centre-left, and had gained membership of the Socialist International. Basescu, however, sought to take advantage of the marginalisation of the PNTCD, and the gap left on the political spectrum, by redefining the Democratic Party as a party of the centre-right. In 2005, the PD became an observer member of the European People's Party, the pan-European centre-right grouping. In January 2007 the status of the PD was upgraded so that it became an associate member of the EPP. In January 2008 the Democratic Party merged with the Liberal Democratic Party, who had split from National Liberal Party, to form the Democratic Liberal Party (PD-L). This process of consolidation and transformation was continued in July 2014 with the merger of the PD-L and the PNL. The new party used the PNL name, but retained a significant element of the PD-L organisation.<sup>7</sup>

Traian Basescu, however, had split from the PD-L in July 2013 to form his own breakaway centre-right grouping, the People's Movement Party (PMP). On 20 July 2016 Traian Basescu announced that the PMP would be merging with the centre-left National Union for Progress in Romania. This fusion of parties apparently from the opposite ends of the Romanian political spectrum further underlines the ideological fluidity of Romanian politics.

By early 2007 the parliamentary coalition Basescu had constructed had broken down. Moves were made by Basescu's political enemies, including the

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<sup>7</sup> *The Democratic Party from Romania Became an Associate Member of the European People's Party* Georgeta Volnea Konrad Adenauer Bucharest, 20 November 2006;

*Romania: Merger a Touchstone for PNL and PD* Alina Grigoras SEEurope.net, 1 October 2005.

governing PNL and Conservative Party and the opposition Social Democrats, to hold a referendum calling for his impeachment. On polling day, 19 May 2007, Basescu secured a convincing victory in the referendum with 74.48% against impeachment and 24.75% against. This high level of public support for Basescu derived to a considerable extent from the reputation he had gained amongst the public as a campaigner against corruption.<sup>8</sup>

However, the popularity of Basescu and his party declined as the next round of parliamentary and presidential elections approached. In the 2008 parliamentary elections the Social Democrat/Conservative coalition gained 33.1% of the vote, the PD-L gained 32.4% and the PNL 18.6%. Subsequent negotiations between the PD-L and the Social Democrats saw Emil Boc, the PD-L candidate and current mayor of Cluj, becoming Prime Minister. In the Presidential elections in 2009 Traian Basescu was narrowly re-elected with 50.3% of the vote to 49.66% for his rival Mircea Geoana. Basescu's victory was secured at the last minute following the counting of votes from Romanians living abroad.

In February 2012, Emil Boc resigned as Prime Minister in the face of anti-austerity street protests. His place was taken, in April 2012, by Victor Ponta (born 1972) from the Social Democrats. In July 2012 Ponta moved against Basescu calling a second referendum on the president's impeachment. Basescu denounced the threat of impeachment as an attempted coup, and called on his supporters to boycott the referendum.

This took place amidst domestic and international concerns over the increasing authoritarianism of the Ponta government, and his attempts to control media and cultural institutions. Herman van Rompuy, the President of the European Council, stated that the EU had 'deep concerns' regarding 'the rule of law and independence of the judiciary.' He called on Ponta to address these issues.

On 29 July 2012, referendum polling day, 88.7% voted in favour of Basescu being impeached with 11.3% voting against. Turn-out, however, was 46%, and as it fell below the 50% threshold the Romanian Constitutional Court declared the referendum to be invalid.

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<sup>8</sup> The 2007 impeachment referendum and its relation to the issue of corruption is analyzed in: *Europe and Romania's Presidential Impeachment Referendum, May 2007* Ed; Maxfield *European Parties Elections and Referendums Network* October, 2007.

In spite of this setback in the referendum Victor Ponta was able to consolidate his power in the parliamentary elections held on 9 December 2012. In these elections the Social Democrat led coalition gained 58.61% of the vote compared to 16.52% for the PD-L led, Right Romania Alliance.

Victor Ponta entered the November 2014 presidential elections confident of securing victory. He was, however, unexpectedly defeated in the second round of the elections when he gained 45% of the vote to 54% for his opponent, Klaus Iohannis, the mayor of Sibiu, standing for the Christian Liberal Alliance (PD-L and PNL). Iohannis had made anti-corruption and judicial independence key elements in his electoral platform.

On 17 September 2015, Victor Ponta was indicted on charges of money laundering, tax evasion, and conflict of interest dating from the period before he became Prime Minister. In spite of the fact that these charges had been brought against him Ponta stated that he was determined to remain as Prime Minister until new parliamentary elections were held at the end of 2016.

Then on 30 October 2015, a fire broke out at the *Colectiv* night club in Bucharest in which 64 people died and 147 were injured. Protests took place in Bucharest and other towns which soon shifted in focus from the venue's defective safety precautions to a wider protest against the government and corruption. On 4 November in the face of continuing protests Victor Ponta, and the rest of the Romanian government, were forced to resign. Ponta's administration was replaced on 17 November by a new technocratic government headed by Dacian Ciolos, a former EU commissioner with responsibility for agriculture.

### III Monica Macovei and the First Anti-Corruption Drive (2004-2007)

Monica Macovei (born 1959) was a prominent lawyer and civic activist. In the public sphere she focussed on campaigning for minorities, particularly LGBT and Roma rights and against corruption. In 1997 she brought a case against former President Ion Iliescu for perjury in relation to an episode in 1991 when the miners of the Jiu valley had descended once again on the capital following the *Mineriada* of the previous year.<sup>9</sup> Following the election victory of Traian Basescu, Monica Macovei was appointed in December 2004 as the new Justice Minister. She was seen as having an established record of campaigning experience and political independence.

