



# Building a constituency for rule of law. Lessons from the Romanian anti-corruption drive

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## Policy Recommendations

1. Do not trade long-term sustainability (accountability, due democratic process, stakeholder negotiation) for short-term efficiency. Yet, short-term results and investment in drivers of change are necessary to build up the credibility of the process. Striking the golden mean is painstaking, but rewarding.
2. Hold out credible reward for performance (EU accession) and build a rule of law constituency (invest in independent media, civil society organisations, public communication). Empower them to carry the flag and be domestic agents of change. Beware of window-dressing reformers using the accession process for their own ends.
3. Treat rule of law, anticorruption and good governance as cross-cutting issues to be incorporated and monitored in every chapter of negotiation and partnership with the EU; ensure stakeholder participation up and down the decision-making process; maintain focus on values, not just ticking boxes.

## Abstract

Romania's experience is that of the most intensive push for rule of law and anti-corruption among new European Union (EU) members, given that the country joined in 2007 before it had met EU conditionality. The outcome has been a mixed bag of spectacular short-term successes and long-term frustration. While not transferable as such to its neighbours, Romania's experience is perhaps especially indicative of both 'how to' and 'how not to' go about building rule of law. The benefit of hindsight helps, as does awareness of current challenges to democracy across Central and Eastern Europe.

Alongside Bulgaria, Romania is one of only two countries to have become EU members and still be subjected to an ongoing monitoring mechanism on justice and the rule of law. Pressure from the EU (and the United States) and political will at home concerning the accession and integration process to both the North Atlantic Treaty Organization (NATO) and the EU, against the background of massive popular support for reintegration with the West, have allowed for a comprehensive institution-building effort to be deployed (albeit not with the most democratic

means). This in turn has led to a societal process, i.e. building an actual constituency for rule of law among the general population. As both the domestic political will and external leverage have started to wane in recent years, the long-term sustainability of this endeavour seems to lie more with this constituency than with the structural elements at play (relevant institutions, legislation, etc.).

At present, the Western Balkans and other EU neighbours do not enjoy the luxury of a similar mix of circumstances: the overall credibility of enlargement has diminished over time and is very low, governments and societies do not feel that they necessarily have to make an exclusive 'East/West' type of choice, the incentives to effect painful reforms are proportionally reduced and the EU has put most of its eggs in the baskets of regimes that have lost much of their internal legitimacy and used the EU to consolidate power. Yet, a few important principles of action can be extracted which have universal applicability and point at lessons that can be taken for the Western Balkans and the EU based on the Romanian experience.



# Building a constituency for rule of law. Lessons from the Romanian anti-corruption drive

## Unanimous, unconditional support for Euro-Atlantic accession creates a national identity agenda

The particular background of the anti-corruption and justice reform drive started in the course of North Atlantic Treaty Organization (NATO) and European Union (EU) accession in the 2000s (one that can hardly be replicated today<sup>1</sup>) was the enormous popularity of the Europeanisation and Westernisation process among the Romanian population which throughout the years has constantly remained the highest<sup>2</sup> among the Eastern bloc. Seen as an existential, identity issue, the rectification of a historic injustice done to Romania after the Yalta Conference that relegated it to the domination of the Soviet Union, the prospect of returning to the bosom of the West was met with almost unanimous approval from both society and political actors. It was constructed as the country's sole national project for a decade and a half and beyond<sup>3</sup>, giving the EU and the United States unmatched leverage over the internal agenda. It was also the subject of an unprecedented accord among all political parties, ratified in the Snagov Declaration of 21 June 1995, which granted their full support to the national EU accession strategy<sup>4</sup>.

***“In practice, the monitoring process as well as the constant attention and pressure from outside partners has functioned as a very strong enabler of reforms.”***

1) <https://www.eastern-focus.eu/2019/08/rule-law-decade-eastern-partnership-lets-talk-political-change/>

2) <https://europa.eu/eurobarometer/surveys/detail/583>

3) Romania initiated relations with NATO in 1990, immediately after its regime change in December 1989, and officially notified the Secretary General of its intention to join the Alliance in 1993. The same year, the country signed its Association Agreement with the European Union. It became a member of NATO in 2004; democratic reforms started in view of its membership of the North Atlantic Alliance paved its way to EU accession in 2007.

