Competing Formal and Informal Institutions in a Democratizing Setting: An Institutional Analysis of Corruption in Romania

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COMPETING FORMAL AND INFORMAL INSTITUTIONS IN A DEMOCRATIZING SETTING: AN INSTITUTIONAL ANALYSIS OF CORRUPTION IN ROMANIA

by

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COMPETING FORMAL AND INFORMAL INSTITUTIONS IN A DEMOCRATIZING SETTING: AN INSTITUTIONAL ANALYSIS OF CORRUPTION IN ROMANIA

Mihaiela Ristei, Ph.D.
Western Michigan University, 2010

This dissertation explores the interaction between formal institutions and the informal institution of corruption in Romania from 1997 until 2006. I argue that corruption is an informal institution that creates incentives incompatible with the formal rules, alters the effectiveness of formal institutions, undermines the rule of law, and threatens democratic consolidation. Specifically, I test the capacity of formal institutions to counteract the informal institution of corruption and thus to reduce corruption in four sectors: the judiciary, customs, health care, and public procurement. The research project investigates the methods to restructure incentives and increase the effectiveness of formal institutions, the factors that influence the success or failure of anticorruption strategies, and the capacity of anticorruption strategies to restructure incentives. An institutional analysis of corruption contributes to our understanding of when and why anti-corruption programs fail or succeed.

This study employs a mixed methodology. The predominant methodology is qualitative, whereas quantitative analyses are integrated whenever appropriated (e.g., testing for statistically significance relationships between variables or estimating kappa coefficient for multiple raters). The longitudinal analysis of the four sectors in Romania uses the "most similar with different outcomes" research design.
The dissertation shows that, particularly after 2000, there were clear indications of political will manifested through comprehensive diagnoses of corruption, the intermittent inclusion of the main stakeholders in the policy-making process, the adoption of anticorruption strategies, and the creation of more transparent monitoring systems at the national and sectoral level. Moreover, one factor stood out in explaining the presence or absence of political will, namely the external pressure exercised by the EU, which was a constant factor in explaining the instances of political will and in supporting the anti-corruption leaders if and when they appeared. The public opinion pressure was shown to be insufficient by itself to stimulate political will and to lead to the adoption of anticorruption reforms, particularly outside the election years. Overall, the largest progress in combating corruption and increasing the effectiveness of formal institutions was registered in the judiciary, followed by customs, and public procurement, whereas the least progress was made in the health care sector.
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in democratization and informal institutions pushed me to think carefully and more broadly about my arguments. My special thanks go to Dr. Rasma Karklins, who was very generous to share with me her expertise in corruption in Post-Communist countries. Her suggestions regarding the methodological soundness of my hypotheses and the literature on corruption contributed significantly to the quality of my dissertation.

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Mihaiela Ristei
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CHAPTER 1

THEORETICAL AND METHODOLOGICAL CONSIDERATIONS

1. Introduction

This project explores the interaction between formal institutions and the informal institution of corruption in Romania in the decade prior to the country’s accession to the European Union. I argue that corruption is an informal institution that creates incentives incompatible with the formal rules, alters the effectiveness of formal institutions, undermines the rule of law, and threatens democratic consolidation. Specifically, I test the capacity of formal institutions to counteract the informal institution of corruption and thus to reduce corruption in four sectors: the judiciary, customs, health care, and public procurement. What are the methods to restructure incentives and increase the effectiveness of formal institutions? What reforms or strategies are effective in fighting corruption? Are anticorruption strategies capable in practice of restructuring behavioral incentives? What are the factors that influence their success or failure? An institutional analysis of corruption contributes to our analysis of when and why anti-corruption programs fail or succeed.¹

For the last sixteen years, Romania has been struggling with the process of democratic consolidation, a process undermined in part by corruption. In October 2005,

¹ Although informal politics are not the focus of this study, they are captured to the extent to which they play a role in moderating the interaction of formal institutions with the informal institution of corruption.
Transparency International (2005a) ranked Romania as the eighty-fifth most corrupt country in the world, along with the Dominican Republic and Mongolia. Thus, Romania lagged behind all former communist countries in the region, except Bosnia and Herzegovina, Serbia and Montenegro, Albania and Macedonia. A year later and only a couple of months before joining the European Union, Transparency International ranked Romania as the eighty-fourth most corrupt country in the world. While the Corruption Perceptions Index (CPI) for Romania improved (from 3.0 to 3.1), Romania continued to maintain its rank as the most corrupt former communist country in the region, except for those mentioned above.

In the Romanian post-communist context, corruption is an informal institution inherited from the previous regime that further thrived under the favorable circumstances created by the transition to democracy and the market. The complex transition process resulted in a fluid formal institutional context conducive to the flourishing and routinization of informal institutions. Specifically, corruption in transition settings has been facilitated by the rewriting of an unprecedented number of laws, regulations, and policies; the redistribution of wealth from the state to the private sector; the virtual absence of institutions capable of checking the abuse of public office; a situation in which the old rules do not function anymore but the new rules are not yet crystallized in people’s minds; and, particularly in the post-communist cases, state officials who have

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2 For more details regarding the Corruption Perceptions Index (CPI), please see http://www.transparency.org/cpi/2005/cpi2005.sources.en.html
3 The score is measured on a scale from 1 (highly corrupt) to 10 (highly clean). For more details, please see http://www.transparency.org/policy_research/surveys_indices/cpi/2006
4 See for example the Corruption Perceptions Index (CPI) at http://www.transparency.org/policy_research/surveys_indices/cpi/2006
inherited a lot of license permission and discretionary powers (World Bank 2000a, Hankis 2002, Krastev 2004).

Borrowing from several sources (Philp 2002, Helmke and Levitsky 2004, Huffer 2005), I define corruption as a set of unwritten and illegal norms and rules that regulate interaction between public servants and the general public, are used for the public servants' personal gain (although sometimes indirectly, e.g., family, friends, ethnic group, political party), and are enforced through informal channels outside of the officially sanctioned channels. Hence, corruption in the forms of bribery, influence peddling, gratitude or informal payments, favoritism, nepotism, clientelism, and misappropriation competes directly with the formal democratic institutions created or reformed in Romania since 1990.

The prospect of European Union (EU) membership highlighted the conflict between the formal institutions of democracy and the informal institution of corruption by increasing the visibility of the latter and providing powerful pressure from the outside to curb them. To fulfill EU requirements, Romania had to adapt its formal rules and norms to the European standards that sometimes differed considerably from its informal norms. The result was an increasingly conflictual relationship between the formal and informal rules. Furthermore, the EU pressure for anticorruption strategies and results was unevenly distributed; that is, the pressure to curb corruption in the judiciary and customs was higher than for public procurement and health care sector (see Table 1, page 55).

This project draws on the literature on democratization, corruption, and informal institutions and it brings three major contributions. First, it contributes to the study of informal institutions by offering a better understanding of their interaction with formal
institutions and of the sources of informal institutional change in democratizing countries. Second, it brings an empirical contribution to the policy debates by revealing the effective ways of containing corruption and strengthening formal institutions. And third, it contributes to a better understanding of the role played by external actors (such as the EU, World Bank, UNDP) during democratization processes on reforming formal institutions, fighting corruption, and, ultimately, on democratic consolidation. Hence, I test the effectiveness of anticorruption strategies and provide an understanding of anticorruption strategies from an institutionalist perspective. For the purpose of this study, I use Helmke and Levitsky’s (2006, 13) definition of effectiveness, according to which an institution is effective if “rules and procedures [...] are enforced or complied with in practice.” If institutions are effective, actors believe that there is a high probability that noncompliance with the rules will be sanctioned. If the opposite is true, the actors expect low sanctions for noncompliance with the rules and norms prescribed by the formal and/or informal institutions.

As an institutional analysis of corruption, this study relies on two approaches: Historical Institutionalism (HI) and Rational Choice Institutionalism (RCI). The former approach stresses the importance of path dependency, according to which, institutions are perceived as “relatively persistent features of the historical landscape” which influence the actors’ behavior and actions (Hall and Taylor 1996, 941). The creation of new institutions usually entails “high fixed or start-up costs,” significant “learning effects, coordination effects, and adaptive expectations.” Furthermore, once an institution is established it will generate positive feedbacks that will reinforce its own stability and

---

5 I am using this term to reflect the various programs, measures, mechanisms and tactics employed in the fight against corruption.
development (North 1990, 95). Positive feedback in path dependence analysis simply translates into “history is remembered” (Pierson 2000, 75). According to Thelen (1999), there are two feedback mechanisms that reinforce the established institution or path taken. One mechanism is functional and it relies on the incentive structure created by the existing institution(s) and which induces “actors to adapt their strategies in ways that reflect but also reinforce the ‘logic’ of the system” (Thelen 1990, 392). The other path refers to the distributional effects of institutions and it claims that the institutional arrangements introduce certain distributional biases that empower certain groups in society and create policy feedback that over time will crystallize the existing institutions and block other avenues for change (Thelen 1990, 394). Both mechanisms are highly deterministic and suggest that institutional patterns set into motion in path dependence processes are very difficult to change (Mahoney 2000).

Furthermore, both HI and RCI use a calculus approach in explaining actors’ behavior; that is, they see actors as utility maximizers who engage in extensive calculations and behave strategically in order to attain their goals. Rational choice institutionalists accept the important role played by “institutionally induced preferences” (Katznelson and Weingast 2005, 12), that is, they agree that rules and social norms constrain the actions and behavior of rational utility-maximizers actors (Ostrom 1991). Thus, institutions shape actors’ preferences and influence their decisions and not only the other way around. Additionally, HI and RCI recognize the important role that power and asymmetrical relations of power play in analyses of institutions (Hall and Taylor 1996).

For HI, institutions are considered to be “distributive switchboards” populated by actors

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*6 Historical Institutionalism uses also the cultural approach in order to explain how actors’ behavior is influenced and constrained by institutions. For more details, see Peter A. Hall and Rosemary C.R. Taylor, “Political Science and the Three New Institutionalism,” Political Studies (1996), pp. 936-957.
who have a wide range of assets and possibilities (Katznelson and Weingast 2005, 15). While historical institutionalists emphasize the uneven distribution of power across social groups, rational choice institutionalists highlight the role that power asymmetries play in the creation, development and transformation of institutions. The balance between costs and benefits for the relevant actors will determine how institutions will evolve, the relevant actors having the advantageous position in the asymmetric balance of power. Although, HI is less suited to explain rapid institutional change, change would not be inconsistent with this theory if power (e.g., outside power) were a cause of that change. However, RCI is somewhat less deterministic in nature than HI and, therefore, better suited to explain institutional change.

The informal institution of corruption inherited from the communist regime fits the path dependent explanation proposed by historical institutionalists. This informal institution was reinforced through a functional mechanism that relies on an incentive structure that induces actors to engage in corrupt activities. Nonetheless, according to RCI, a positive change of the informal institution of corruption (i.e., decrease of its effectiveness) rests heavily on the ability to change the incentive structure created by this institution (i.e., by increasing the costs of complying with the informal rules and the benefits for non-compliance with these rules). My argument is that path dependence is helpful in explaining the endurance of the informal institution of corruption, but falls short in understanding how these institutions can be changed and, therefore, how corruption can be curbed. According to HI, a reduction in the effectiveness of the informal institution of corruption is unlikely. By focusing on the incentive structure created by the institutional arrangements and the factors that alter that structure, RCI is
better suited to help us understand how corruption can be contained and reduced. In this study, I am employing propositions made by both approaches because HI helps explain the persistence of the informal institution of corruption and the difficulties in changing it, while RCI claims that a successful strategy to change informal institutions is to alter the incentive structure created by those institutions.

2. Why Romania?

In December 1989, Romania was the last and only country in Central Eastern Europe to violently overthrow its communist government. Since then, the country has undergone a difficult process of transition to democracy and market economy, a process undermined in part by the continuation and even thriving of informal institutions. The informal institution of corruption was part of the communist legacies and all former communist countries had to address them. Additionally, the nature of transition further aggravated the situation, corruption being considered one of the main causes of departures from the rule of law in the newly established democracies (Sandholtz and Taagepera 2005, Rose 2001). Hence, corruption is not uncommon during transition processes and all former communist countries in Central Eastern Europe struggled with corruption after 1989.

Romania had faced especially difficult challenges during its dual transition due to the communist legacies (as with all former communist countries), the endurance of former nomenklatura and its control of power for the first six years after the transition, the lack of an organized and strong opposition, and a weak civil society. Thus, for the first six years after the revolution, Romania was constantly included in the category of
illiberal democracies, along with other post-communist countries such as Bulgaria and Slovakia (Vachudova 2005). That might be explained in part by the fact that, despite the violent break up with the previous regime, the old nomenklatura remained in power after 1989 revolution. The absence of a strong and cohesive opposition and the advantageous position of the old communist cadres in the political and economic arenas delayed the democratization process in Romania.

Romania was also considered to be a challenging case for the accession to the EU (Vachudova 2005, Pridham 2007). Although it was considered from the early nineties to be one of the serious candidates for EU membership, Romania constantly lagged behind all other candidate countries to the EU (Phinnemore 2005). Furthermore, Romania had been constantly ranked as one of the most corrupt countries in the region and the most corrupt EU candidate country by various international organizations. The persistence of corruption might be explained by the fact that, in the Romanian post-communist context, corruption is a matter of political culture and a constant and major concern for the general public and politicians. Thus, the former are interested in curbing corruption and living better lives, while the latter are using corruption as a campaign issue to further their political careers (in the short run, at least). Corruption makes for a highly visible and inflaming campaign issue and political parties cannot refrain from using it in order to get in office. At the same time, the effect of using corruption as a campaign issue depends on where the parties stand during the elections (i.e., governing coalition or opposition). The last three national elections (1996, 2000, and 2004) have shown that all major political parties have used anticorruption rhetoric successfully when they were in opposition. The
anticorruption rhetoric proved to be detrimental to the governing parties which became vulnerable to the attacks of the opposition and lost the elections\(^7\).

Besides being a relevant case for post-communist transition to democracy and market economy, Romania is also an interesting case because of its mixed political system. Following the French model, the Romanian president is directly elected for a five year mandate\(^8\) whereas the Parliament is elected for a four year mandate. The president has the responsibility to choose the Prime Minister (PM) and appoint the government based on the nominations made by the Parliament. In case of government reshuffle (which had happened at least a couple of times during each four-year government mandate) the president revokes and assigns, after discussions with the PM, the new government. The relationship between the president and the government has proved to be complicated and difficult to sustain for long periods of time even when the president and the PM came from the same political party. The situation is even more complicated when the president and the PM are from different political parties\(^9\) and they have to cooperate to maintain the governing coalition formed by their parties and preserve the support of their colleagues in the Parliament.