In office, Macovei took steps to reform the judiciary and eliminate some of the residual vestiges of communism, including disbandment of the Justice Ministry's secret service. She appointed a new head to the National Anti-Corruption Directorate (DNA), the prosecutor Dan Morar, under whose leadership former Prime Minister Adrian Nastase was indicted for corruption in 2006 along with several other former government ministers and members of parliament from the PSD, which now found itself in opposition.

The DNA's targeting of senior PSD figures quickly earned it criticism for being politically biased and Macovei and Morar were accused of abuses of power by the opposition who believed they had been doing the bidding of President Basescu in his endeavour to eliminate the PSD's leadership.<sup>10</sup>

Monica Macovei's period in office as Justice Minister is widely seen as constituting the first serious attempt by the Romanian government to confront the issue of corruption, and the relationship between state, politics, and the economy. Despite the bias in the prosecutions against the Social-Democratic Party, the European Union were nevertheless keen to acknowledge Romania's efforts at reform and it is in this context that Macovei's reforms played a key role in securing Romanian accession to the EU in January 2007.

On 13 February 2007 a motion of no-confidence in Monica Macovei was moved in the Romanian senate by the Conservative Party, a political vehicle for the *securitate* connected oligarch Dan Voiculescu, and was supported by

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<sup>9</sup> *The Theft of a Nation – Romania Since Communism* Tom Gallagher Hurst, 2005 Page 186

<sup>10</sup> *A Controversial Minister: Monica Macovei* Carmen Epuran EuroZiua, 6 March 2007



the Social Democrats and the ultra-nationalist Greater Romania Party. The motion accused Macovei of delaying judicial reform, intervening in judicial cases, and undermining parliament. The motion was passed in the senate by 81 out of 137 votes. These figures suggested that even some senators from Traian Basescu's Democratic Party ended up voting against Macovei.

Following the vote, however, the Romanian Constitutional Court ruled that the passing of the no-confidence motion did not mean that Monica Macovei was obliged to resign. The European Commission, and other representatives of EU member governments, took this opportunity to express their support for her continuing in office.

While she survived, her political demise was not that long in coming. On 2 April 2007, Calin Popescu-Tariceanu the Romanian Prime Minister, removed her from her position as Justice Minister. This came after a split between Basescu's Democratic Party and the Prime Minister's National Liberal Party. Although Macovei was to some extent 'collateral damage' of a feud within the Romanian government, her departure was generally viewed by the international community as a major set-back to Romania's anti-corruption efforts.

#### IV Laura Kovesi and the Second Anti-Corruption Wave (2013 - )

Laura Codruta Kovesi (born 1973) was appointed in 2006 as Prosecutor General of Romania. In 2013, she was appointed as Chief Prosecutor for the DNA. In April 2016 she was reappointed to this position for a second three-year term.

Laura Kovesi is widely seen as a successor to Monica Macovei. While Macovei's anti-corruption measures were instrumental in securing Romania's accession to the EU, Kovesi's have been associated with securing Romanian compliance with the EU's Co-operation and Verification Mechanism (CVM).

During 2015, the DNA under Kovesi's leadership charged 1,258 individuals including 1 Prime Minister, 5 Ministers, 16 MPs, 5 senators, and 100 mayors or councillors. In the same year, the DNA reported that it had only 131 prosecutors on its payroll and more than 10,947 cases on its books. Despite chronic understaffing and significant problems around the quality of its work, throughout 2015 the DNA managed to record a staggering conviction rate in excess of 92%.<sup>11</sup>

Unsurprisingly, given clear internal pressures and the speed with which the DNA executes its investigations, there have been numerous examples of cases that have attracted serious criticism for breaches of due process and abuse of the fundamental rights of defendants.

It is in the context that under Kovesi, the work of the DNA has met with mixed opinions. Speaking at the presentation of their annual report in February 2016, Klaus Iohannis, the President of Romania told the DNA that:

*'You are the epitome of a functioning institution and you have created a standard for performance.'*<sup>12</sup>

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<sup>11</sup> DNA Annual Report 2015 (DNA Raport de Activitate 2015 Integral) Page 6

<sup>12</sup> National Anti-Corruption Directorate 2015 Review Reveals Bribes Worth 431 Million Euros Nine O'Clock, 15 February 2016

However, the year before, in April 2015, the former President of Romania, Traian Basescu, declared in more cautionary tones:

*“The anti-corruption fight must continue, because it has eroded the state. What I wish now is that these institutions should make no abuses, not enter into a triumphalist way of doing justice, of a show, made on the back of people’s dignity Coldea, Kovesi, Stanciu are the artisans of a devastating way of practising justice.”<sup>13</sup>*

Accusations of political motivation behind DNA prosecutions have been persistently raised inside Romania ever since Macovei’s first anti-corruption trials.