4) [http://old.presidency.ro/pdf/date\\_arhiva/370\\_ro.pdf](http://old.presidency.ro/pdf/date_arhiva/370_ro.pdf)

Political will was therefore paramount to the full implementation of justice and good governance reforms, building democracy and rule of law. It reflected also the widespread option of the electorate, but it was embraced by the top levels of the country's leadership and seen as an exclusive strategic West vs. East choice. This choice would ensure nothing less than the country's survival as an independent state, providing security guarantees in an otherwise troubled region. The political and socio-economic integration with the EU would further guarantee the de facto structural transformation of the country into a Western democracy. After the initial focus on liberalising the economy Chapter 24 Justice and Internal Affairs was opened in 2002 and it became the main sticking point in negotiations between Romania and Brussels, given the high level of corruption in the country. Romania eventually became an EU member without having fully met all of the criteria regarding judicial reform and corruption. Therefore, the Cooperation and Verification Mechanism (CVM)<sup>5</sup> was set up as a transitional mechanism to ensure delivery of reforms in these fields. Politically, the CVM has positioned Romania and Bulgaria as 'second tier' EU member states, a very uncomfortable status vis-à-vis the other 25 (later 26, as Croatia entered without a CVM), where reports by the European Commission of transgressions very similar to those of Bucharest or Sofia had much less bearing on their conduct of domestic politics or ability to negotiate their interests at EU level. The trade-off though was seen as the only win-win option: giving the EU a big say in Romania's internal affairs in exchange for ratification of accession in 2007. In practice, the monitoring process as well as the constant attention and

5) [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en)



pressure from outside partners has functioned as a very strong enabler of reforms.

### **Political elites reluctantly relinquish illicit influence, in hopes of a trade-off**

One can only speculate as to the reasons why the ruling political class of the time consented to relinquish some of their privileges and the domestic environment of impunity they had enjoyed until then. Prime Minister Adrian Năstase (2000-2004) was instrumental in kick-starting the anti-corruption campaign and taking Romania into the EU. Just like his counterpart Ivo Sanader in Croatia, he would later go to jail on charges of high-level corruption. Perhaps they held the belief that toeing the EU line would allow them some wiggle room for their own influence or give them an edge in negotiating their own exit from the political stage with Brussels and Washington. Also, at a later stage, powerful players such as President Traian Băsescu (2004-2014) deployed a full-fledged effort to build institutions able to take on state capture (such as the National Integrity Agency/ANI or the National Anticorruption Directorate/DNA, which were studied as models of good practice for a number of years before quietly slipping into irrelevance of late) in an attempt to use the anti-corruption fight as an influential instrument to eliminate political adversaries under the cloak of legitimacy and commitment to EU benchmarks.

Whatever its reasons, the strong political will behind the anti-corruption drive and building rule of law has translated in practice into a forceful top-down, centralised and highly efficient process<sup>6</sup>, unlike, for instance, in Bulgaria, where there was never any genuine reform effort. Corruption was framed as a national security threat, and thus the anti-corruption fight was placed under the authority of the Supreme National Defence Council (CSAT), which made it relatively easy to rally behind it all the institutions of force, including the intelligence services. This also

gave the president decisive influence, including through appointments of the heads of the DNA, the Attorney General, the magistrates of the Supreme Court and Constitutional Court. In so doing, he often bypassed the Parliament completely (either in its legislative functions or as the institution exercising control over the executive) – and hence the mechanisms of democratic accountability. This has led to a highly personalised system, where political support was key and allowed institutions such as the National Integrity Agency under its Secretary General Horia Georgescu to increase the transparency of the fortunes of political leaders; or the Supreme Council of Magistrates to become a dominant body regulating the profession; or the head of the DNA and current European Chief Prosecutor Laura Codruta Kovesi to pursue high visibility cases of high-level political corruption, in close cooperation with the National Intelligence Service, or former Justice Minister Monica Macovei to implement robust reforms<sup>7</sup>.

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### **Building democracy through undemocratic means**

The resulting system thus had important loopholes, legislation was at times sketchy and not debated in parliament, the courts were inefficient and access to justice remained a problem for both the common citizen, the business environment and high-ranking politicians. The latter often accused political vendettas as the reason for their prosecution, with cases often tried in the court of public opinion, following leaked information to the press, yet later dismissed in court due to

6) <https://www.eastern-focus.eu/2019/05/romanias-permeability-authoritarian-tendencies/>

7) <https://www.politico.eu/article/the-dna-of-romanias-anti-corruption-success-eu-transparency-international/>



inconclusive evidence<sup>8</sup>. The press as a watchdog remained endemically unprofessional, underfunded, politicised and corrupt (with virtually all owners of the major media groups having been indicted by now on corruption charges or at least investigated, and most of them using the outlets they owned to cater to the interests of their political patrons and secure protection for their other business interests). Civil society was as intensely polarised as the justice system itself; neutrality became a rare commodity, as influencers would rally behind what they regarded as the 'righteous camp'. Which one this was could be hard to make out at times, since the battlefield was divided between those who were essentially the flag-bearers for anti-corruption and building rule of law, and those who accused them of instrumentalising these goals for their own interest. Opposing the former would be seen as lacking integrity and going against 'the good fight', while supporting the latter would necessarily translate into weakening the anti-corruption drive itself.