Furthermore, the hybrid political system creates the potential for more tensions in the relationships between the executive (the presidency and the Government)\(^10\) and the Parliament. According to the Romanian Constitution, Art.109 (1), the Government is

\(^7\) This claim supports Ivan Krastev's (2004) argument regarding the use of anticorruption campaigns and its negative consequences. See pages 19-20 for a more detailed discussion of his argument.

\(^8\) The five year mandate was introduced by the 2003 Constitution and the first five-year mandate started in November 2004.

\(^9\) Although the Constitution stipulates that the president cannot be a member of a political party during his/her mandate, it is common knowledge which party the president favors based on its pre-election membership and the assignment of ministers to his former Party fellows.

\(^10\) According to Adrian Enache, from a doctrinaire point of view, both the government and the president represent the executive. For more details, see Adrian Enache, *Controlul Parlamentar* [Parliamentary control] (1996), Iași: Editura Polirom.
politically accountable to the Parliament for its activity, but every president since 1990 has attempted to control the Government as much as possible. Thus, President Iliescu's (1992-1996) direct involvement in the Government's activity led Jacques Rupnik (1997) to the conclusion that the Romanian political system is a presidential one. While I disagree with this claim, I share his estimation with regard to the president's attempt to control the government. Additionally, Parliament-president cooperation is complicated by the fact that both are directly elected and have the same legitimacy and responsibility to the electorate. The hybrid system makes it easier to avoid blame and more difficult to hold specific actors accountable for their actions or inactions. Furthermore, it makes it easier for political actors to take credit for any success in establishing the rule of law and curbing corruption. Hence, the mixture of the parliamentary-presidential system affects the adoption and implementation of anticorruption strategies, and implicitly, the relationship between formal institutions and the informal institution of corruption. The impact of this political system is, therefore, captured in the analysis of the institutional strategies adopted in the decade under study.

However, the political will to combat corruption and, implicitly, the success or failure of anticorruption strategies are not likely to be the direct result of a specific regime type. That is, the mixed Romanian political system is not expected to be more or less successful in its anticorruption efforts than other countries that have parliamentary systems (e.g., Bulgaria, Hungary) or presidential systems (e.g., Argentina, Brazil). The anticorruption literature, as it will be shown in more detail later in this chapter, emphasizes the importance of political will to combat corruption, regardless of a country's regime type. Hence, to state with absolute certainty that a specific political
system increases the chances of curbing corruption or vice versa would require additional and extensive research which is beyond the scope of this study.

Thus, while sharing the general characteristics of post-communist countries and their transition problems, Romania can be considered a difficult case. Nevertheless, being a difficult case for the dual transition, the fight against corruption, and the accession to the EU only makes Romania an even more interesting and important case to study. Moreover, as a native Romanian, I am linguistically and culturally prepared to study the relationship between formal institutions and the informal institution of corruption in this country. However, the more important component of the research design, i.e., the selection of sectors, is developed later in this chapter.

3. Literature Review

This section examines briefly the relevant literature on democratization, informal institutions, and corruption. The first subsection focuses on the literature on democratic consolidation and the significance of the rule of law. The second subsection reviews the literature on informal institutions and the sources of informal institutional change. A persuasive argument of corruption as an informal institution in Romania and the concept of “blat” is also included in this subsection. The last part of this section evaluates the literature on corruption emphasizing particularly the difficulties of defining corruption, the consequences of corruption, and the anticorruption strategies recommended in the literature. Additionally, this subsection includes a discussion of “political will” and the difficulties of measuring it in practice.
3.1. Democratic Consolidation and the Rule of Law

The democratization process comprises two phases: the breakdown with the former regime and the consolidation of the democratic regime (Huntington 1991). The latter is attained when democracy becomes the “only game in town” (Linz and Stepan 1996). The literature on democratic consolidation emphasizes the importance of creating complex institutional arrangements compatible with the democratic norms and capable of guaranteeing the rule of law (O’Donnell 1992, Mainwaring 1992, Valenzuela 1992). Thus, democratic consolidation is claimed to entail the “elimination of formal and informal institutions that are inimical to democracy” (Valenzuela 1992, 71). Although the importance of eradicating the informal institutions incompatible with democratic standards is mentioned, subsequent scholars have focused mainly on the design and functioning of formal institutions.

The rule of law represents an essential element for the success of democratic consolidation by establishing “a hierarchy of norms that make actions by, and upon, other arenas legitimate and predictable” (Linz and Stepan 1996, 14). The legal system represents one of the fundamental pillars of market economy and an independent judiciary is essential for the implementation of public policy as well (World Bank 2000a). A corrupt or politically dependent judiciary makes the implementation of public policy more difficult, undermines reforms, overrides legal norms, facilitates high-level corruption, and it undermines the democratic consolidation process as a whole (Rose-Ackerman 1999). Additionally, a corrupt judiciary cannot serve as a check on other branches of government and cannot ensure an impartial and equitable implementation of the rule of law (Dakolias and Thachuk 2000). The result is the creation of a private
system of justice based on informal rules, which in turn will reinforce the perception of a
failed legal system (Hay and Shleifer 1998). Furthermore, since one of its roles is to act
as the ultimate arbiter of anticorruption reforms, a corrupt judiciary will in fact
undermine the anticorruption efforts themselves (World Bank 2000a, 14).

When corruption competes with the formal rules that regulate the functioning of
the judiciary, customs, health care system, and public procurement sector, the negative
consequences go beyond their mere functioning and effectiveness. Not only is the rule of
law, people's welfare, and the privatization process undermined but also the very
legitimacy of public institutions is threatened. The success of democratization process
depends on the rule of law (Linz and Stepan 1996) and the legitimacy of the formal
institutions. The loss of legitimacy threatens the prospects of democratic consolidation
and corruption represents such a threat in Romania.

3.2. Informal Institutions

Although the mainstream comparative analysis has focused mainly on the study
of formal institutions such as constitutions, electoral systems, party systems, and market
systems, the wave of institutional change in post-communist and developing countries
has also stimulated the research of informal rules and institutions. Thus, students of Latin
America (Taylor 1992; O'Donnell 1994, 1996; Helmke 2002; Helmke and Levitsky
2000, Collins 2002) emphasize the importance of informal institutions and their
relationships with formal institutions in democratizing countries. These studies suggest
that by looking only at formal institutions, one cannot have a comprehensive
understanding of the way the transition process works. Informal institutions also shape political actors' behavior by creating incentives and constraints outside of the formal arena. Institutions, both formal and informal, are important because they reduce uncertainty and create constraints within which individuals make rational decisions (Ostrom 1991, 240). Inattention to the informal rules and norms leads to an incomplete representation of the way formal institutions work and of the factors that affect their effectiveness, and implicitly the factors that influence the democratization process as a whole.

In an attempt to develop a framework for integrating the study of informal institutions within mainstream institutional research, Helmke and Levitsky (2004) developed a typology of four models of formal and informal institutional interaction: complementary, substitutive, competing (the most problematic), and accommodating. The first two types of relations are characterized by convergent outcomes and the informal institutions have the role of “filling in gaps,” or supplementing ineffective formal institutions. In contrast, competing and accommodating informal institutions seek divergent outcomes from those of formal institutions. While the accommodating informal institutions do not violate the letter of the formal rules, the incentives created by "competing" informal institutions are incompatible with those of the formal rules. Furthermore, accommodating informal institutions coexist with effective formal institutions, while competing informal institutions coexist with ineffective formal institutions. This typology is especially useful when it comes to evaluating the impact of corruption in democratizing countries. As an informal institution, corruption competes with the formal democratic structures adopted during the transition to democracy,
especially when the former are ineffective due in part to an unsystematic enforcement of the formal rules. In Romania, corruption is an informal institution that competes with the formal democratic institutions and undermines the latter functioning and effectiveness.

The literature on informal institutions identifies three main sources of informal institutional change. The first source is the formal institutions themselves either by a change in their design or a change in their effectiveness (i.e., strengthening formal institutions) (Helmke and Levitsky 2006). A second source of informal institutional change may be an alteration in the conditions that sustained the informal institution; that is, a change in the external environment that results in a different distribution of power and resources may lead to a change in the informal institutions affected by the new status quo (Knight cited in Helmke and Levitsky 2006, 24). While a change in the external conditions that sustain an informal institution may lead to their alteration, this type of change is unpredictable and is less helpful in understanding how informal institutions can be intentionally changed. An alteration in the actors’ shared beliefs and experiences that in turn will affect their shared expectations about the informal rules and norms represents a third source of informal institutional change; while these type of changes are possible and can sometimes have quick results (e.g., the case of foot binding in China), changes in the societal values are generally slow and incremental (Helmke and Levitsky 2004, 2006).

Thus, where a change in the design of formal institutions has already taken place, as is the case of Romania, the task then becomes to increase the effectiveness of formal institutions. Specifically, a restructuring of incentives can lead to more effective formal institutions, which in turn can reduce the effectiveness and prevalence of informal
institutions. For the formal rules to be able to replace or change the informal ones the formal rules have to be recognized and applied consistently; they have to be precise in their language; and they have to be associated with a willingness to invoke sanctions (Knight 1992, 185-186). If these conditions are not met, the attempt to change stable informal expectations may actually exacerbate the pervasiveness and "stickiness" of informal institutions.

3.2.1. Why Is Corruption an Informal Institution in Romania?

According to Helmke and Levitsky (2004, 733), three basic questions must be answered in the attempt to identify an informal institution: 1) What are the actors' shared expectations with regard to the actual constraints they face? 2) What is the community to which the informal rules apply? And 3) How are informal rules enforced? Based on actors' mutual understanding of the informal rules, one can differentiate between informal behavior patterns and informal institutions and, thus, identify the actors' shared expectations. Of course, that would require an intimate knowledge of the community to which the informal rules apply. Related to the first question, the second one asks to identify the community to which the rules apply, such as a village, an ethnic or religious community or a nation. And finally, the third question refers to the existence of sanctions for violating the informal rules. These sanctions may take different forms (ostracism, social disapproval, extrajudicial violence), but they exist and actors are aware of their existence and of the risks they would encounter by violating the informal rules. The existence and enforcement of sanctions is essential for differentiating between informal behavioral regularities and informal institutions.
Using these questions as basic criteria for identifying an informal institution and based on the intimate knowledge of the Romanian society, I argue that corruption is an informal institution in Romania. It is common knowledge in Romania that, in order to solve a problem (regardless of its nature), one has to engage in a corrupt activity either by offering a bribe (money or gifts) or by using its connections (relatives, friends, clients). The failure to follow the informal rules of corruption leads to consequences of various natures for the persons involved, depending on the problem they attempted to solve. The informal rules of corruption as well as the sanctions associated with them are known nationwide in Romania and they influence and constrain actors' behavior. Hence, corruption is comprised of a set of informal rules embedded in widely shared expectations among both citizens and public officials and a refusal to comply with these rules is going to be sanctioned.

The impact of informal rules is far-reaching in the Romanian society by shaping actors' behavior. Thus, if one needs medical attention but fails to follow the informal rules (e.g., bribe the medical personnel), he/she runs the risk of receiving poor health care services that might endanger his/her life. Although there are no written rules regarding the appropriate conduct of patients in their interaction with health professionals, everyone finds out very fast the "price" of every service delivered in a medical facility. The means through which patients find out about the appropriate prices are very simple: other patients already have that information or, sometimes, the new patient asks directly the nurses or other low-level personnel working in the hospital about the costs of services provided by doctors. The informal rules of gratitude payments are so entrenched that everyone obeys them unless they have no income and no possibility of obtaining the
money necessary to cover the informal payments. In the latter situation, the risk is to receive a lower quality of health care, the health professionals' services being diverted to those who paid for the extra attention. However, since health is a good that people cherish dearly, there is little resistance to the established informal rules of corruption in this sector.

In 2004, a group of Romanian journalists of investigation decided to publish a Bribery Manual (Manual de Șpagă) that presented a collection of real life stories of everyday corruption in the country collected over a period of two and a half years. The diversity of corruption accounts reflected the widespread practice of corruption and the pervasiveness and influence of its informal rules. For example, the gratitude payments that a patient made for a hip surgery, the result of a car accident, amounted to €600 ($745\textsuperscript{11}). The total costs of the patient’s stay in the hospital were broken down as follow: €300 ($373) the main surgeon; €150 ($186) the second surgeon; €50 ($62) the anesthesiologist; €60 ($74) the nurses; and about €30 ($37) the other lower level health care staff. Moreover, the total cost did not include the drugs the patient bought with her own money while in the hospital. (Popescu 2004, 16). The failure to make the informal payments, as noted before, affect the quality of services received by the patients. In a different case, a young patient who had her tonsils removed was complaining about pain post-surgery. The nurse’s reply was: “You should have thought about that before the surgery and you should have ‘greased’ the wheels!” (Popescu 2004, 16).

The informal rules of corruption are not limited to the health care sector. For example, in 2003, the television station Antena covered the story of a custom officer who

\textsuperscript{11} The currency conversions to USD were made by using the average currency exchange rate for 2004 as provided by the National Bank of Romania.
was fired because he refused to cover up an illicit activity in which his direct supervisors were involved. The customs officer, along with another colleague, was sent to process a customs control on a series of shipments with goods from Turkey which were transiting Romania. The two customs officers noted a series of irregularities, including the false paperwork that accompanied the shipment and the undervaluation of the goods being transited. Shortly after beginning their processing, the two officers were told that they have to stop their activity and report to their supervisor. What followed was a series of events which highlight the entrenched informal rules of corruption in the customs sector. The customs officer was asked to sign a paper stating that his colleague had conducted an illegal customs control, and when he refused to do so he was dismissed. Believing that they have done nothing wrong, the customs officer refused and was fired without a possibility to work in the public sector for a minimum of seven years. Additionally, his supervisors requested the Court of Accounts to initiate an investigation into the activity of the dismissed customs officer for alleged past irregularities in his activity. To add even more pressure, the customs officer began receiving death threats if he would ever go public with his story, which he did only after his former boss managed to get him fired from a private company where the customs officer was working as a customs consultant. After years of humiliation and disappointment with the judicial system, the customs officer left the country and started a new life in Western Europe. Shortly after the “Black Box” show presented his story on Antena television, the show was cancelled in response to “higher pressures” (Interview Journalist 2, June 6, 2007).

The case of corruption in the customs sector is illustrative of the widespread tentacles of the informal rules of corruption that reach to the highest levels and have
serious consequences for those who oppose them. Additionally, the everyday encounters with the traffic police are conducted according to the informal rules of corruption. For example, to ensure that the policeman who supervises one’s driver’s license road test will not unintentionally fail the test takers, an informal payment (i.e., bribe) is paid prior to the test. In some cases, the driving instructors collect a fixed sum of money from each student and pay the policeman in charge with supervising the road test.