Moreover, many international observers have not been convinced by the idea that the DNA is independent. On 6 March 2016, the former chief of the US Secret Service for Eastern Europe, Darren White, expressed grave doubts about Kovesi’s ability to be a neutral and objective prosecutor in an interview on Romanian TV. White confirmed the feelings of many both domestically and internationally when he stated openly:

*“All too often, the people you see being prosecuted by the DNA, DIICOT and the others, those are political targets, those are people that they’re mad at for various reasons. So those services, even your intelligence services, the SIE, the SRI are often used for political purposes as opposed to what they were designed to do. I would have some doubts about the legitimacy of current and ongoing investigations by any of the bodies, DNA or DIICOT or any of the others because most of the targets are political targets, people that they’re angry with versus a legitimate criminal investigation.”<sup>14</sup>*

Such insights provide a strong countervailing view to the positive veneer that is perpetuated internationally by those who want to believe in the current iteration of Romanian anti-corruption. Indeed, when Laura Kovesi spoke in London at a conference on corruption in May 2016 she was described by *The Economist* as being greeted by the audience ‘as if she was a rock star.’<sup>15</sup>

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<sup>13</sup> T. Basescu: Coldea, Kovesi, Stanciu sunt artizanii modului ravasit de a face justitie. Nui sun din sila Digi 24, 6 April 2015

<sup>14</sup> Videocratia, interviu exploziv cu Darren White, fostul sef US Secret Service Unde Tv YouTube, 6 March 2016

<sup>15</sup> *Cleaning-Up* The Economist, 4 June 2016

In reality, the DNA and the Romanian internal intelligence service, the SRI, increasingly use wiretapping and surveillance techniques not only in relation to high profile political cases but in ways more reminiscent of totalitarian Eastern Europe than a functioning and liberal democracy under the rule of law.

The manifest involvement of the SRI in judicial matters gives further rise to concerns over judicial independence. In a shocking interview dated 30 April 2015, Dumitru Dumbrava, a General serving with the SRI, went so far as to state:

*“Specifically, if a few years ago we believed that we achieved our goal once the DNA was notified, for example, if we subsequently withdrew from the tactical field once the court was notified by the indictment, appreciating (naively as we can say now) that our mission had been completed, we now maintain our interest / attention until the final settlement of each case.”<sup>16</sup>*

Dumbrava’s comments confirm the fears of many observers, that a number of Romanian judges are either themselves SRI agents or are heavily pressured by its officers to obtain the preferred verdicts. The situation is now so bad that the Romanian Union of Judges (UNRJ) has formally asked for the full disclosure of SRI agents and operatives working within the Romanian court and judicial system, and for the full disclosure of SRI approval of nominations of new judges.<sup>17</sup>

In many ways, the DNA has probably deepened Romania’s problems concerning its lack of judicial independence. Many judges have been investigated after they refused to convict people on the DNA’s say so. Spectacular scenes of judges being escorted out of court by masked and heavily armed anti-terror police, as was the case for Stan Mustata in April 2014, have contributed to a climate of fear across the judiciary.<sup>18</sup>

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<sup>16</sup> Dumitru Dumbrava: SRI este unul dintre anticorpii bine dezvoltati si echipati pentru insanatosirea societatii si eliminarea coruptiei Alina Matei Juridice, 30 April 2015

<sup>17</sup> Uniunea Nationala a Judecatorilor din Romania cere presedintelui tarii clarificari despre implicarea SRI în numirile din Justitie Andreea Traicu MediaFax.ro, 4 August 2016

<sup>18</sup> Judecatorul Stan Mustata si grefiera Mariana Curea, arestati preventiv Digi24 29 April 2014

One telling example involves the investigation of the judges Dolache and Gagescu following the acquittal on appeal of Mariana Rarinca, a secretary accused of blackmailing the head of the Romanian Supreme Court, Livia Stanciu. Despite wide-spread concern over manifest bias in favour of the DNA's prosecution, Rarinca was finally sentenced by the Bucharest Appeals Court to a three year suspended sentence. Livia Stanciu on the other hand, was subsequently promoted by Romanian President Iohannis to the country's Constitutional Court.<sup>19</sup>

In February 2016, co-operation between the SRI and DNA came under pressure when Romania's Constitutional Court ruled that the use of surveillance evidence by the SRI in DNA criminal investigations was itself unconstitutional. In response, Laura Kovesi argued that without such co-operation, the SRI the DNA would have to recruit 130 more police officers to carry out electronic surveillance and that such work would involve an additional cost of 10 million euros. Intriguingly, she stated that such figures were based on the notion that somehow the DNA would still be able to go on using much of the SRI's 'technical infrastructure'. Eduard Hellvig, the head of the SRI, described the constitutional court's ruling as being a 'threat to security'.<sup>20</sup>

On 11 March 2016 Dacian Ciolos, the Romanian Prime Minister, responded to the Constitutional Court's ruling by introducing an Emergency Order which enabled the continued use of the SRI's wiretap material in DNA investigations. The decision was also approved by President Klaus Iohannis and the country's National Security Council. Traian Basescu however, questioned whether the use of such an Emergency Order was constitutional or appropriate for a country trying to get away from its totalitarian past?

While the SRI and DNA have worked closely together, relations between the DNA and the SIE, Romania's foreign intelligence service, have been much less harmonious. Tensions between the DNA and the SIE came to the fore on 28 April 2016 when Kovesi complained publicly that she had not been receiving intelligence reports from the foreign service. She stated:

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<sup>19</sup> *Judecatorii care au achitat-o pe Mariana Rarinca, cercetati disciplinar* Digi24, 3 Nov 2015

<sup>20</sup> *CCR Decision to Forbid Tapping Conducted by SRI Sparks Immediate Reactions of Institutions with Prerogatives in the Anti-Corruption Fight. Intelligence Service Head Says Court Ruling Impacts Security* Nine O'Clock, 10 March 2016

*'We haven't been informed about foreign bank accounts, luxury villas, luxury yachts...It is illegal to have information about possible crimes and not to inform the DNA. This is a legal obligation that any intelligence officer and any head of department must follow.'*

In response the SIE issued a formal statement rightly distancing themselves from the perceived Securitate-style onslaught which the DNA seemingly craves:

*'The SIE does not monitor Romanian citizens living abroad as this was the practice of the securitate. The SIE does not monitor bank accounts and transfers either or real estate or other purchases made by Romanians.'*<sup>21</sup>

Reservations regarding the methodology used during the so-called anti-corruption drive have also been expressed by a range of external observers. In a New York Times article entitled 'Romania's Anti-Corruption Mania' (5 March 2015), Patrick Basham described the whole process as having now degenerated into an 'illiberal crusade'. He points out that:

*'Crude populism now carries the day. The television networks relentlessly cover every perp walk. With the courts convicting at a rate of more than 90% scores of politicians from all the main parties have been disgraced. Most Romanians admit they care little about the shortcomings of due process, whether it is laughably thin evidence or prosecutors tutoring judges in verdicts.'*<sup>22</sup>

Significantly, Basham draws attention to the case of Dan Adamescu, the owner of the independent *Romania Libera* newspaper, who was also highlighted by the NGO Fair Trials, in relation to their concerns over pre-trial presumption of guilt.<sup>23</sup> Dan Adamescu was accused by the DNA of corruption, paraded in handcuffs in front of TV cameras and declared guilty on the first day of his trial. Repeatedly refused bail on the basis that he continued to deny the DNA's charges against him, he was also seemingly barred from receiving basic medical treatment.

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<sup>21</sup> *Romania's Anti-Graft Chief Slams Intelligence Service* Cristina Bucureasa, *Balkan Insight* 28 April 2016

<sup>22</sup> *Romania's Anti-Corruption Mania* Patrick Basham *New York Times*, 5 March 2015

<sup>23</sup> Fair Trials International, *Presumption of Innocence Position Paper*, November 2014

## **V The Anti-Corruption Drive in its International Context: Romania, NATO and the United States**

On 21 February 2014, following months of street protests the Ukrainian government collapsed and President Viktor Yanukovich fled the country. The Russian government took advantage of the weakness of the new post-revolutionary Ukrainian administration to launch a take-over of Crimea. This was achieved by a hybrid combination of elite Russian regular forces, local militia, and criminal gangs imported from Russia. On 18 March 2014 the Russian parliament formally voted to annexe Crimea.

These events in neighbouring Ukraine transformed Romania's relationship with the United States. Having been a relative backwater in terms of US diplomacy, Romania came to be seen as a bulwark against renewed Russian expansionism in the region. Romania's particular strategic importance lay in its capacity to challenge potential Russian dominance of the Black Sea following the annexation of Crimea. Romania became, along with countries such as Poland and the Baltic States, one of the key US allies in the region.

The period following the occupation of Crimea and the outbreak of war in eastern Ukraine was marked by a significant intensification of diplomatic engagement by the United States. In May 2014 Joe Biden, the US Vice-President, made a two-day visit to Bucharest. Victoria Nuland, Assistant Secretary of State for Europe and Eurasia, made regular annual visits to Romania in January 2014, 2015, and 2016. On 21 September 2015 Hans Klemm was appointed as the US ambassador to Romania, a position which had remained vacant for the previous two years. John Kerry, the US Secretary of State, has also indicated that he will visit Romania in 2016, prior to the end of his term in office.

This intensification of diplomatic activity was paralleled by increased military co-operation between the US and Romania.

On 25 April 2016 two of the latest US F-22 *Raptor* aircraft flew into the *Mihail Kogalniceanu* airbase in an exercise designed, as part of the European Reassurance Initiative (ERI), to increase US capacity to deploy resources quickly in response to any new Russian threat.

On 12 May 2016 the land based station for the *Aegis* US missile defence system, designed to protect NATO countries from short to medium range missiles, was opened by Jens Stoltenberg at the Deveselu air base, 180 km south-west of Bucharest. A second *Aegis* defence station is currently being

developed at the Redzikowo airbase in northern Poland, and is due to become active in 2018.

Alongside the intensified diplomatic contacts and military co-operation, the third pillar of US policy towards Romania has been support for the country's anti-corruption drive. US policy has seen reduction in corruption as essential for the good governance of Romania, its stability as a state, and as a key regional ally. Additionally, corruption was seen as providing weak links in the state structures which could act as potential access points for Russian influence.

During his May 2014 visit to Bucharest Joe Biden stated, following a meeting with Traian Basescu, that:

*'Corruption sucks from the power of the state. It is in fact another form of tyranny. The fight against corruption is not only a matter of good governance, it is mere patriotism.'*<sup>24</sup>

In March 2015 James Comey, the Director of the FBI, visited Bucharest and met Laura Kovesi and Eduard Hellvig, the head of the SRI, to discuss co-operation in the fight against corruption in Romania.<sup>25</sup> On 22 May 2015, Hoyt Yee, the Deputy Assistant Secretary of State for Europe and Eurasia, told a hearing before the US Congress that Romanian officials suspected of corruption would be denied visas to enter the United States, although he did not identify which officials these were.<sup>26</sup>

The strong political and organisational support provided by the US to Laura Kovesi and the DNA has been a significant factor in their capacity to continue to operate in the face of increasing hostility from the political class in Romania.