***“The political investment in rule of law and anti-corruption over the years, the centrality of the subject in media and public debate, and the constant attribution of poor governance to endemic corruption had eventually managed to build a constituency among the population.”***

Whether it was making progress or experiencing setbacks, anti-corruption became the buzzword for over a decade, it was making the political and public agenda and concentrating around it much of the effort aimed at building and then consolidating democracy. Two impeachment attempts of former President Traian Băsescu were grounded in accusations of abuse of power against political rivals through politicisation of the appointment of prosecutors, use of national intelligence services and illegal phone-tapping. Current President Klaus Iohannis won his first term almost exclusively on an anti-corruption agenda. The government of

Prime Minister Victor Ponta collapsed following a fire in the Colectiv nightclub in Bucharest, which left 65 dead, and whose underlying causes were attributed to corruption. When people took to the streets calling for the government's resignation, chants of "corruption kills" were heard for the first time. Then the Social-Democrat Party (PSD) under leader Liviu Dragnea came back to power in 2017 and spent two years having as its primary agenda the reversal of justice, rule of law and anti-corruption reform, in order to spare its members (who had been the prime, though largely legitimate targets of prosecutors supported by former President Traian Băsescu) lengthy jail sentences. The PSD was eventually ousted at the polls, where it first lost elections for the European Parliament and then local and national elections.

The political investment in rule of law and anti-corruption over the years, the centrality of the subject in media and public debate, and the constant attribution of poor governance to endemic corruption had eventually managed to build a constituency among the population. Rule of law had primarily resonated with the growing professional middle class, mostly urban, increasingly educated and financially independent, who could afford to speak truth to power, developed a notion of active citizenship and were reclaiming political agency.

### **Civil society – more resilient than institutions**

***“It [the process] morphed, however, into a bottom-up, grassroots movement demanding accountability for the political class in how they implement the self-professed European values of rule of law and integrity.”***

The unprecedented protests that preceded the fall of the Dăncilă<sup>9</sup> government, mostly organised spontaneously, on social media, as well as the amount of public debate over executive measures

8) <https://www.eastern-focus.eu/2019/08/beyond-dna-steroids/>

9) <https://www.bbc.com/news/world-europe-49998670>



targeting the justice system testify to the importance that regular people had come to attach to the anti-corruption fight. The process had started out as top-down, highly centralised and, in all truth, not very democratic, reliant on political will and geared very much toward the defence of one's own political interests at the expense of one's adversaries. It morphed, however, into a bottom-up, grassroots movement demanding accountability for the political class in how they implement the self-professed European values of rule of law and integrity.

***“The quiet slide into irrelevance of the tremendous institution-building effort in Romania should be a stark warning for the EU in its approach to rule of law in the Western Balkans.”***

As history has shown, however, the effort of building or sustaining democracy does not end with victory at the polls; it often just begins anew then. Similarly, in Romania, a weak president and a government still dominated by the old political guard have – at least temporarily – put an end to political will and the efficiency of the anti-corruption fight. They are now aware of the full extent of the storm that can await them, should they lose their grip on power and remain within reach of the hand of the law. The topic has gradually evaded public attention, relevant institutions have been decapitated and/or deprived of the resources to do their job to the full extent needed and their lack of sustainability became obvious. The main buffer against democratic backsliding remains, at this point, the enduring societal condemnation of corruption – but it remains to be seen if this can be a strong enough element of pressure on the institutions and the political class. So far, the signs are not encouraging.

The quiet slide into irrelevance of the tremendous institution-building effort in Romania should be a stark warning for the EU in its approach to rule of law in the Western Balkans. So far, both Brussels and the member states have mostly focused on getting the executives and political majorities of these countries to enact measures improving the

legislative and institutional environment for rule of law. Gradually though, the carrots have multiplied and the sticks have been inefficient, and as the EU engaged in political haggling with political leaders it lost both legitimacy and impact within the larger society, thus disempowering and alienating its likeliest allies. Increasingly authoritarian governments have become very adept at implementing reforms on paper, while in practice silencing their critics.

***“EU integration is a whole-of-society process, not a bureaucratic effort.”***

A look at Romanian society over the past two decades shows that strategic EU orientation at the political level can well be an opportunistic choice, whose aim is to handpick the benefits, while trying to avoid the costs and pains of reform as much as possible, rather than a genuine transformative endeavour stemming from a convergence of values. EU integration is a whole-of-society process, not a bureaucratic effort.



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