The informal rules of corruption are not only permeating almost every aspect of the Romanian society, but failure to comply with them sometimes results in very serious consequences, as the case of the customs officer demonstrates. The sanctions for not complying with the informal rules when dealing with the judiciary or public procurement sector are of a different nature than those in health care or customs, but not necessarily less costly. For example, the loss of a trial which may result in imprisonment and/or significant financial losses or being placed on a black list for government contracts and risking losing one’s business due to a failure to follow the informal rules are consequences that people have to consider almost every day. Hence, in studying corruption is important to understand the rules and sanctions that comprise the very fabric of this informal institution. Moreover, institutional designers or reformers must take into consideration the incentive structure to engage in corruption when engineering new formal institutions or reforming the existing ones. That is, the incentive structures to comply with formal rules must aim at altering or, ideally, counteracting, the incentive structure to engage in corruption. Failure to take into account the underlying mechanisms of corruption when designing or reforming formal institutions is likely to result in ineffective formal institutions and/or failed formal institutional reforms.
3.2.2. Blat

The communist societies had been characterized by the existence of a special type of informal rules known as blat, rules that although were a deviation from the formal ones were condoned by the communist regimes. Blat is defined as "the use of personal networks (kin, friends, and acquaintances) to obtain goods and services in the economy of shortage" and "the informal exchange of 'favours of access' given at the expense of institutional resources" (Ledeneva 2004, 123-4). In the context of the economy of shortage that characterized communist societies, the line between friendship and the use of friendship became blurred. Consequently, personal networks were very important for getting access to goods in short supplies and to other institutional resources (Ledeneva 2004).

According to Helmke and Levitsky (2004), blat is an example of accommodating informal institution created because although the actors did not like the outcomes of the formal rules, they were unable to change or openly violate them. Heidenheimer (1989) claims that blat is a form of "white" corruption and, therefore, an acceptable form of corruption in the public's eyes, because of its non-monetary form and its role in increasing social equality in communist societies. This acceptable form of corruption "'allows' participants in blat transactions to mis-recognize their activities as 'help' and to cover it in the 'rhetoric of friendship'" (Krastev 2004, 64). The process of transition to democracy affected also the informal institution of blat which was reformed according to market principles. According to Krastev (2004), blat changed from a non-monetary to a monetary form and is now largely perceived as corruption. The informal networks specific to blat have survived and even multiplied during the democratization processes,
but they are being perceived as means for introducing social inequality. This, in turn, makes them less acceptable in the eyes of the general public (Krastev 2004). Nonetheless, the informal networks specific to the system of blat and their survival in post-communist societies may help us understand the endurance and pervasiveness of informal institutions.

However, the differentiation between blat and corruption appears to rely mainly on the monetary or non-monetary form that they take. Thus, according to Ledeneva (2004) and Krastev (2004), the use of one’s influence and authority position in order to obtain benefits for him or for others (i.e., family, friends, clients) classifies as blat as long as there is no direct monetary exchange involved. This differentiation suggests the use of a narrow definition of corruption which, in turn, allows for the classification of certain informal institution of corruption as blat. However, survey results show that people do not consider corrupt activities only those involving the direct exchange or gain of money. Favoritism, nepotism, and clientelism (i.e., the use of one’s authority and influence for his own non-monetary benefit or for the benefit of his family, friend, or client, such as to secure a job position or get special treatment or favors from a public servant) are considered to be corrupt practices (Gallup Romania 2002). Hence, my conceptualization of corruption includes also corrupt activities that do not involve a direct exchange of money or direct financial benefits. Regardless of its color or form, corruption is an informal and illegal institution. Furthermore, the informal networks specific for accommodating informal institutions such as blat can be and have been used to engage in corrupt activities in post-communist countries. Hence, the distinction between blat and corruption is meaningless in the post-communist context, where the same informal
networks that characterized the former are now employed for the benefit of the latter. Besides, the relationship between formal and informal institutions has changed once the communism collapsed. That is, the effective communist formal institutions have been replaced by ineffective democratic structures that allow more room for the expansion of informal institutions such as corruption. Additionally, while the existence of blat in communist times found its justification in the special circumstances in which people lived, corruption is non-justifiable in a society that aspires to be governed by democratic rules and norms, a fact demonstrated by the growing attention devoted to corruption, as it will be shown next.

3.3. Corruption and Anticorruption Strategies

The last decade has witnessed an increased interest on the part of various international organizations such as the EU, International Monetary Fund (IMF), Organization for Economic Cooperation and Development (OECD), Transparency International (TI), and the scholarly community (Eigen 1996, Klitgaard 1997, de Lozada 1999, Sedigh and Muganda 1999, Philp 2002, Davis 2004) in understanding corruption, its causes, consequences and strategies to contain and reduce it. The increasing attention accorded to corruption is stimulated by the growing amount of evidence that corruption undermines good governance, the rule of law, economic development, and even moral values (United Nations Development Programme (UNDP), World Bank (WB), World Trade Organization (WTO), Mauro 1995, Kaufmann 1997, Karklins 2005).
3.3.1. Conceptual Problems

Scholars agree that any study of corruption should start by defining the term, an endeavor which is both difficult and controversial. They also agree that the term “corruption” has different meanings in various languages, a fact that might explain why a unique and universal definition of corruption is difficult to find. Thus, corruption has been defined in moral, legal, public office, public interest, and economic terms. Prior to corruption becoming the subject of rigorous social science research, corruption was defined primarily in moral terms as an act to be condemned. According to the moral definition, “to corrupt means to pervert, degrade, ruin, and debase” (Williams 1999, 504). However, the moral conceptualization of corruption has been “largely eschewed” by contemporary scholars in part because of the religious connotations attached to the idea of morality (Huffer 2005, 121).

The legal conceptualization of corruption attempts to define it “as something that occurs outside of rules and laws” (Huffer 2005, 121). Such a parsimonious definition was appealing to scholars, but the variation of legal codes across countries was soon considered to be a serious problem that limited the general application of a legal definition of corruption. Furthermore, although laws are considered to be “neutral, objective, and non-political”, they often represent the interest of the “most powerful who can determine what conduct is declared improper” (Williams 1999, 505). This, in turn, would further limit and eschew the conceptualization of corruption because it would mean to sanction the interpretation of the powerful rather than the just (Williams 1999, 505). Moreover, laws regulating public life assume the existence of a clear delineation between private and public spheres which, as it will be shown next, is not always the case.
(Huffer 2005, 121). More importantly, though, by simply defining corruption as something that occurs outside the legal norms and rules does not offer, from an analytical point of view, a better conceptualization of corruption. Hence, the legal interpretations of corruption have had a limited contribution to the study of corruption.

The public office and public interest definitions assume that the public and private roles are clearly established and differentiated, while that might not always be the case. According to these conceptualizations, corruption is behavior that deviates from the public servant’s duties in the interest of monetary or status gain for the individual, his family, or friends, and which damages the public interest (Philp 2002, 45-46). During communist governance, the distinction between public and private roles was blurred and public servants used their positions in order to further their own interests as well as the interests of their families, friends, acquaintances, or ethnic group. Additionally, these two definitions, by emphasizing different aspects of the public (office and interest), leave unclear which one of the two views of the character and scope of the public office or public interest should be accepted nor is it clear what norms should one use to measure the additional concepts included or implied in the definitions (Philp 2002).

The economist explanation portrays corruption as rent-seeking behavior that occurs because governments have too much control over resources and markets (Williams 1999). The underlying assumption is that individuals are selfish and seek to maximize their short-term profits at the expense of other economic actors. As Philp (2002) notices, these market-oriented definitions of corruption do not define better the concept of corruption, but they are more likely to offer a model for understanding the incidence of corruption.
The lack of consensus in the literature with regard to a definition of corruption along with my argument that corruption is an informal institution have led me to a different conceptualization of corruption. This definition relies on the existing definitions of corruption and on Helmke and Levitsky's (2004) description of informal institutions. Hence, for the purpose of this project, corruption is defined as a set of unwritten, illegal norms and rules that regulate the relationship between public servants and the general public, are used for the former’s personal gain (directly and/or indirectly), and are enforced through informal channels outside of the officially sanctioned channels. As such, corruption may take different forms such as bribery, influence peddling, informal payments, nepotism, favoritism, clientelism, and misappropriation. This definition of corruption as an informal institution emphasizes the expectations the actors have with regard to the rules and norms that regulate corrupt informal behavior as well as the sanctions for non-compliance. Thus, corruption creates an incentive structure to engage in corrupt activities that competes with the incentive structure created by formal institutions. Consequently, this conceptualization of corruption emphasizes the illegal nature of corruption but, unlike the legal definitions of corruption, it has the advantage of capturing the complex nature of corruption (i.e., informal rules and norms, enforcement, and sanctions).

Clientelism is generally viewed as a network of social relations characterized by “a particular mode of ‘exchange’ between electoral constituencies as principles and politicians as agents” (Kitschelt and Wilkinson 2007, 7). Studies of patron-client relations focus particularly on Latin America, where clientelism is considered to be an informal institution that sometimes competes with the formal institutions and directly violates the
formal rules and norms while at times it substitutes for weak formal institutions (Helmke and Levitsky 2006, 17). Hence, corruption and clientelism are considered to be two distinct types of informal institutions. In post-communist countries, patron-client relations are viewed as having their origins in the previous regimes where the communist nomenklatura controlled the best jobs and appointments. After 1989, the communist cadres became patrons “who received tribute from subservient units and subordinated interests of their posts to personal and particular interests” (Karklins 2002, 28). While clientelism and corruption are separate in Latin America, in post-communist countries they merge and the result is what Andras Sajo (1998) calls “clientelist corruption.” This type of corruption is “a form of structural corruption, which should be distinguished from discrete individual acts of corruption” (Sajo 1998, 2). The former nomenklatura had a significant advantage at the beginning of the transition and it materialized that advantage by establishing corrupt patronage networks that continue to self-perpetuate. Thus, clientelism can be considered to be one of the forms corruption takes in post-communist settings.

3.3.2. Consequences of Corruption

Numerous studies on corruption have shown its negative consequences. Thus, corruption reduces economic growth and lowers the level of foreign direct investment; it reduces the effectiveness of industrial policies and encourages businesses to function in the unofficial sector in violation of tax and regulatory laws (Rose-Ackerman 1999); it distorts public expenditures by encouraging unproductive public investments (projects with higher corruption capital) and under-investments in human capital by spending less
on education (Mauro 1995, Krastev 2004); it marginalizes citizens from the political process; it puts an additional burden on the poor; and, very importantly, it fosters disdain for and undermines trust in public institutions, democratic politics, and the rule of law, thus, de-legitimizing the democratic governance (Klitgaard 1991, Della Porta and Vannucci 1999, Karklins 2005).

Revisionist scholars have challenged this view of corruption by claiming that corruption is not necessarily incompatible with economic development (Huntington 1968, Lui 1985). Corruption, whose meaning varies from culture to culture, may actually advance economic development by introducing an element of competition into monopolistic industries or by speeding up services (Leff cited in Kaufmann 1997, 114). According to revisionist scholars, governments often pursue sub-optimal economic policies due to either their incompetence or ideological bias. In these circumstances, corruption plays a positive role by reducing the negative consequences of these sub-optimal policies (Nye 2002). Additionally, corruption may improve the situation by persuading the government to pursue policies more in line with social welfare if the business groups can, through corruption, enhance their participation in policy formulation and if they are more likely to promote growth (Leff 2002). According to the traditional rent-seeking theories, corruption is viewed as a preferred form of seeking preferential treatment in comparison to other more competitive and legal forms, such as lobbying, because it reduces economic costs (Lambsdorff 2007, 116). However, the revisionist scholars do not take into consideration the possibility of corruption leading to sub-optimal policies nor the inefficiencies that are resulting from the allocation of contracts and licenses through corruption (Kurer 1991). Nor do they take into consideration the
very impact of corruption on rent-seeking, which is that “[C]orruption motivates politicians and public servants to impose (or threaten to impose) market restrictions so as to maximize the resulting rents and bribes paid in connection with them” (Lambsdorff 2007, 121). In other words, corruption tends to self-perpetuate and to further distort the market competition and the distribution of benefits. Furthermore, this reductionist view of corruption fails to recognize its broader negative impacts on society as a whole.

Although subtle forms of this perspective can still be identified, the dominant view is that corruption is a plague that needs to be reduced, controlled, and prevented. Additionally, as Rose-Ackerman (1999, 110) said:

“If behavior labeled “corrupt” by some observers is, nevertheless, viewed as acceptable gift giving or tipping within a country, it should simply be legalized and reported. If, however, these practices are imposing hidden or indirect costs on the populace, analysts can clarify and document those costs. Definitions of acceptable behavior may change once people are informed of the costs of tolerating payoffs to politicians and civil servants.”

3.3.3. Corruption and Privatization

Privatization is considered to be an effective tool in combating corruption because it reduces the state control over certain assets and transforms discretionary official actions into market-driven actions (Rose-Ackerman 1999). By introducing market competition in previously state controlled sectors, the incentives that actors face will be dictated by the free market rules reducing the incentives to engage in corrupt activities. Hence, the privatization process is considered to be a necessary step in reducing corruption. However, studies show that the short term impact of privatization on containing corruption is ambiguous. Privatization is a process that offers many opportunities for
corruption and control over the information is one of them. That is, the information regarding the big enterprises that are to be privatized or any other information pertinent to the privatization of specific assets is still in the hands of the government or the privatization authority controlled by the government. Corrupt officials may offer incomplete or false information to the general public while selling pertinent information and access to insiders who pay for that information (Rose-Ackerman 1999, 35-37).

Privatization is no guarantee that the newly created units will no longer be subservient to politically motivated interests nor that they will be less likely to engage in corrupt activities (Lamsbdorff 2007). Additionally, the many examples of corruption in the course of privatization in post-communist countries prove the limits of privatization in reducing corruption (at least in the short term).

Nonetheless, the type of privatization implemented is important because different strategies create various opportunities for corrupt behavior. Kaufmann and Siegelbaum (1997) differentiate among privatization strategies employed in post-communist countries that generate more or less potential for corruption. In Romania, the MEBO (management-employee buy-out) strategy had been largely employed (Kaufmman and Siegelbaum 1997, 427)\(^{12}\). Regardless of the chosen strategy, opportunities for rent-seeking may increase during the privatization process if the level of administrative discretion is high, the process lacks transparency, the privatization agency is not independent, and the process is slow. Nevertheless, Kaufmann and Siegelbaum (1997) claim that by modifying and controlling the previously mentioned factors, privatization may create fewer opportunities for corrupt behavior and lead to a reduction of corruption in the long run.