But the recent irregularities and abuses in the Romanian anti-corruption effort have also met with subtle criticism from various US representatives. In January 2016, Victoria Nuland, Assistant Secretary of State for Europe and Eurasia, remarked on the upcoming prolongation of Kovesi's mandate. She said that she was impressed with the work accomplished by the DNA but also

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<sup>24</sup> *Highlights of the Visit of the US Vice-President Joe Biden to Bucharest* Agerpres 21 May 2014

<sup>25</sup> *Why the West Wants Romania to be Less Corrupt* Stratfor Analysis EurActiv, 11 June 2015

<sup>26</sup> *Hoyt Yee: There are Romanian, Hungarian Officials Suspected of Corruption Banned to Enter the USA* Romanian Journal, 20 May 2015



remarked that in democratic societies there has to be a balance between the security of citizens and their fundamental right to a private life.<sup>27</sup>

Indeed, recent excesses in DNA activity have not gone unnoticed by Romania's largest partner within NATO. In a letter in June 2016 to the president of the Romanian Coalition in the United States, the Greek Catholic priest Chris Terheș, Congresswoman Loretta Sanchez voiced:

*"...concerns about documented human rights violations (under the pretext of fighting corruption), the violation of due process under penal investigations, and threats to the independence of the judiciary in Romania."*<sup>28</sup>

Today, far from championing due process, rule of law and the basics of an open and free society, the DNA is starting to alienate even its former supporters and allies. Chris Terheș, who once lobbied the US Congress in support of the DNA, has now become a fierce critic of Laura Kovesi and the DNA under her leadership. Condemning the DNA's methods, practices and impact, he recently went so far as to conclude that the DNA is now an organisation that had already "...slipped from efficiency and professionalism towards populism and sensational issues".<sup>29</sup>

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<sup>27</sup> SUA anunța că se implică în alegerea procurorului DNA: Ce spun despre Laura Codruța Kovesi Gabriel Zamfirescu *Stiripesurse*, 18 January 2016

<sup>28</sup> EXPLOZIV/ Congresmenii americani ACUZA România: Sub pretextul combaterii corupției sunt VIOLATE drepturile omului *Flux24*, 4 June 2016

<sup>29</sup> "Activitatea DNA a alunecat în ultimii ani de la eficiență și profesionalism spre populism și senzational". *Interviu cu Chris Terheș, președintele Coaliției românilor din SUA* *Mircea Marian evz.ro*, 28 June 2016

## **VI The Anti-Corruption Drive in its Regional Context: Romanian Exceptionalism?**

The problem of state corruption has been a significant challenge across post-communist and former Soviet Europe. Attempts to deal with the issue of corruption have, however, frequently become enmeshed in political rivalries and have provided an excuse and opportunity for political score settling. In these circumstances the problem of corruption is replaced by the problem of selective justice.

This section of the paper will look at the way anti-corruption campaigns, in countries neighbouring Romania, have also been used as a mask for political feuding. It will then seek to compare and contrast these campaigns with the Romanian anti-corruption drive.

### **Moldova**

Moldova is Romania's, smaller, eastern neighbour. It has strong cultural, economic, and cultural links to Romania. It also has a major problem with endemic and systematic corruption. It was ranked 103 out of 168 in Transparency International's *Corruption Index* for 2015. The most spectacular example of fraud and corruption in Moldova's recent history was the theft of \$1 billion from three Moldovan banks in late 2014, an amount equivalent to around one eighth of Moldova's annual GDP. On 19 October 2015 Vlad Filat, the former Prime Minister and leader of the Liberal Democratic Party of Moldova, was arrested in parliament on suspicion of involvement in the bank fraud. On 27 June 2016 Vlad Filat was sentenced to nine years in prison for corruption and abuse of power.

This was presented by the Moldovan administration as a victory for the rule of law over corruption at the highest levels of government. Within Moldova, however, Filat's political demise and subsequent imprisonment was widely seen as being the product of an intra-governmental feud with Vlad Plahotniuc, Moldova's only oligarch and the power behind the rival Democratic Party. Plahotniuc's victory over Filat in this power struggle was secured through his control of the major media outlets and, most significantly, the judicial institutions in Moldova. Interviewed in January 2016 Monica Macovei stated that: 'Vladimir Plahotniuc is the biggest danger to the Republic of Moldova, the man who does and undoes everything.'<sup>30</sup> In early

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<sup>30</sup> Romanian MEP Monica Macovei: *Plahotniuc is the Biggest Danger in the RM and the PD Wants to Become the Most Powerful Party for a Fight in the Art of Stealing* Jurnal.Md 10 January 2016

May 2016 Vlad Plahotniuc was part of a Moldovan government delegation, headed by Deputy Prime Minister Octavian Calmic, which visited the US. Plahotniuc, who holds no official role within the administration, was described during the visit as a 'co-ordinator' of the Moldovan government. During the visit the delegation met, among others, Victoria Nuland and Menno Snel, the Executive Director of the IMF. Plahotniuc's participation in the delegation was regarded with dismay by pro-Western observers in Moldova who saw it as legitimising his oligarchic capture of state institutions. Natalia Morari, a Moldovan political journalist, commented that: 'Nobody considers Plahotniuc to be pro-European. He is pro-Plahotniuc and pro-corruption.'<sup>31</sup>

## Georgia

Georgia provides another example of an apparently politicised anti-corruption campaign. In October 2012 the United National Movement (UNM), who had held power since the Rose Revolution of November 2003, were defeated in parliamentary elections by the Georgian Dream coalition led by the billionaire businessman, Bidzina Ivanishvili.

This was the first time that political power had changed hands peacefully in Georgia since the country had gained independence in 1991, and was greeted by Western governments as a positive step forward in terms of the democratic development of Georgia. However, once in government the Georgian Dream coalition set about vigorously investigating acts of corruption allegedly committed by members of the previous UNM government. The new government's pursuit of UNM members culminated in July 2014 when the former president, Mikheil Saakashvili was indicted for corruption and abuse of power whilst in office. The Georgian Dream government stated, in response to international criticism, that they were simply maintaining the rule of law. The indictment of Mikheil Saakashvili was a demonstration, they said, of the fact that no one was above the law. However, in the view of other observers it appeared as if the Georgian Dream government was using the law and judicial institutions as a means by which they could remodel the political landscape of Georgia in their favour. In a development which enraged the Georgian government, Mikheil Saakashvili was appointed in May 2015 as the governor of Odessa in Ukraine. One of his key responsibilities in this new position was to lead the fight against corruption.

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<sup>31</sup> *Moldova is Rattled as Washington Welcomes Feared Tycoon Andrew Higgins New York Times, 3 June 2016*

## Ukraine

Corruption has been one of the key problems afflicting post-independence Ukraine. It has also been an issue which has, in the recent history of Ukraine, frequently been used as a weapon in conflicts between political rivals. In January 2010 Viktor Yanukovich narrowly defeated Yulia Tymoshenko in the Ukrainian presidential elections. After this election victory Yanukovich commenced a legal campaign against members and officials from the previous government headed by Yulia Tymoshenko. Yanukovich stated that this campaign was simply a fight to root out corruption. However, observers noted that it was strange how the only suspects Yanukovich appeared to be able to locate came from amongst the ranks of his political opponents.

The campaign came to a head in October 2011 when Yulia Tymoshenko was convicted of 'abuse of public office' and sentenced to seven years in prison. When Yanukovich subsequently came under pressure from the EU and other international institutions to release Tymoshenko he replied that he had no power to intervene in the acts of judicial institutions. The imprisonment of Tymoshenko was, however, widely seen by Ukrainian and international observers as being the direct result of a feud between Yanukovich and his political rival which was played out in the court.

The Ukrainian revolution of 2013/2014 ostensibly began as a protest at Viktor Yanukovich's last minute decision, in November 2013, not to sign a trade agreement with the European Union. However, the demonstrators were also motivated by deeper concerns regarding the prevalence of corruption and what type of a state they wanted Ukraine to be. In the subsequent post-revolutionary period the issue of corruption has continued to be one of the key concerns in Ukrainian politics, which is played out in the conflict between reformers and oligarchs for control of the institutions of the Ukrainian state.<sup>32</sup>

### Romanian Exceptionalism?

Today, given increasing concern over the methods, practices and standing of Romania's SRI/DNA nexus, it is difficult to make conclusive comparisons with other players and their anti-corruption drives across the region. Nevertheless, recent excesses in Romania's anti-corruption programme may well be viewed

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<sup>32</sup> An analysis of events leading to and immediately after the 2013/2014 revolution is provided in *Ukraine: Ukraine Crisis – What it Means for the West* Andrew Wilson, Yale 2014

as a prelude to what will end up being the discrediting of the country's current iteration in its quest.

Indeed, while some politicians in Romania clearly set out to prosecute those who they deem to be political enemies, such people are also finding themselves engulfed by ever increasing storm that is in part of their own making.

When Romanian Prime Minister Victor Ponta used national television to pre-emptively and prejudicially vilify the businessman and publisher Dan Adamescu by claiming - *'Mr Adamescu publishes a newspaper (Romania Libera) that strongly campaigns against corruption. I think that this man who has himself led a network of corruption to such great effect and over a period of many years presents himself as a publisher who speaks about the fight against corruption...I am convinced that we will be hearing even more things about this from the state prosecutor's office'*<sup>33</sup> – by September 2015, Ponta was himself attacking the DNA when they accused him of chargeable misdemeanours. Suddenly, he claimed his indictment was the result of:

*'The obsession of a totally unprofessional prosecutor trying to make a name by inventing and imagining facts and untrue situations from ten years ago.'*<sup>34</sup>

When set against other countries in the region, Romania's anti-corruption drive is no longer merely targeted at specific or political foes. Instead, it is now growing organically; externally nourished by a conjuncture of disparate forces which range from NATO and the EU to include elements within the US administration who should know better.

The perpetual expansion, the nature of the anti-corruption drive, the breadth of its targets, and the combination of the often malign involvement of the domestic intelligence service, renders the Romanian situation unique. For it represents a scale and scope of operation that not only has strong echoes with the country's totalitarian past, but which represents an underlying architecture that is again ideally placed to further erode democratic practices and encourage renewed levels of corruption - particularly amongst key elements of the increasingly powerful Romanian state security apparatus.

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<sup>33</sup> Ponta: *There Has Been Immense Pressure on me in Connection With Adamescu*: TV Antena 3, 24 May 2014

<sup>34</sup> Bringing in the scalps: the woman leading Romania's war on corruption Kit Gillet *The Guardian*, 4 November 2015

Disguised under the veneer of anti-corruption, a quarter of a century on from the fall of Communism, Romania has essentially ended up reinventing its own panopticon state.

## VII The Anti-Corruption Drive and the Romanian Political Landscape: The DNA as Political Kingmaker

In many ways, the DNA's activities have transformed Romania's political scene in ways that were not initially intended or expected by the proponents of anti-corruption. While Romania's voters have never been particularly fond of their political class the accusations and convictions brought by the DNA over the last ten years have in reality left all parties in a weakened polity. An opinion poll undertaken in the autumn of 2015 put public trust in parliament at a mere 10%.