\(^{12}\) See Chapter II for a more detailed discussion of the various strategies of privatization and their potential for corruption.
The level of privatization and therefore market-competition in the four sectors under study here is very limited due to features specific to each sector. The judiciary and customs are two sectors vital for the survival of the democratic system and the national security. Therefore, these two sectors have not been the object of the privatization process in Romania. In the health care sector the privatization process, as part of the reform process, began in late nineties and has continued at a very slow pace. As a result the private sector is small and the competition is mainly among dentists, who own the most private businesses. In September 2006, Otmar Kloiber, the general secretary of the World Medical Association, declared that the Romanian health care system continues to be “centralized, corrupt, and over-bureaucratized” (Evenimentul Zilei, September 21, 2006). The public procurement sector is a sector that began developing in 1990 and while competition should be one of its main features, it is yet to demonstrate its role in reducing the level of corruption. Hence, although privatization is considered to be an important strategy in curbing corruption in the long term, for the moment its role in reducing corruption in post-communist countries remains to be empirically demonstrated. Additionally, it is not believed to be an effective anticorruption strategy in the four sectors under study here.

3.3.4. Anticorruption Strategies

The literature on corruption suggests that the strategies to contain corruption should be multi-pronged and include a variety of methods (World Bank 2000a, World Bank 2000b, UNDP 2002, UNDP 2004, Karklins 2005, Kaufmann 2005). Most analysts of anti-corruption strategies focus on de-monopolizing decision making, limiting
discretion, and strengthening accountability. Specifically, they advocate effective law enforcement and willingness to invoke sanctions, the creation of oversight institutions and anticorruption agencies, increase in transparency and freedom of information acts, whistleblowers and witness protection, clear ethics codes, and a merit-based civil service. Underpinning all of these, however, is the political will to fight corruption, singled out as an indispensable factor in effectively implementing anticorruption strategies (World Bank 2000b, UNDP 2002). In the absence of a political will to fight corruption, the institutional strategies would remain desirable propositions that would be unlikely to materialize or work in practice. Political will is thus a necessary condition in the fight against corruption. International donors (e.g., EU, World Bank, UNDP) and public opinion can influence the level of political commitment to curb corruption by pressuring political officials to take action. In Central and Eastern Europe, the EU plays a significant role and any scenario that fails to include this external actor provides an incomplete picture of the interaction between formal and informal institutions in post-communist countries, especially in the candidates to EU membership. Similarly, an inclusion of the domestic public opinion provides new insights into the role of the public in the fight against corruption (World Bank 2000b, UNDP 2002, UNDP 2004).

The anticorruption strategies advocated by anticorruption scholars and experts and which focus on de-monopolizing decision making, limiting discretion, and strengthening accountability are all institutional strategies. These strategies attempt to change the incentive structure created by formal institutions and the competing informal institutions by increasing the costs of engaging in corrupt behavior and the benefits of complying with the formal rules. Since these two types of institutions are correlated and
an increase in the effectiveness of one type of institution leads to a decrease in the effectiveness of the other type, these institutional strategies are curbing corruption while strengthening the formal institutions. Therefore, this study focuses on the institutional strategies designed to curb corruption and on their ability to achieve the proposed goal.

The fight against corruption is not only difficult, but there is no guarantee that one successful implementation of anticorruption policies will endure or that will be followed by other successes in curbing corruption (Eigen 1996). According to Krastev (2004), governments are more likely to succeed in their fight against corruption if they implement anticorruption policies without using anticorruption rhetoric, that is, if they do not employ anticorruption campaigns. An anticorruption campaign, in which corruption is used for electoral purposes, increases the incentives of the opposition to attack the government as being corrupt, accusations that the government is likely to fail to reject as long as the public defines corruption as "the very nature of exercising power" (Krastev 2004, 110). Furthermore, an anticorruption campaign is also more likely to be accompanied by kompromat, which can be expressed as "publicizing, with the intention of compromising someone, data, evidence, circumstances, or documents (or the threat of publicizing such data), using the traditional and reformed journalistic and political genres of reporting, exposing, defaming, and recrimination" (Szilágy 2002, 208). The publication of compromising material, even in the absence of any evidence (as was the case of the executive director of Bulgartabak in 2002 (Krastev 2004)), may reinforce the public's view that all governments are corrupt and there is no chance to effectively curb corruption. The perception of a widespread corruption, in turn, may lower the costs of corruption and increase the chances of individuals to engage in corrupt activities. Hence,
in order to avoid *kompromat* and to increase the chances of successfully fighting corruption, governments have to effectively implement anticorruption policies without attempting to use anticorruption rhetoric.

However, corruption is an incendiary campaign issue and in societies plagued with corruption, politicians perceive anticorruption rhetoric as a means to gain more votes. That is, in their competition for winning the elections, political parties cannot resist the temptation of using corruption as a political issue and Romania is no exception. Thus, corruption became an integral part of any election campaign since 1996 and the success of the Romanian Democratic Convention (RDC)\(^\text{13}\) and its presidential candidate, Emil Constantinescu set an important precedent, namely, that corruption wins votes. The following national elections were therefore dominated by an anticorruption rhetoric and it was employed successfully by the main opposition parties, which managed every election to win enough votes to rule the government and dominate the Parliament.\(^\text{14}\)

As Krastev (2004) stated, the use of corruption as a campaign issue can easily backfire with damaging consequences for the political parties that employed it. The fate of CDNPP is perhaps an extreme example but a relevant one in showing also the negative impact of anticorruption rhetoric divorced from designing and implementing effective anticorruption strategies. Nine years after its electoral defeat, this political party has yet to gain the trust of the electorate and enough votes to pass the electoral threshold. As the other examples are showing corruption is a constant in the political context of post-communist Romania. The last three national elections were profoundly marked by the use

\(^{13}\text{RDC is a party alliance between Christian-Democratic National Peasant’s Party (CDNPP), National Liberal Party (NLP) and some other small parties. NLP left the coalition in 2000, few months before the national elections.}\)

\(^{14}\text{A more detailed discussion of the use of anticorruption rhetoric is made in Chapter IV.}\)
of corruption as a campaign issue which placed the fight against corruption mainly in the realm of rhetoric with damaging consequences for political parties and implicitly for the general public which continued to be afflicted by corruption. Hence, the use of anticorruption campaign makes the fight against corruption more difficult because the government becomes more vulnerable to attacks from the opposition parties. Additionally, the failure to fulfill the electoral promises and to demonstrate political will to combat corruption may not only result in electoral defeat but in an increase cynicism among the general public with regard to politics and democracy.

3.3.5. Political Will

As mentioned before, political will is the essential factor in the fight against corruption on which heavily rests the effective design and implementation of anticorruption strategies. Starting from previous definitions (Kpundeh 1998, Brinkerhoff 1999 and 2000), political will is defined as the demonstrated commitment of political actors (elected or appointed leaders) to engage in and carry out a set of strategies (i.e., anticorruption strategies) and to sustain their costs over time. This definition includes, on the one hand, the acknowledgement that a healthy system of governance is of national interest and, on the other hand, the need for the effective cooperation of national key leaders in the long-term fight against corruption.

Building political will and, moreover, maintaining it over time is not an easy task. First, timing is a key issue and elections may offer good opportunities for politicians eager to portray themselves as anti-corruption and pro-reforms. Thus, a good rhetoric may help them get access to the governing power and resources. Of course, the real
challenge comes after the election when the new-elected politicians must keep their promises (Pope 2000). Second, building political will requires cooperation of the main political actors and their determination to curb corruption. Additionally, the actors’ personal integrity and the integrity of their actions must be beyond reproach, otherwise the fight against corruption risks being compromised by its own advocates and the popular view that all politicians are corrupt reinforced. Third, the fight against corruption may require political actors to cross the party lines both in the legislature and in the government, a task that may be politically costly for those brave enough to do it (World Bank 2000b). It is not uncommon for Romanian politicians to be expelled from their own parties because they criticized the party policies, agenda, leadership, or have supported the opposition on a specific policy. For example, in 2002, the president of the local chapter of the SDP Bihor, Mihai Bar, was expelled from the party after he criticized the dubious activities of a father and son, Aurel and Adrian Tarau, also members of the SDP. Another member of the SDP, this time from the Suceava chapter, had the same fate as Bar after he criticized the questioning activities of some of the high profile members of that local chapter (Parliamentary debate, March 31 2003). Consequently, those committed to combating corruption must be willing to accept sometimes serious political and career costs.

According to Barbara Geddes (1994, 13) political actors are constrained in their ability to initiate reforms (and anti-corruption strategies for that matter) by their desire to succeed in their political roles and by their control of state resources. In other words, political actors will initiate and support reforms if their own careers are not at stake.

15 Adrian Tarau was investigated at the time for his involvement in the smuggling of oil and gas in Yugoslavia during the embargo.
However, reforms are collective goods and as such they pose the problem of the free-rider. Everyone would be better off if they cooperate, but, in the short run, that is not the rational choice for individuals to make. For politicians, the choice is between the political benefits of supporting the reform, on the one hand, and the costs of using resources for other than achieving political support (i.e., for implementing the reform), on the other hand. If the benefits outweigh the costs, they will push for reform; otherwise, even the most reformist politicians may choose to postpone the reform. After all, in order to make a change one has to be in office. These constraints on political actors’ ability to initiate and support reforms influence the political will required for initiating and implementing reforms and anticorruption strategies. If political actors as rational individuals do not perceive it politically beneficial for them to initiate and support them, the chances of building the required political will for an effective fight against corruption and for reforms, in general, are slim.

Additionally, Geddes (1994) claims that not only elected politicians but also party leaders play an important role in the struggle over reform. In proportional representation systems with closed-lists, party leaders hold more power over the votes of politicians in their parties who are concerned with the future (re)elections. Thus, if parties are disciplined and party leaders have this power, the support for reforms rests with the personal interests of the party leaders. Nevertheless, the successful initiation and implementation of reforms is more difficult in a multiparty system: more players, higher transaction and enforcement costs, and lower benefits.

However, building political will does not have to be an impossible task. Political competition that allows for the alternation in governing power of political parties may
help build the necessary political will to fight corruption. Through political competition, demands and promises for reforms and policies addressing the problem of corruption *per se* as well as the underlying problems that facilitate corruption may become the top issues on government and opposition parties’ political agendas (World Bank 2000).

At the same time, one must not overstate the importance of political parties in the fight against corruption in Romania where the multiparty system continues to be fluid. That is, new parties are created through the assimilation of smaller parties into bigger ones, other political parties are still searching for the most appropriate name and doctrine, and political alliances are created and dismantled after only several months with parties moving from the opposition side to the governing side. For example, on June 16, 2001, the Social Democratic Party (SDP) was created through the assimilation by the Social Democratic Party of Romania (SDPR) of the Romanian Social Democratic Party (RSDP). Since January 1990, the latter had cooperated with all major political parties regardless of their ideological stances, altered its political doctrine according to the political stances of the new-coming members, incorporated the Socialist Party in July 2000, only to be itself assimilated (although they called it “fusion”) by the SDPR (Alexandrescu & Stoica 2005). Another relevant example is that of the Conservative Party (CP), the single party with a centrist doctrine in Romania, which changed its name four times in the last fifteen years. In 2004 elections, CP formed an alliance with SDP, but immediately after the elections CP broke the alliance and joined the new governing coalition formed by NLP, DP, and the Democratic Alliance of Hungarians in Romania (DAHR). The decrease in number of political parties registered at the Municipal Court in Bucharest from 150 in 1996 to 41 in 2006 suggests that the party system in Romania is undergoing positive
transformations, but it has yet to stabilize. What all these changes illustrate is the limited role political parties play in the fight against corruption; as long as their own existence is being questioned and their doctrinal identity is not clearly defined, the fight against corruption is more likely to remain in the realm of political rhetoric. Hence, formal institutions play the crucial role in effectively addressing the problem of corruption, which also explains the focus of this research on formal institutions and their role in curbing corruption in Romania.

3.3.6. Problems with Identifying and Assessing Political Will

While political will has been recognized as a necessary element in the fight against corruption, only two attempts have been made to identify the characteristics that could be used to identify political will and to develop a framework for its analysis. The first such attempt was made by Sahr J. Kpundeh at the international conference organized by the OECD Development Centre and the UNDP Programme for Accountability and Transparency (PACT) in October 1997 in Paris. The papers presented at the conference were subsequently compiled in a book with a similar title, namely *Corruption and Integrity Improvement Initiatives in Developing Countries*, published in 1998. Kpundeh (1998, 77-78) proposed a set of six indicators to identify and assess "genuine" political will, namely (1) the degree of analytical rigor in understanding the context and causes of corruption; (2) the use of a strategy that is participative (i.e. incorporating and mobilizing the interests of many stakeholders); (3) the distinction between "demonstrative" and

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16 Approximately 150 peer-reviewed articles from various fields (political science, economics, health policy, education) that mentioned "political will" in their title or content were reviewed. However, only the studies discussed in this section had actually developed a framework for assessing political will. In all other instances, political will was only mentioned as a necessary factor that was either present or absent.
“strategic” issues; (4) the prevalence of incentives and sanctions; (5) the creation of an objective process that monitors the impact of reforms and incorporates those findings into a strategy that ensures policy goals and objectives; and (6) the level of structured political competition in both the economic and political spheres. These indicators are designed to cover a large spectrum of manifestations of political will and to indicate instances of "genuine" political will and its absence.

The first indicator, the analytical rigor in diagnosing corruption, evaluates the major measures taken to assess the problem of corruption and to identify the steps required to curb it. The second indicator assesses not only the crucial role of leadership but also the involvement of non-governmental actors who are affected by the adoption and implementation of anticorruption strategies. Thus, a strategy that is participative by including and gathering the cooperation of many stakeholders is another indicator of genuine political will. Kpundeh goes a step further and claims that genuine political will depends on the commitment of actors outside the government to implement the anticorruption reforms and they would do that only to the degree they perceive their interests to be protected by the government. As in his definition, Kpundeh expands the concept of political will to a whole arena of actors from various sectors, which makes it more difficult to identify and analyze the intended concept, namely political will.