The June 2016 local elections in Romania provided a significant test of the extent to which the anti-corruption drive was impacting on the Romanian political scene. Two weeks before the beginning of the campaign for local elections, on 13 March 2016, DNA prosecutors brought forward the case of the PSD mayor of Sector 3 in Bucharest, Robert Negoita. The mayor was suddenly prosecuted for alleged acts of tax evasion that dated back to 2005-2009. Negoita refused to step down as a candidate and continued to compete in the race.<sup>35</sup>

Ten days later, the DNA arrested Neculai Ontanu, the mayor of Sector 2 in Bucharest who was also the junior president of UNPR, a key ally of the PSD. Ontanu was taken into custody over charges for alleged criminal acts that reportedly dated back some 10 years.<sup>36</sup>

Seven days later, on 30 March 2016, another PSD heavyweight, Lia-Olguta Vasilescu, the mayor of the Craiova Municipality, was arrested by anti-corruption prosecutors on charges of bribery and money laundering.<sup>37</sup>

All over the country the DNA accused, charged and arrested candidates standing in elections despite many of the files being many years old or out of date. While some withdrew from the race, others continued. Thus, for the first time in modern Romanian post-communist history, the domestic

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<sup>35</sup> *DNA: Robert Negoita este urmarit penal pentru evaziune fiscala in forma continua* Monica Moanea *Mediafax.ro*, 14 April 2016

<sup>36</sup> *Primarul Sectorului 2, Neculai Ontanu, retinut de DNA pentru luare de mita.* Petriana Condrut *Mediafax.ro*, 23 March 2016

<sup>37</sup> *Olguta Vasilescu, primarul municipiului Craiova si vicepresedinte PSD, retinuta de DNA* Monica Moanea *MediaFax.ro*, 30 March 2016

intelligence SRI/DNA nexus intervened directly in elections and the standing of individual candidates.

### ***The Resilience of the Old Parties***

However, despite these unorthodox practices, the Romanian population did not appear to want to follow the DNA's directions. Many of the accused candidates went on to be elected into office and no doubt some international observers were left confused as to why?

Overall, the Social Democrats emerged from the June 2016 elections as the largest single party. They gained 37.5% of the vote across the country, and won elections in almost all the major urban centres including Bucharest. The Social Democrat victory in Bucharest might have appeared to be particularly surprising in view of the corruption charges brought against Sorin Oprescu, the former Social Democrat mayor of Bucharest, who had been indicted for corruption.

The elections were not deemed to be good for the PNL, particularly given the forthcoming national election to be held at the end of 2016. Only gaining 28% of the vote, it failed to win any major urban centre except for Cluj in Transylvania, where Emil Boc, the former Prime Minister, was elected as Mayor. While the PNL maintained their position as the main centre-right party, overall, turn-out was low at a mere 48.4%.<sup>38</sup>

It therefore seems that the unintended consequence of the most recent iteration of the anti-corruption drive has been to undermine the credibility of Romania's democracy and politics as a process.<sup>39</sup> Political choice is, however, about possibilities and alternatives and the local election results are, if nothing else, a sign that the DNA's credibility among the population is waning. The perceived political opportunism of the SRI and DNA in Romanian politics increasingly conjures up reminiscent images of Romania's troubled and post-war past.

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<sup>38</sup> *Romania's Social Democrats Win in Elections* Cristina Bucureasa *Balkan Insight*, 6 June 2016

<sup>39</sup> *Liberalii nu au inteles de ce au pierdut alegerile: 'Discursul anti-coruptie a fost invalidat'* Gabriel Zamfirescu *Stiripesurse*, 6 June 2016



## **VIII Conclusion: *The Corruption of Anti-Corruption in Romania and the Need for Further Reform***

While the issue of corruption has provided a unifying thread in Romanian politics from the period immediately after the fall of Ceausescu in 1990 to the present day, there has continued to be a lack of separation between the institutions of politics, the economy, and the state.

There has also been continuity in terms of the public's lack of faith in the capacity of politicians to solve the problem of corruption. Indeed, politicians and the underlying institutional arrangements that they conspire to construct are often seen as being at the root of the problem. This lack of faith amongst the public in politicians and the political process has occasionally resulted in the public taking to the streets and engaging in extra-institutional political action. This level of public frustration in the political process and the inability of electoral politics to bring about change was first manifest in the post-communist period in the student demonstrations which led to the June 1990 *mineriad*. The most recent manifestation of popular anger at institutional corruption came with the protests following the *Colectiv* night club in October/November 2015.

In the period between these two popular protests there were a series of 'false dawns' in which politicians made anti-corruption a key element in their election platforms, but ultimately failed to deliver any meaningful change. These include the Democratic Convention's victory under the leadership of Emil Constantinescu in November 1996 and Traian Basescu's 'Orange Revolution' in November 2004. Klaus Iohannis was elected on a similar anti-corruption platform in November 2014.

As has been noted above, there have been two main anti-corruption drives in Romania in the post-Communist period. The first conducted by Monica Macovei lasted from 2004 until she was ousted as Justice Minister in 2007. The second, under the direction of Laura Kovesi began with her appointment as head of the DNA in 2013 and remains on-going.

The current campaign represents a serious and significant attempt to address the unresolved issue of corruption in Romania. However, while it has received widespread international support, there is evidence that it is becoming increasingly marred by excesses, irregularities and unintended consequences. While reservations have been expressed by observers regarding the methodology, tactics and practice of a drive that is increasingly underpinned by the deployment of a domestic intelligence agency against its

own citizens, it is also clear that a lack of judicial independence is gravely undermining due process and the rule of law. Judges being put under pressure by the SRI/DNA nexus is not only unacceptable but such issues need to be examined and taken seriously if the international credibility of the Romanian anti-corruption drive is to survive in any way, shape or form.