The third indicator is the distinction between “demonstrative” and “strategic” issues. Kpundeh defines the former as “reforms that are desirable for their nominal outcomes (e.g., cost reductions resulting from successful implementation of reforms)”, whereas the latter are explained as incorporating “the assessment of probable costs and benefits of enacting a particular reform as measured against the costs and foregone
benefits of choosing not to intervene” (1998, 86). However, the explanation of “demonstrative” and “strategic” issues is not clear and instead of making the identification of genuine political will easier, it complicates it even further. Moreover, Kpundeh does not state that the presence of only “demonstrative” issues is an indication of absent genuine political will. Instead, he claims that the choice of strategies that accomplish their stated goals on a manageable basis is a more definitive indication of genuine political will, which undermines the use of “demonstrative” issues in the design of this indicator.

The prevalence of incentives and sanctions, Kpundeh’s fourth indicator, would evaluate the reformers’ ability to adopt and implement effective strategies that would “restructure the principle-agent relationship” by providing positive incentives for compliance (e.g., rewards for honest behavior, publication of positive outcomes) and not only sanctions (Kpundeh 1998, 78). While anticorruption experts and policy-makers recognize the importance of preventing corruption, it is not clear from this indicator how much emphasis should be put on positive incentives in order to conclude that there is an instance of “genuine” political will. Moreover, as long as there are sanctions for corrupt behavior and a willingness to invoke them, it is hard to argue that there is a lack of “genuine” political will to fight corruption just because the sanctions are not complemented by measures designed to reward honest behavior or other positive incentives for compliance. It is also not clear what the ideal balance would be or, at least, the balance that would indicate a “genuine” commitment of political leaders to fight corruption.
The fifth indicator of political will proposed is the creation of an objective process that monitors the impact of reform and incorporates those findings into a strategy that ensures policy goals and objectives. This indicator appears to assess not only the existence of political will but also its sustainability over time. Long-term "genuine" political will is, thus, expected to include the assessment of the anticorruption reforms implemented and the incorporation of those results into the new and refined strategies.

The level of structured political competition in both the economic and political spheres, Kpundeh’s last indicator, is described as the existence of “meaningful competition” and “institutionalized structures” capable to monitor and punish any arbitrary abuse of power. While political competition is recognized in the literature on corruption as being important in stimulating the formation of political will, it is not an indicator of political will per se. Authoritarian leaders may have the political will to curb corruption and the means to achieve their goals in a society tightly controlled by the state including in the economic sphere, if they think that by showing real determination to fight corruption would strengthen even more their position. Hence, the lack of political competition in either political or economic spheres should not necessarily equate with the presence of political will.

Kpundeh’s attempt to conceptualize political will and indentify a set of characteristics that would allow scholars and practitioners to identify and assess “genuine” political will is an important starting point for analyzing political will. However, his proposed set of indicators leaves room for improvements and it should be seen as such for developing more comprehensive and clear measurement tools. The

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second attempt to develop a framework for identifying and assessing political will came soon after Kpundeh’s and it was made by Derrick W. Brinkerhoff (1999 and 2000). Building on Kpundeh’s model, Brinkerhoff took it a step further by developing a framework that comprises the characteristics or indicators of political will, the environmental factors that influence political will, and the relationship between them. While the environmental factors are important in assessing the changes in the degree of political will, the goal here is to evaluate the characteristics that would help us identify it and analyze its impact.

Brinkerhoff (1999 and 2000) defined political will as “the commitment of actors to undertake actions to achieve a set of objectives—in this case, anti-corruption policies and programmes—and to sustain the costs of those actions over time” (2000, 242). He proposed a set of five indicators of political will, namely (1) locus of initiative; (2) degree of analytical rigor; (3) mobilization of support; (4) application of credible sanctions; and (5) continuity of effort. The titles of these indicators alone allow us to see the similarities between his and Kpundeh’s indicators. More specifically, the second, third and fourth indicators resemble three of the indicators proposed by Kpundeh. Additionally, Brinkerhoff proposes also the scales that should be used for each indicator and which would allow the creation of a composite measure of political will. The aggregated indicator of political will would include the scores from all five indicators, with high/strong rankings delineating strong political will. Brinkerhoff cautions researchers to take into consideration the scores of all indicators when assessing the degree of political

will and that low scores on some indicators may not be an indicator of a complete lack of political will.

According to Brinkerhoff, the first indicator of political will, the locus of initiative, refers to the "home-grown" or "imported/imposed" characteristic of political will. Home-grown political will is preferred because it increases the chances of success if the domestic reformers realize the necessity for developing and implementing comprehensive reforms, while imported or imposed political will may have unintended consequences due to the creation of resentment feelings towards the external actors who are trying to impose their own will on the country in question. The suggested scale for this indicator would range on a continuum from high to low, with higher values indicating stronger political will that lies with the domestic reformers. While the distinction between home-grown and imposed political will appears to be important, the impact of external actors is also considered to be an environmental factor that affects the strength and sustainability of political will and rightfully so. If external pressure is a political will moderator, it cannot be used to also identify it and assess its strength. Furthermore, if there is no domestic political will, it is difficult to see how one can claim that there is actually any political will to develop and implement difficult reforms, such as anticorruption reforms.

The degree of analytical rigor, Brinkerhoff’s second indicator, is similar with Kpundeh’s first indicator, which assesses the comprehensiveness and seriousness of identifying the causes and manifestations of corruption, the sectors most vulnerable, and the potential solutions. This indicator should also be measured on a high-low continuum scale, with higher values indicating a stronger political will. The third indicator,
mobilization of support, resembles Kpundeh’s second indicator which refers to the development of a strategy that is inclusive and mobilizes support from various stakeholders and the long-term willingness of reformers to implement their strategies and to ensure the transparency of their efforts. This indicator is, thus, a sum of multiple indicators measured on different scales such as “many versus few efforts, strong versus weak, and/or effective versus ineffective, with the former of each of these being associated with stronger political will” (Brinkerhoff 2000, 243).

While Brinkerhoff’s attempt is to develop a more comprehensive indicator, this aggregation of indicators into a single one is problematic for at least a couple of reasons. First, this indicator attempts to measure more than just the mobilization of support for the anticorruption strategies, but also the degree of transparency in the implementation and impact of those strategies and the degree to which the failures are being publicized. Hence, this indicator requires a long period of time in order to measure what it intends to and it would not necessarily reflect the reformers’ intent and success in mustering support for their efforts. Second, the different scales use to assess the indicators require further clarifications. For example, how many efforts are enough to score the highest value on the scale and how few are too few to have a weak political will? How would weak but inclusive efforts be assessed to determine a low degree of political will? Furthermore, the effective/ineffective scale needs further clarification and objective indicators in order to ensure an analytical assessment of anticorruption strategies. A strategy may prove to be ineffective despite the mobilization of high level of support. In the end, this indicator attempts to capture more than it initially proposes and it loses sight of the intended goal, namely the mobilization of support.
The next indicator, *the application of credible sanctions*, resembles Kpundeh’s fourth indicator, and it refers to the implementation of punitive sanctions and the creation of positive incentives that would change behavior. The scale used to measure this indicator would range on a continuum from strong application of highly credible sanctions to weak application of ineffective sanctions, with the former indicating a stronger political will. Although Brinkerhoff developed this indicator by introducing the scale to measure it, the balance between sanctions and positive incentives remains non-specified. Hence, the scale fails to assess the creation of positive incentives that would change people’s behavior or to measure the positive incentives necessary to determine the existence of strong political will.

Brinkerhoff’s last indicator assesses the *continuity of effort*, that is, the reformers’ long-term commitment to implement anticorruption strategies in terms of necessary financial and human resources and by establishing a process of monitoring the impact of anticorruption strategies and incorporating those findings into the new strategies. The latter part of this indicator is similar with Kpundeh’s fifth indicator, but as in the case of the previous four indicators, Brinkerhoff proposes the scale to be used in measuring this indicator. Thus, “strong and sustained continuity of effort” would be a sign of more political will and “weak, episodic, or one-shot efforts” would suggest less political will (Brinkerhoff 2000, 243).

Although these two attempts represent progress in conceptualizing political will and developing a framework to assess it, both have shortcomings that reveal the complexities and difficulties that any such study entails. Nonetheless, the mere fact that such a research would be complicated should not prevent scholars from attempting to
untangle the black box of political will. One of the goals of this research is to identify and assess the impact of political will and it does that by building on the previous studies and developing an adapted analytical framework in the Romanian case.

4. Research Design

4.1. Hypotheses

The literature on corruption argues that external pressure and public opinion pressure are important elements in fighting corruption, but that the political will is the essential element. The same literature suggests that there is a series of institutional strategies to curb corruption, including enforcement of anticorruption legislation and sanctions, creation of oversight institutions and anticorruption agencies, increase in transparency and freedom of information, whistleblowers and witnesses’ protection, ethics codes, and merit-based civil service. Furthermore, an overall, effective anticorruption campaign should involve a multi-dimensional approach in which multiple strategies are used together or in various combinations corresponding to the sectors targeted and the specific levels of corruption (World Bank 2000b, UNDP 2004, Karklins 2005). The institutional literature proposes a relationship between the restructuring of incentives, the increase in effectiveness of formal institutions, and the decrease in effectiveness of informal institutions (Helmke and Levitsky 2004, 2006).

Based on the literature on corruption and institutions and as it is presented in the theoretical model (see Figure 1 below), I am hypothesizing that:

**H1:** The more corruption became a salient issue for the EU, the higher was the political will to fight corruption.
This hypothesis is based on the literature on corruption which states that international organizations, institutions, and/or donors play an important role in the fight against corruption. More specifically, the international actors can condition their assistance by asking the governments to show a real commitment to curb corruption. In this case, the EU is in an advantageous position not only because of the financial assistance given to the Romanian government but also because of the latter's desire to achieve EU membership. Hence, an increase in the salience of corruption for the EU should translate into more political will to curb corruption.

Figure 1
Theoretical Model

In the first report monitoring the progress towards democracy made by Romania as well as the problems that remain to be addressed before the accession (i.e., 1998 Regular Report), the European Commission (EC) mentioned corruption only a few times and mostly as a problem specific to the judicial system. However, by 2005, corruption
was assigned a red flag in the *Regular Report* and it had become one of the most
important problems to be addressed before the accession. Furthermore, the report
mentioned the effective fight against corruption as a condition for becoming an EU
member at January 1st, 2007. At the same time, one has to take into consideration the
possibility that the EU pressure was motivated by political reasons and less by the
existing level of corruption in Romania. It might be the case that EU politicians, in
response to their own constituents’ pressure to postpone the enlargement, used
corruption, a highly visible and inflaming issue, as a means to justify their political
decisions with regard to Romania. Regardless of the real motivations behind the EU
pressure, it is expected to see an increase in the salience of corruption for the EU
associated with an increase in the political will to fight corruption.

**H2:** The more corruption became a salient issue for the public, the higher was the
political will to fight corruption.

The logic behind this hypothesis is also based on the literature on corruption,
according to which an effective fight against corruption is not possible without the
public’s support and active participation. Given the secrecy that surrounds corruption,
people have to become aware of its existence, negative effects, and, most importantly, of
the means to fight it. Media and civil society organizations play an important role in
raising awareness and pressuring the government to initiate and implement anticorruption
strategies. Public opinion surveys are effective tools to monitor the importance that
people assign to the problem of corruption and the necessity to fight it. In turn, these
survey results may signal not only the significance that the public assigns to corruption as
a major problem, but they can also serve as means to add more pressure to the
government and the political elites to effectively commit to the fight against corruption. In its endeavor to push for anticorruption reforms, the public has one effective means to achieve its goals: elections. Every four years, local and national elections are held during which the public has the opportunity to reward or punish the politicians according to their performances in office and, especially, to how well they kept their electoral promises. As previously mentioned, beginning with 1996 elections, political parties have been regularly sanctioned by the electorate with sometimes highly damaging consequences (see the case of CDNPP). Under these circumstances and as long as politicians keep using anticorruption rhetoric, ignoring the public opinion is not a politically viable option. Furthermore, given the difficulties inherent in the fight against corruption, public opinion can influence not only the building of the political will necessary to carry out this task, but also the maintenance of a high political commitment over time (Pope 2000). Therefore, the expectation is that an increase in people’s perception of corruption as being the most or among the most important problems they face leads to a higher political will to curb corruption.

The impact of these two variables, EU pressure and public opinion pressure to fight corruption, on the political will is likely to be difficult to differentiate. However, given the fact that corruption appears to be more salient for the EU in the case of judiciary and customs, an increase of the EU pressure to fight corruption in these two sectors should materialize in a higher commitment (i.e., political will) and, therefore, an increased implementation of anticorruption strategies in the judiciary and customs (see Table 1, page 55). As an international actor, the role played by the EU in the fight against corruption may be a unique case that cannot be replicated by other international
organizations or institutions in other contexts. The EU has an advantageous position compared to, for example, the World Bank, because of the financial and non-financial "tools" it has at its disposal to exert necessary pressure on governments that want to become EU members as well as the promise of the future benefits after the accession. It may be the case that the EU will play a less significant role in the fight against corruption after the accession, but it is highly unlikely that a complete reversal of the anticorruption policies will take place. Moreover, due to the direct impact of health care corruption on people’s lives, it is highly probable that public opinion will exercise more pressure for the adoption and implementation of anticorruption strategies in this sector than in the other sectors.

At the same time, as the theoretical model shows, a feedback effect may occur; that is, a decrease in the level of corruption and an increase in the effectiveness of formal institutions should in turn affect the level of EU pressure and public opinion pressure (i.e., decrease). A change in the two main dependent variables (i.e., increase in the effectiveness of formal institutions and decrease in corruption) may lead to a relaxation in the pressure exercised by the public opinion and EU. That, in turn, may affect the level of political will and consequently the implementation of institutional strategies. However, such a feedback effect would require a longer time to be monitored than the ten year period that this study is focusing on, given the fact that in some sectors (e.g., health care, public procurement) Romania is at the early stages of developing and implementing the necessary institutional strategies. Hence, the primary focus of this study is on the impact of the public opinion pressure and EU pressure on the level of corruption and the effectiveness of formal institutions and not vice-versa.
If the first two hypotheses are confirmed and an increase in political will is being observed, the next step is to differentiate between political rhetoric to fight corruption and demonstrated political will to curb it. Given the negative consequences of corruption, it is to be expected that an increase in the salience of corruption for both the public and the EU would result in an increase in the declared (or rhetorical) political commitment to effectively fight it. That is, corruption is very likely to be used as a campaign issue during national election years although perhaps less likely to be fought against once the elections are over. Thus, there might be a gap between the political rhetoric and the demonstrated political will to fight corruption represented by a failure to adopt anticorruption measures or policies that would curb corruption. For example, in the 2006 National Anticorruption Report, TI Romania notes that, despite the Romanian President’s declared commitment to effectively fight corruption, the parliamentary parties showed a decreased level of support with regard to anticorruption policies. Deputies and senators representing both the opposition and the governing coalition parties have constantly opposed or made it difficult to adopt bills addressing specifically the fight against corruption. Hence, the demonstrated component of political will is identified and, assuming that it is present, the study continues with the testing of the next two hypotheses.

**H3:** The more anticorruption strategies were adopted, the greater the decrease of corruption.

Corruption is an informal institution which through its own rules and sanctions seeks divergent outcomes to those intended by the formal institutions. Additionally, corruption has the advantage of time because the informal rules have been established and enforced well before the fall of communism. The literature on informal institutions
states that competing informal institutions, such as corruption, coexist with ineffective formal ones. Hence, in the absence of a coherent package of anticorruption strategies and effective formal institutions capable of changing and replacing the competing informal institutions, corruption continues to thrive. The chances of successfully fighting corruption depend on the ability of the anticorruption strategies employed in changing the incentive structure created by the coexistence of formal and informal institutions. That is, the implementation of anticorruption strategies should lead to a decrease of incentives to engage in corrupt activities and an increase of incentives to comply with the formal rules. Since institutions are composed of rules and sanctions for violating them, the application of anticorruption strategies may result in a change in the costs of complying with the formal (i.e., decrease) and/or informal rules (i.e., increase). Thus, a decrease in the level of corruption should translate into an increase in the effectiveness of formal institutions since the two variables are correlated and changes in one type of institutions results in changes in the other type.

**H4**: The more anticorruption strategies employed simultaneously (multidimensional approach), the greater the decrease of corruption.

The success in the fight against corruption depends not only on the type of anticorruption strategies employed, but also on how they are employed (i.e., multidimensional versus one-dimensional approach). The increasing literature on corruption agrees that the simultaneous implementation of a variety of anticorruption strategies is needed in order to increase the chances of successfully curbing it. Thus, the goal is not only to pass anticorruption legislation but also to implement and enforce it, to increase transparency and accountability, as well as to ensure the public’s support by offering
effective protection for those who decide to come forward and denounce corrupt acts or testify against corrupt individuals. A multi-dimensional approach in the fight against corruption is expected to lead to a decrease of corruption and an increase in the effectiveness of formal institutions. That is, an effective package of anticorruption strategies contains measures designed not only to target corrupt behavior and activities, but also to reform the formal institutions plagued with corruption (e.g., oversight institutions, strategies to increase transparency, ethics codes).

However, one may also expect sector by sector variation in the impact of various anticorruption strategies employed as well as in the specific selection of strategies employed in each sector (for example, the specific package of anticorruption strategies implemented in the judiciary may be different than that employed in public procurement sector). Moreover, it is also reasonable to take into consideration a time lag between the implementation of specific strategies and the results of those strategies. Generally, anticorruption strategies have specific time tables attached to them, which also mention the distance in time from the implementation until the first, second, and so on evaluation of their implementations and with what results. Based on the specific anticorruption strategies employed and the time lags attached to them, the impact of the multi-dimensional approach may lead to results that will vary from sector to sector. Still, the simultaneous implementation of different anticorruption strategies is expected to result in changes in the level of corruption (i.e., decrease) and the effectiveness of formal institutions (i.e., increase).
The variation in Salience of Corruption for the EU (Table 1, "more" and "less") is evaluated according to the likelihood of corruption in each sector to obstruct Romania’s accession to the EU. The 2005 EU Regular Report on Romania mentioned not only that corruption was the main problem that has to be addressed, but it also emphasized the importance of making real progress before January 1st 2007 or the process of accession would be postponed at least one year. The judiciary and customs were singled out as the main sectors in which anticorruption efforts must be aggressively applied and progress made in order for the process of accession to continue as scheduled.

Table 1

Variation in the Salience of Corruption: the Public vs. the EU

<table>
<thead>
<tr>
<th>Salience for the EU</th>
<th>More</th>
<th>Less</th>
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<tbody>
<tr>
<td>Salience for the EU</td>
<td>More</td>
<td>Judiciary</td>
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<tr>
<td>Less</td>
<td>Health Care</td>
<td>Public Procurement</td>
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The EU Regular Report issued in May 2006 noticed the progress Romania made in the fight against corruption. However, the Report also mentioned the need for maintaining the pace of reforms and the implementation of anticorruption strategies.

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18 I chose to use the categorizations “more” and “less” because they capture more accurately the differences in priorities for the EU and the public with regard to the fight against corruption and allow for more degrees of differentiation among the four sectors with regard to anticorruption strategies and their effectiveness.
particularly in the judiciary and customs. Additionally, the Report stressed the importance of obtaining concrete results in the fight against corruption, i.e., indictments, prosecutions, trials, and convictions. Public procurement was also mentioned as a sector in which corruption needs to be addressed, while the health care sector was presented as a sector in which petty corruption was a “concern.” Nonetheless, the most emphasis was once again put on reforming and cleaning-up the judiciary and customs.

The variation in *Salience of Corruption for the Public* is conceptualized based on the impact and importance of corruption in each sector for the general public. Hence, corruption in the judiciary has led to “a generalized perception that Romania is governed by vested interests and not the rule of law” (Open Society Institute 2002, 493). At an individual level, a corrupt judiciary negatively impacts people’s lives through the arbitrary interpretation and application of the law leading to the creation of a general state of uncertainty governed by informal rules that contravene the formal rules. Corruption in the health care system also has a very direct impact on people’s lives because health is a good that people go to great lengths to obtain and maintain. Furthermore, this sector is one in which people report personally experiencing corruption more often than in the other sectors (Karklins 2005). According to the World Bank’s *Diagnostic Survey* (2001, 14) one of the worst effects of corruption in this sector is the fact that poor households are twice as likely as rich households to say that they do not seek medical assistance even though they need it. Corruption in customs is less salient for the public because of the less direct negative impact on people’s lives. Public procurement is a sector that is not only new in Romania but it is also less visible to the general public, which justifies the “less” salient designation.
4.2. Case Selection

I conducted a qualitative case study of four sectors in Romania by using the “most similar with different outcomes” research design. This approach assumes that differences in outcomes among the cases\(^\text{19}\) compared are explained by their differences rather than by their similarities (Przeworski and Teune 1970). The sectors were chosen because of their importance for democratic consolidation, the different salience corruption has for the EU and the public in each sector, and the varying strategies employed to fight it. I have also taken into account the fact that corruption is secret by its nature and studying it is somewhat illusive, especially when the interests at stake are high and the attempt is to maintain them hidden from the public. Therefore, I chose methods of data collection such as public official records, press publications, and interviews with anti-corruption experts, public officials, representatives of NGOs and professional organizations, and journalists that allowed me to gather reliable data. In addition, I used surveys of perception of corruption\(^\text{20}\) conducted by various national and international organizations, such as Transparency International Romania, Open Society Foundation Romania, the Center for Health Policy and Services, the Center for Institutional Analysis and Development, and World Bank.

Judicial System. An independent judiciary capable of enforcing rights, the constitution, and other democratic institutions is still lacking in Romania (Anderson et al. 2005). After the 1989 revolution, the judicial system underwent significant reforms. The

\(^{19}\) For the purpose of this research, the four sectors are treated as individual cases.

\(^{20}\) Unbiased, hard data on corruption continues to be difficult to obtain and usually raises the question of validity. Surveys on perceptions of corruption remain the most reliable means of assessing the levels of corruption. (Transparency International 2005, http://www.transparency.org/cpi/2005/dnld/methodology.pdf).
main changes regard the recognition of the rule of law, the independence of judiciary, the judicial code, and organization of the judicial system. However, in 2001, the World Bank found that more than half of the citizens believe that judiciary is the second most corrupt sector (after customs). The report states that one in five citizens reported paying a bribe either to get a certain judge assigned to the case or to speed up the trial. There were also instances in which a judge bribed another judge from a superior court in order to influence the latter’s decision (Open Society Institute 2002, 497). The 2005 EU Regular Report on Romania underscored corruption in the judiciary as one of the major impediments in the way to the EU accession. Consequently, the judiciary is the sector where the EU exercised more pressure for institutional reform and reduction of corruption. Moreover, this sector is expected to differentiate itself from the other three sectors with regard to the demonstrated political will and, implicitly, the impact of the institutional strategies implemented.

Customs. Since 1990, the customs authority has also been significantly re-organized. New legislation regulating the functioning of customs administration and the modernization of customs methods has been adopted and adapted to EU standards (GRECO21 2002). In late 1992, Romania began close cooperation with the EU in the context of the PHARE22 program, targeting an increase in the efficiency and effectiveness of customs. In a report published in 2001, the World Bank found that the customs authority was perceived as the most corrupt institution in Romania and that

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21 GRECO (Group of States Against Corruption), called the monitor, is a mechanism designed to improve its members’ capacity to fight corruption and operates under the supervision of the Council of Europe. For more details, please visit http://www.greco.coe.int/Default.htm.
22 PHARE (Poland and Hungary Aid for Reconstruction and Economy) is the European Union’s grant assistance to the Central and East European countries in their process of economic transformation and democratic consolidation. For more details, please visit http://www.gmu- unccd.org/FIELD/Multi/EU/FR_Phare.htm
enterprise managers reported frequent encounters with bribery when dealing with customs. Additionally, Romania has a geographically strategic importance in the context of customs transit and in the fight against drug and human trafficking from the East (PHARE 1998), translating into more pressure from the EU to reduce corruption in customs. The difference between customs and judiciary may be less significant with regard to the EU pressure, but corruption in customs is a less salient issue for the public than health care or judiciary. Therefore, variation between customs and judiciary is expected with regard to the pressure of public opinion (higher in the case of the judiciary), political will and the effect of institutional strategies adopted and implemented.

**Public Procurement System.** The first legislation regulating public procurement was adopted in 1991. Since then, the legislation has been changed and complemented with laws concerning the functioning of the procurement process and in an attempt to align with the EU rules and norms regulating public procurement. Still, SIGMA\(^\text{23}\) (2003) found a huge discrepancy between tender notices (about 6000) and contract award notices (about 2000) published in the *Official Journal of Romania* (*Monitorul Oficial*). Corruption distorts the way public contracts are assigned and subverts the economic transition. The EU started exercising increased pressure to reform and combat corruption in this sector in 2005. Additionally, the public procurement sector is very complex and relatively new for the general public to exercise direct pressure to be reformed and cleaned up of corruption. Consequently, variation between these sector and the other three sectors is expected with regard to both EU and public opinion pressure. Moreover,

\(^{23}\) SIGMA (Support for Improvement in Governance and Management) is a joint program of the OECD and EU designed to support partner states to improve their public governance systems. For more details, please visit [http://www.sigmaweb.org/pages/0,2987,en_33638100_33638151_1_1_1_1_1_1_1_1_1,00.html](http://www.sigmaweb.org/pages/0,2987,en_33638100_33638151_1_1_1_1_1_1_1_1_1,00.html)
an increase in the EU pressure starting with 2005 is expected to translate into an increased demonstrated political will to reform this sector just prior to accession. Hence, differences are expected also with regard to the institutional strategies adopted and their impact, which is expected to be less visible given the novelty of institutional strategies.

Health Care System. The health care system in Romania has been reformed at a slower pace than other sectors. Prior to 1989, the health care sector was based on the principles of universal coverage, state financing, central planning, and free access to health care (Bara et al. 2002, 446). The most important change took place in 1997 when a German insurance model based on compulsory contributions was developed, but the private sector continues to remain under-developed. The insurance model has reduced the chances of elders, those who live in rural areas (40% of the population), and unemployed, who cannot make the monthly insurance payments, to have access to health care services (Bara et al. 2002, 450). Additionally, in 2001 the public perceived the health care system as the fifth most corrupt sector in Romania and more than half of the citizens reported paying *atentie* (under-the-table) while using health care services (World Bank 2001). The likelihood of fighting corruption in this sector may be less than in the judiciary or customs because EU pressure is less significant. Nonetheless, corruption in health care is felt by a wide swath of the population directly, unlike customs or procurement. Therefore, public opinion pressure is expected to be higher in this sector and to result in an increased political commitment to reform and combat corruption in the health care system.
4.3. Methodology and Measurement

The project employed a mixed methodology. The predominant methodology was qualitative and quantitative analyses were integrated whenever appropriate (e.g., testing for statistically significance relationships between variables or statistically significant differences between trends). Corruption is by its nature hidden and difficult to prove; therefore, the best approach is to incorporate multiple perspectives and methodological tools. Each tool has its own specific strengths and weaknesses but they complement each other and taken together offer a more complete image of the phenomena under study (Yin 2003). I conducted an annualized longitudinal analysis that started in 1997 and ended in 2006. In July 1997, the European Commission issued its Opinion regarding Romania's application for EU membership. The Opinion presented a detailed assessment of the progress made by Romania towards democratization and market economy and it recommended problems to be addressed during the pre-accession process. That year also marked the official starting point of the annual evaluations made by the EU to all candidate countries, evaluations that took the form of annual Country Monitoring Reports, simply called Regular Reports that monitored the progress made by the candidates in meeting the EU requirements. Additionally, from 1997, every new government in Romania publicly announced its commitment to fight corruption, but both the EU and the Romanian public were impatient for concrete results (Transparency International Romania 2005). With January 1st, 2007 as the deadline for the EU accession, the pressure for progress and result in the fight against corruption increased in 2006. Nonetheless, the efforts appeared to have been concentrated on reforming and
curbing corruption in the judiciary and customs, and less in the public procurement and health care sectors.

Although I made a basic designation of each of the four sectors as more or less salient for the public and the EU, I further measure each. I measured *the salience of corruption for the public* by evaluating 1) public polling results (specifically, the Barometers of Public Opinion (BOP) from 1998 until 2006, inclusive) and 2) the cases of corruption publicized in the newspapers (under the assumption that publicity has demonstration value and keeping in mind the fact that it is more likely that it may be the case that only the major cases of corruption are covered in the written media). In order to measure *the salience of corruption for the EU*, I assessed 1) EU monitoring reports of the progress in reforming the four sectors and fighting corruption, 2) the presentation in the written media of corruption in association with EU integration, 3) statements made by EU officials regarding the level of corruption, and 4) statements made by EU officials regarding the postponement of EU integration in the absence of a decrease of corruption.