The two main anti-corruption drives in post-communist Romania, directed by Monica Macovei and Laura Kovesi, have not drawn their support from political parties or directly, and extra-institutionally, from the people, but rather from the office of the President of the country, and importantly from external institutions, such as the EU, NATO and US.

The reliance of the leaders of the anti-corruption drives on external sources of support and legitimacy has the advantage that it makes their campaigns less prone to political capture and instrumentalisation. In neighbouring countries anti-corruption campaigns have frequently been used to settle scores and conduct feuds. However, the draw-back in terms of reliance on external voices for support is that the anti-corruption drive lacks a strong institutional base of support within Romania. The action taken by the SRI and DNA against politicians means that there has been an overall decline in public confidence in democratic institutions and processes. This leads to a sizeable power vacuum that is increasingly being filled by the DNA and SRI and which carries all manner of questions concerning the nature and future of Romanian democracy. In time, the alienation experienced by substantial parts of the Romanian public may even fuel an unhelpful re-birth of nationalism and economic protectionism. It is in this context that the longer term sustainability of the anti-corruption drive will depend on the development of credible institutional support for its efforts within Romania.

Judging Romania's quest for anti-corruption so far, three key international measures - the Legatum Institute's Prosperity Index 2015, the Fraser Institute's Economic Freedom of the World Report 2015, and the Heritage Foundation's 2016 Index of Economic Freedom - all suggest that a new approach is urgently required.

Despite seemingly vigorous and effective anti-corruption reforms spanning the last 12 years, the Legatum Institute in 2015 found that 85.2% of those surveyed in Romania believed that corruption in government and business was widespread. Only 41.4% had confidence in the judicial system and a mere 26.7% had confidence in the national government.<sup>40</sup>

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<sup>40</sup> *The Legatum Institute, Prosperity Index 2015*

The Fraser Institute continues to rate Romania very poorly on its legal system and property rights, and gives a damning assessment of Romania's judicial independence. Both the reliability of Romania's police force and the protection of property rights in the country are shown to have remained poor for the last 15 years. Indeed, the Fraser Institute's 2015 report shows that the impartiality of courts in Romania has actually declined since 2000, along with the integrity of the legal system and the legal enforcement of contracts.<sup>41</sup>

The Heritage Foundation's 2016 Index of Economic Freedom goes further, highlighting a sharp decrease in Romania's commitment to property rights in the last year alone and expressing ongoing grave concern about the lack of rule of law in the country holding it back: 'Lingering institutional shortcomings make it difficult to enhance respect for the rule of law. High levels of corruption exacerbated by a relatively inefficient judicial system weaken the prospects for dynamic long-term development.' The report adds: 'Romania has struggled to meet the European Union's anti-corruption requirements amid resistance from much of the political class. The courts are under resourced and subject to chronic corruption and political influence.'<sup>42</sup>

Furthermore, recent decisions by the Crown Prosecution Service in the United Kingdom, a country whose strong commitment to the rule of law and judicial independence Romania is attempting to emulate, would suggest that Romania's rhetoric on the success of its judicial reforms aren't matched by results on the ground. Following UK High Court litigation in which concern over overcrowding in Romania's prisons had been expressed, Romania gave assurances to the British government on prison conditions for those extradited to the country. These assurances were later found to have been breached in a number of cases, prompting the CPS to adjourn all pending Romanian cases until Romania could assure British authorities that those extradited would not risk being subjected to 'inhuman and degrading treatment'.

On the basis of the concerns expressed by leading think tanks and observers, and the conclusions of this report, the following recommendations are made to help ensure that Romania's anti-corruption efforts are rendered both effective and in accordance with the principles and norms of the rule of law.

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<sup>41</sup> *The Fraser Institute*, Economic Freedom of the World 2015 Report

<sup>42</sup> *The Heritage Foundation*, 2016 Index of Economic Freedom

1. The SRI/DNA nexus must stop exerting undue influence over Romania's judiciary by pressurising courts and judges. The alarmingly high conviction rates in excess of 90% raises alarm bells concerning defendants' rights.
2. The DNA should place quality over quantity in its work. With 10,947 cases on its books, yet only 131 prosecutors on the payroll in 2015, it is unsurprising that concerns are increasingly being expressed about the DNA's work. Too many cases are tainted by wilful and improper actions and such concerns must be addressed by ensuring that prosecutions adhere to the highest standards of investigation and legal practice.
3. The DNA must avoid being a political player. It must not fall into the age-old trap of believing it speaks for ordinary Romanians. Perceived political opportunism in prosecutorial cases run the risk of backfiring with adverse and unintended consequences.
4. A renewed focus on quality by the DNA should be accompanied by comprehensive reform of Romania's court and prison system. The basic principles of an independent judiciary, innocence until proven guilty, habeas corpus and trial by jury must be clearly adhered to. Without this, observer comments about the corruption of the anti-corruption drive and the political nature of a number of corruption convictions will abound. Likewise, Romania's prison system must be overhauled to address issues of excessive overcrowding and the inhuman treatment of prisoners.
5. Extraditions to Romania under the European Arrest Warrant system should receive additional legal scrutiny from the extraditing country, particularly on the issue of fair trials, political interference in the legal process and assurances over human rights for those being extradited.
6. Should Romania fail to take adequate steps to improve the quality of its judicial decisions, extraditions to Romania under the European Arrest Warrant system should be halted until the country reaches international standards. The leaders of the anti-corruption drive in Romania rely on external sources of support and legitimacy. International opprobrium may be the only effective means to force progress and support those within Romania who are unhappy with the current effectiveness of judicial and legal reform.