*Political will* was measured by a set of six indicators, which were borrowed and adapted from Kpundeh (1998) and Brinkerhoff (1999 and 2000) to capture the demonstrated and rhetorical political will in the Romanian case. The first indicator, *the analytical rigor in diagnosing corruption*, evaluates the major measures taken to assess the problem of corruption and to identify the steps required to curb it. The second indicator, *the inclusion and cooperation of main stakeholders*, refers here to the collaboration between government, political parties, and civil society organizations in drafting and adopting anticorruption legislation and strategies. The third indicator,
adoptions of anticorruption reforms, assesses the development and implementation of anticorruption reforms. The process of adopting a particular anticorruption strategy is measured by assessing the a) consensus or compromise, b) duration of reaching an acceptable agreement for all parties involved in the decision process, and c) political coalitions formed during the negotiation and decision process based on the minutes of the legislative debates and data from interviews. The parliamentary minutes were used to analyze the legislative debates regarding the adoption of specific anticorruption reforms; the legislative debates revealed not only the changes introduced to the initial legislative proposals, but also the changes that failed to be adopted, the reasons for which they were not adopted, as well as the dynamics between the political parties and between the government and the legislature, which will reveal the level of compromise in adopting anticorruption measures and will help differentiate between demonstrated and rhetorical political will. The fourth and last indicator assesses the creation of a monitoring system that is transparent and that includes its findings in refining anticorruption strategies. The indicators are qualitatively evaluated and while specific scores are not attributed to each individual indicator (as Brinkerhoff suggested) the degree of political will is based on the aggregated evaluations of the individual indicators.

I also evaluate the statements made by political parties and political elites regarding the fight against corruption publicized in the major newspapers, and the use of corruption as a campaign issue during national elections (2000 and 2004 national elections) to determine the degree of rhetorical political will. Additionally, I analyze public statements made by three high officials, namely President Emil Constantinescu

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24 "Reforms" and "strategies" are used interchangeably in this study.
(1997-2000), Prime Minister (PM) Adrian Năstase (2001-2004),\textsuperscript{25} and President Traian Băsescu (2004-2006). Although not exhaustive, these statements are illustrative of the rhetorical political will expressed throughout the decade under study.

I measured the enforcement of legislation and sanctions by assessing 1) the incidence of corruption indictments, prosecutions and convictions (judicial records obtained from the Ministry of Justice, the General Prosecutor’s Office, and the National Anticorruption Directorate). The application of other anticorruption strategies such as oversight institutions and anticorruption agencies was measured by 1) identifying them (i.e., ombudsman, audit institutions), 2) their formal authority (i.e., evaluation of statutes), 3) the resources allocated for their operation (i.e., funds and staff), and 4) their activity based on the Activity Reports made public by these institutions.

The increase in transparency was measured by evaluating 1) the openness of procedures (i.e., publication of tenders and the information needed to participate, the advanced time of their publication, publication of bids and contract awards in public procurement); 2) publication of legislation; 3) publication of regulations (customs); and 4) publication of fees (i.e., for health care services, customs). The efficacy of freedom of information was measured by assessing the existing legislation based on 1) its quality (e.g., identify the specific types of information that fall under this legislation) and 2) its effectiveness (e.g. attempts made by the media and people to access information under the Act on Free Access to Public Information and their success in doing it). In order to measure the protection of whistleblowers and witnesses, I evaluated 1) the quality of the

\textsuperscript{25} PM Năstase was chosen due to his high visibility during 2001-2004 SDP governance, period in which he was the forefront political actor representing the new administration in the fight against corruption. That strategy is explained by the fact that Năstase was preparing his 2004 presidential campaign and therefore, he made a conscientious decision to build an image of corruption-fighter, image that would increase his chances of success in the upcoming presidential elections.
legislation (what specific protection offers) and 2) the implementation of the legislation (number of cases registered since the implementation of the legislation).

Ethics codes are also important strategies in the fight against corruption and to measure their impact on the level of corruption I evaluated 1) the quality of the rules; 2) sanctions for violating them; and 3) cases of violations of ethics codes publicized in the written media and/or publicized by the organism responsible for monitoring the implementation of ethics codes in each sector (e.g., the Superior Council of Magistracy publicizes the cases of ethics codes violations in the judicial system). I measured the degree to which the civil service is merit-based by assessing 1) the rules and procedures for recruitment (e.g., merit-based versus appointments), 2) the rules of promotion (e.g., rewards for performance and honest work versus seniority rule), and 3) professional training courses.

The dependent variables, change in the level of corruption and increase in the effectiveness of formal institutions, are correlated; by measuring the decrease in the level of corruption, I indirectly measured an increase in the effectiveness of formal institutions. The change in the level of corruption was assessed by utilizing 1) existing national and international surveys assessing the public's perception and experiences with corruption in each sector, 2) interviews with anticorruption experts and public employees and 3) qualitative evaluation of the institutional strategies and their reported impact.

The surveys that evaluate the views of firms, public officials and households with regard to corruption are the main measure of evaluating the existence and diffusion of corruption and the only available data source that allow the monitoring of corruption over time and across countries (Kaufmann et al. 2006, 1). Perceptions are important because
if, for example, people believe the courts to be corrupt, they will not want to use their services regardless of the objective reality. Furthermore, perceptions about corruption can be used to monitor the success of anticorruption strategies the same way that polling data is used by governments around the world in setting policy priorities and evaluating their progress (Kaufmann et al. 2006). Perceptions of corruption also affect people’s trust in public institutions, the rule of law, and democracy. Hence, a high level of perceived corruption indicates that corruption is a serious problem that cannot be ignored and, if anticorruption strategies are developed and implemented, it suggests a low level of their efficiency. Moreover, increasingly more surveys measure not only the *perceptions* of corruption but also the actual *experiences* with corruption (e.g., World Bank’s BEEPS). Thus, people are asked to assess the perceived level of corruption and to report their own experiences with corruption. At the same time, one should not overstate the difference between *perceptions* of corruption and actual *experiences* with corruption because, given the secret nature of corruption, people might not be completely forthright with their own experiences of corruption.

There are two major criticisms made of corruption data: measurement error and imprecision. Thus, one should be aware of these weaknesses and the fact that specific measures of corruption at the sector level are not perfectly related to the overall level of corruption (Kaufmann et al. 2006). In order to address these weaknesses, I used surveys of corruption that were comparable (that is, they were either centralized or

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26 The Business Environment and Enterprise Performance Survey (BEEPS) is a national survey of business firms that assesses corruption and other problems firms have to face, and it is also one of the best indicators of corruption in public procurement. For more information, please visit http://www.ebrd.com/country/sector/econo/surveys/beeps.htm.
decentralized\textsuperscript{27}) and that also provide detailed information with regard to the definitions and methods used to collect data, so the level of uncertainty was reduced (Knack 2006). Additionally, I chose corruption indicators that used rather fixed and explicit criteria that allowed me to measure change over time (e.g., indicators included in the Barometers of Public Opinion), as opposed to indicators that used criteria which have been greatly revised from one year to another. While different indicators of corruption may use various definitions, for the purpose of this study, I do not need to identify corruption indicators that match exactly my definition of corruption. While it would be interesting to distinguish between the changes in the level of various forms of corruption, that is beyond the scope of this study.

An analysis of informal institutional change requires extensive fieldwork and a significant knowledge of the community or society within which they are embedded (Helmke and Levitsky 2004). Additionally, extensive fieldwork of corruption is in itself a complex and difficult phenomenon to research. To that end, I spent eleven months (from September 1\textsuperscript{st} 2006 until July 31\textsuperscript{st} 2007) conducting field research in Romania. I collected a significant amount of data from newspapers, public official documents, corruption reports and studies, and from interviews with public officials, anticorruption experts, civil society representatives, journalists, and professional experts (i.e., judicial experts, health care experts, and public procurement experts). A total of 31 interviews were conducted between January 2007 and July 2007, which included 10 public officials, 9 civil society

\textsuperscript{27} "Centralized" means that the corruption sources are represented by a network of people with country specific expertise but that the final rating is being determined by a small number of people; "decentralized" means that the views on corruption are solicited from experts only for countries in which they have direct expertise. For more details, see Stephen Knack, "Measuring Corruption in Eastern Europe and Central Asia: a Critique of the Cross-Country Indicators," World Bank Working Paper 3968, July 2006, particularly pp. 8-9.
representatives, 1 representative of magistrates' professional organization, 3 journalists, 4 professional experts, 2 anticorruption experts, and 2 physicians. With the exception of public officials, the identities of the interviewees are confidential and in accordance with the Human Science Institutional Review Protocol no. 06-03-13. The three newspapers surveyed, i.e., Evenimentul Zilei, (The Daily Event), Jurnalul Național (The National Journal), and România Liberă (The Free Romania), were selected based on the data from the Romanian Audit Bureau of Circulation and consultations with representatives from the Romanian Academic Society.

5. The Organization of the Study

The second chapter provides a historical setting for the discussion of corruption as an informal institution. Corruption is shown to be part of the communist legacy, a legacy that expanded during the transition to democracy and continued to undermine the process of democratic consolidation and the establishment of the rule of law. The endurance and pervasiveness of informal power relations is also discussed along with their impact on democratization and marketization.

The third chapter focuses on the EU strategy of democracy promotion, Romania’s road towards accession, the EU pressure on the Romanian Government, and the impact on the political will. The main emphasis is on the analysis of EU pressure on the Romanian government to transpose the *acquis communautaire* and fight corruption in each of the four sectors under study and on the assessment of the EU impact on the domestic political will. Additionally, the evolution of the EU pressure in the major newspapers is investigated.
The fourth chapter is devoted to the analysis of the public opinion pressure on the political will. Thus, the chapter assesses the salience the public assigns to corruption by analyzing public polls data and it examines the role played by the media in uncovering cases of corruption and presenting rhetorical political will. The relationship between the public opinion pressure and political will measured by the newspaper articles is then statistically tested. The chapter also discusses the impact of public opinion in the four sectors analyzed in this study.

In the subsequent four chapters the institutional strategies adopted and implemented in the decade under study are being evaluated for each sector in the following order: judiciary, customs, public procurement, and health care. Each institutional strategy is analyzed and its impact on corruption is being assessed. Additionally, the presence of demonstrated or merely rhetorical political will is assessed in the discussion of institutional strategies. Each chapter concludes with a summary of results, an evaluation of the overall impact of the institutional strategies in achieving the intended goals, and the remaining problems.

The concluding chapter summarizes the findings, discusses their implications, explains the limitations of this study, and presents avenues for further research.
CHAPTER II

HISTORICAL BACKGROUND

1. Introduction

The informal institution of corruption is not a new development in the post-communist Romania. Corruption was inherited from the communist regime and thrived under the favorable circumstances created by the dual transition to democracy and market economy. In this chapter, I show that the particular characteristics of the communist regime were not only conducive to corruption, but that the very existence of corruption was necessary for the functioning of the state command economy. Hence, corruption was accepted and tolerated to a certain degree in all communist regimes, Romania included. I also demonstrate that corruption is part of the communist legacy in post-communist Romania, a legacy that undermines the process of democratization and the establishment of the rule of law. First, I briefly discuss the formal institutional changes that took place at the beginning of the transition period, including the issue of formal institutional tabula rasa that created additional space for the flourishing of corruption. Next, I address the issue of informal relations and their impact on the process of democratization and marketization. The chapter concludes with a brief assessment of the pervasiveness and endurance of corruption and informal power relations in the post-communist Romania.
2. Corruption under Communist Regime

In autumn 1944, when the Romanian Communist Party (RCP) came to power it was largely unknown among Romanians. From its creation in 1924 until August 1944, RCP had a very small party membership and it was formed mainly of ethnic minorities (Hungarians, Jews, Bulgarians, Russian, Moldavians), who, although adopted Romanian names in an attempt to increase the Party’s membership, were not very successful in recruiting Romanians (Deletant 1999). Thus, the communist regime in Romania was imposed by the Soviet Union and it lacked the popular support needed to legitimize it. The very process of gaining power without popular approval and the use of terror in order to impose the communist rule might explain why some individuals would see corruption as a form of rebellion against “an illegitimate system” (Holmes 1993, 160).

Regardless of the way in which communists came to power, the very characteristics of the communist systems were conducive to corruption. Those regimes were characterized by a significant institutional blurring, to use Leslie Holmes’ terminology (1993, 183), and the most important one regarded the delineation between the state and the party. In communist regimes the locus of power was the party-state; that monopoly of political decisions led to a situation in which “events do not occur, decisions are not made, and facts are often not recognized as facts until they are allowed to occur or to be recognized” (Jowitt 1992, 72, emphasis added). The party-state’s impractical demand for individuals to identify with the public interest rather than their private interests resulted in a lower identification with the public institutions, a blurring of the public and official realms, and a deeper divide between the public and private spheres. According to Jowitt (1992), the Romanian communist regime strengthened certain
traditional political attitudes that emphasized the social differences based on status which existed prior to 1945. The difference now was no longer between boier (nobleman) and subject, but between party-cadre (the elite) and citizen (the non-elite). Party cadres had a privileged status in all communist regimes, not only in Romania, and those interested in making a “good living” knew that advancing in the communist party was the fastest and safest way to reach that goal. It was common for people during communist era to stimula atenție, to gain the attention of the elite (e.g., doctors, bureaucrats, managers) and for many individuals with such a high status to regularly require mică atenție, a little attention (i.e., a bribe in the form of money or goods) before the performance of a public service (Jowitt 1992, 65).

The failure of the communist regimes to institute a rational-legal bureaucratic system led to the establishment of a system permeated by networks of personal relations among its members, relations based on mutual obligations as opposed to the impersonal and rational legal rules and norms that exist in a system based on the rule of law (Cole 1981, 84-85). The extensive use of pile, relations, nepotism, clientelism, and favoritism was so widespread in communist Romania, that the acronym PCR (Romanian Communist Party, in Romanian) was said to actually mean Pile, Cunoștine, Relații, that is, connections, acquaintances, and relations (Cole 1981, Holmes 1993). Nepotism, which was generally perceived by Romanians as being a form of corruption also in the communist era (Holmes 1993, 69), was common at all levels of the Romanian society. Ceaușescu’s attempt to create a Romanian-style communist society led to the creation of what became known as “socialism in one family”, a highly nepotistic system in which the top positions in the RCP and government were filled with family members, distant
relatives or people from his own village, Scornicești. Thus, at the beginning of 1980s, Elena Ceaușescu, the leader’s wife, became the RCP’s second-in-command and the person in charge with the Central Committee Commission for cadres and the party’s personnel policy; the couple’s youngest son, Nicu Ceaușescu, was being groomed to become their heir; two of Nicolae Ceaușescu’s brothers were in charge of the military and the security police, and other close and distant relatives were assigned influential positions in various sectors, such as the military and Securitate, the secret police (Tismaneanu 1989 and 2003).

Another important feature of the communist regimes which was highly conducive to corruption was the state command economy. Jowit (1992a) described the relationship between the Party and the economy as charismatic and the fascination of the communist regimes with building heavy industry as a heroic activity, worthy of the noble cadres (129). In Romania, Ceaușescu became directly involved in the economy, making regular “vizite de lucru,” working visits to factories and giving “îndicații prețioase,” valuable advices, that managers had to incorporate into their working plans (Deletant 1999, 125). His obsession with heavy industry and the dependence on central planning, along with the regime of austerity measures for the Romanians resulted in a disastrous economic situation and a sharp decrease of the living standards by mid 1980s.

The state command economy emphasized production goals paying less attention to the means necessary to achieve them. In a society in which, as Stalin put it, “Victors of production are not judged!” (Schwartz 1979, 430), adopting informal means for achieving production goals was not only acceptable but it was also rewarded. Additionally, the significant changes resulted from the rapid modernization process...
(industrialization and collectivization) that took place in the first decades of the communist rule were considered responsible for the appearance of a certain degree of corruption. A lower level of corruption was regarded as beneficial for the society because it would help "grease the wheels" and lead to economic growth (Huntington 1968). To a certain degree at least, that might have been the rationale of the communist parties and it might explain their tolerance of corruption in the economic sphere. Corruption might have also been accepted as a substitute for other political, economic, and social reforms.

The combination of informal, personal network of bureaucratic relations with the strictly hierarchical order of the communist party and the special status of privileges for the party nomenklatura made for a highly favorable environment for the flourishing of corruption (Staats 1972, Schwartz 1979). Although corruption was considered to have played a functional role in the communist society because it sustained its economic functioning (Kramer 1977, Schwartz 1979, Holmes 2006), its pervasiveness further increased the gap between society and the party-state. Under those circumstances in which individual initiative and responsibility were restricted and discouraged; where state production plans were not only a priority but also a patriotic obligation for every sector of the economy to achieve; where decision-making processes were highly secretive; where raw materials and products were in short supplies; and where the penalties for not achieving the goals were real and severe, corruption became an important informal means for achieving the required economic goals (Jowitt 1992, Holmes 1993 and 2006, Rose 2001). Hence, corruption became an integral part of the second economy which developed in all communist countries and which helped compensate for the consumer
shortages and political frustrations created by the communist political-economic system (Sampson 1987).

However, one of the major problems with functional corruption is how easily it can become dysfunctional (Schwartz 1979). If initially corruption was accepted as a substitute for institutional reforms and as an informal means for achieving economic goals, very fast it spread to all areas of society. Nepotism, clientelism, favoritism, bribery became the rule rather than the exception in communist societies. While instances of corruption were very common, the official reporting of corrupt acts was less frequent and, as expected, there are only few studies and reports of official disclosure of corrupt activities. There are even less instances of cases of convictions for corrupt activities, which is not surprising given the privileged status of the party cadre, who considered themselves to be above the law, and the widespread use of pile in solving any kind of problems.

Nonetheless, the few examples of corruption are illustrative of its pervasiveness in all sectors of the communist Romanian society. At the beginning of 1980s there were several official reports of bribes taken from failed applicants as a basis for admission to the law school and of the redirection by farm managers of labor and/or material from public to private use; there were also stories about the sale of an entire shipment of stylish shoes before the store opened because they were all bought by the store’s employees for their families, friends, or in order to use them for establishing or maintaining important connections; and the “truism of rural life that no country doctor need[ed] ever spend one Leu^28 on food because of the in-kind gifts of his patients” (Cole 1981, 86). During the same period, there were also few official reports regarding high officials who have been

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28 Leu is the Romanian currency.
replaced due to inefficient management and allegations of corruption (QER 1982, 7). In her study, Holmes (1993, 105) recounted a corrupt act that she witnessed at the Otopeni International Airport, in Bucharest, Romania in 1986, when a passport control officer took $30.00 and a cartoon of Kent (what she called “an invaluable currency when visiting Romania”) from three young men from the Middle East, in order to allow them to enter the country. Western cigarettes, particularly Kent, were a highly appreciated and influential currency in the corrupt exchanges that took place under communism. “Like money, Kents are anonymous, divisible, and relatively long lasting. They can even be counterfeited by stuffing empty packs of Romanian cigarettes!” (Sampson 1987, 131).

Besides money and cigarettes, anything else that was in short supply made for a very good currency (e.g., cognac, chocolate, meat, books, shoes, electronics, etc.).

Corruption was so widespread in communist societies that Wojciech Markiewicz (1985, 195) claimed that “we start greasing other people’s palms even before we are born (or strictly speaking, our parents do it, when they take the trouble to try and arrange tolerable conditions for our arrival into this world).... [and] right up to the grave.” Moreover, the specific communist structure made corruption so common that the very words bribery and corruption were not used anymore. Instead, people began using euphemisms and new expressions such as “a presentation of some tokens of our gratitude” (Markiewicz 1985, 195) were incorporated in the people’s everyday vocabulary. The word corruption re-entered the vocabulary after 1989 when the corrupt activities became less personal and money become the main currency for corrupt exchanges (Ditchev 2002).
3. **Cultural Explanations of Corruption**

One of the often used explanations for the existence and persistence of corruption in Romania is cultural. Corruption is said to be part of the Romanian pre-communist culture which dates back to the Ottoman times when the Danubian Principalities, Wallachia and Moldavia, were ruled by Phanariotes, Greek princes, who used to buy their positions from the sultans (Bacon 1984, Mungiu-Pippidi 1997). That situation created a vicious circle in which money had to be extracted from the Phanariotes’ inferiors (i.e., Romanian subjects) in order to pay or compensate for the payment made to get the position. Corruption is also claimed to be part of the “Balkan mentality” (Moore 1984, 189) and, therefore, something to be expected in the Romanian society, a society that historically lacked “any faith in the state” (Sampson 1987, 132) and it was familiar with a rule of patronage and corruption. Another often used explanation of corruption in Romania is religion and, more specifically, the Orthodox Church, which is claimed to be an excessively accommodating church. Since Phanariotes’ times, the Orthodox Church had collaborated with the exploitative leaders and failed to protect its followers (Gallagher 2005). The cooperation with the communist regime further tainted the image of the Romanian Orthodox Church and it demonstrated its continuous dependence on the exploitative state.

However, one of the main features of communist regimes was their commitment to completely change their societies, to revolutionize them. Every aspect of the communist societies was attempted to be controlled by the party-state through a myriad of state-sponsored, or more appropriately state-controlled, organizations destined to create the “new socialist man” appropriate for the communist society. While communism
reinforced certain "traditional political attitudes and behavior" (Jowitt 1992, 63), it also created a new "culture of expectations" (Holmes 1993, 161) which developed regardless of the pre-communist culture and which emphasized the perquisites that came with higher positions in the *nomenklatura*. Additionally, the communist regime regularly told people that they own the wealth in society and many of them began believing it, or at least believing it when it fitted their purposes (Holmes 1993). It was created a paradoxical situation in which the public property belonged to everyone, but no one (at least among the non-elites) felt responsible for protecting it. That situation might explain the lower respect people had for state property, which in turn allowed them to justify pilfering, embezzlement, and corruption in general, when the public property was the object of their actions.

Communist regimes affected the cultures and values of their societies and corruption became part of the informal rules and norms that shaped the everyday human interaction (Sandholtz and Taagepera 2005, 116). As any informal or formal institution for that matter, corruption was influenced by the cultural context in which it appeared and developed. The problem with the cultural explanations of corruption is that they tend to be fatalistic and limited; that is, corruption is considered to be part of one’s traditions, customs, and history and, therefore, it is little if anything that can be done to change that. In the Romanian case, the emphasis on the Ottoman inheritance regularly omits the fact that Transylvania was part of the Austro-Hungarian Empire and therefore the Phanariotes’ mentality did not develop there. To claim that the Romanian society is prone to corruption because of its inherited culture of corruption from the period of Ottoman servitude requires one to give too much credit to those traditions and to their power to
spread and thrive in new territories (i.e. Transylvania). Even if admittedly those traditions and customs became common to all Romanians, not everyone in society looks back at the very same traditions; various segments of society may look at different traditions in the past in order to justify their present actions (Holmes 1993, 158). Assuming that everyone in society shares exactly the same views with regard to cultural values and traditions is highly reductionist. Additionally, culture is not fixed and although traditions and customs change slower, they do change over time and are influenced by formal institutional constraints. At the same time, learning advances and people re-socialize and re-educate themselves constantly in order to adapt to new political and social environments (Rose et al. 1998).

According to the cultural explanation of corruption, culture determines a society’s propensity to corruption and explains the variation in the levels of corruption among different countries. For example, Daniel Treisman found that the British colonial heritage and Protestantism are correlated with lower levels of corruption (Treisman 2000). However, later studies that used larger samples and additional controls found that there was no significant relationship between Protestantism and corruption or between British colonial heritage and corruption (Sandholtz and Koetzle 2000, Sandholtz and Gray 2003). In a different study, Seymour M. Lipset and Gabriel S. Lenz (2000) attempted to demonstrate quantitatively the link between culture and corruption. First, they referred to Robert Merton’s theory that corruption was a behavior motivated by social pressure to achieve certain goals (e.g., high income) by engaging in violations of norms when the access to the approved means was restricted. They also pointed to Edward Banfield’s explanation of “amoral familism” characteristic for societies with cultural values that
emphasize family ties at the expense of communitarian values. Building on Banfield and Merton’s propositions and using data from the 1990 World Value Survey, the two authors concluded that both familism and achievement orientation are significantly correlated with corruption levels (Lipset and Lenz 2000, 117-120).

However, in a different study, Martin Paldam found that corruption varies significantly among countries within the same cultural areas and that there was “little basis for the belief that corruption is so deeply embedded in the culture of a society as to be unchangeable” (Paldam 2002, 238). Furthermore, William L. Miller and his collaborators’ analysis concluded that the widespread corruption in post-communist countries cannot be explained by “any kind of culture”, and that the “bargaining power of officials vis-à-vis their clients” offers a better explanation for the higher levels of corruption in those countries (Miller et al. 2001, 277).

Hence, cultural explanations of corruption are appealing to politicians who can blame the high levels of corruption and the low levels of success in curbing it on the historical endurance of certain cultural traits favorable to corruption. These types of explanations are also convenient for the people because it might justify their poor electoral choices and their low level of active participation in fighting against corruption (Mungiu-Pippidi, 2003). Culture is the opportune explanation of corruption and of everything else that goes wrong in society, without really providing an answer to the questions regarding the existence of those problems and the appropriate solutions for addressing them. Hence, the cultural argument of corruption is tautological and not helpful in finding the most effective and efficient solutions to tackle this problem. Any understanding of corruption and of the means to curb it must look to other explanations,
such as structural constraints imposed by the specific features of the communist regime, the endurance of informal institutions in post-communist societies and the relationship between formal and informal institutions during democratization and marketization.

4. Institutional Flux, Tabula Rasa?

By 1989, the communist countries in Central Eastern Europe were pervaded by corruption; there was corruption at higher levels, benefiting those in the party nomenklatura and the government, and there was corruption at the lower levels, encouraging disrespect for the formal institutions and the rule of law (Rose et al. 1998). According to Elster and his collaborators (1998), the breakdown of the communist regimes left behind an institutional tabula rasa. The formal institutions of the old regime were completely discredited; the Communist Party and its leading role were removed from the political scene; and the main question became “Is there anyone who might be able to do anything—including defining what needs to be done?” (Elster et al. 1998, 25). Therefore, the immediate challenge that post-communist regimes had to address was the designing of new formal institutions that would ensure the transition to democracy and market economy and that would take the place left void by the dismantling of old institutions.

However, the demise of the communist regimes left behind a more complex situation than the tabula rasa argument suggests. While some formal institutions were dismantled leaving behind an institutional vacuum in which the new institutions had to be created, others were replaced, reformed or continued to function largely unchanged (see Table 2 below). The brief discussion of the main institutional changes that took place in
Romania in the immediate period after the collapse of the communist regime will illustrate the intricacies of the dual transition in Romania.

Table 2
Formal Institutional Changes in Early 1990s

<table>
<thead>
<tr>
<th>Dismantled</th>
<th>Newly Created</th>
<th>Replaced/Reformed</th>
<th>Largely Unchanged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grand National Assembly</td>
<td>Political Parties and Electoral System</td>
<td>Constitution</td>
<td>Police</td>
</tr>
<tr>
<td>Romanian Communist Party</td>
<td>Public Procurement*</td>
<td>Judiciary*</td>
<td>Bureaucratic Apparatus</td>
</tr>
<tr>
<td>Securitate</td>
<td>Parliament</td>
<td>Customs*</td>
<td>Health Care*</td>
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<td></td>
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<td></td>
<td>Military</td>
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4.1. Dismantled and Newly Created Formal Institutions

The most important formal institutions that were removed from the political life were the Grand National Assembly (GNA), the Romanian Communist Party (RCP), and the Securitate, the infamous Romanian secret police. Their disappearance from the political arena left behind a situation similar to an institutional *tabula rasa*, a situation in which new institutions had to be created to fill the void left behind by the disappearance of the old institutions and in response to the requirements imposed by the democratization process. Hence, there had to be created a new Parliament, new electoral rules, and new political parties. Securitate was an exceptional case because its disappearance was not only considered as a necessary step in breaking with the
communist past, but it did not generate the need to fill the space left behind with another similar institution.

4.1.1. The Legislature

Following the Soviet model, the 1948 Constitution of the People’s Republic established the Grand National Assembly, a unicameral legislative body which was considered the highest organ of state authority. When GNA was not in session, which happened quite often, a Presidium formed of a president, a secretary, and seventeen other members acted on its behalf. Of course, GNA was composed of loyal members of the Communist Party and acted under the latter control and supervision (Deletant 1999, 60). GNA was dissolved in December 1989 and the interim role of the legislative body was held by the Council of the National Salvation Front (CNSF). After heated debates, CNSF opted for a bicameral Parliament, which was to be formed based on the results of the first elections, scheduled for May 1990 (Birsch et al. 2002). The new bicameral Parliament was created in May 1990, following the elections. Originally, the Chamber of Deputies had 396 members, but after the first elections its size was reduced, and currently there are 333 Deputies, 18 of them representing small minority groups that cannot win enough votes to pass the electoral threshold. The higher chamber, the Senate initially had 119 members, but after the 1990 elections, the number of Senators was increased to 143 (Hollis 1999). Currently, the number of senators was reduced to 137, each senator representing 160,000 voters.
4.1.2. The Electoral System and Political Parties

In January 1990, RCP was declared to be part of the communist past and banned from the political life. According to Elster et al. (1998, 131), the post-communist transition differed from other democratization processes in the sense that it had a "unique starting point". In Central Eastern Europe there were no pre-communist party structures which could be easily recreated or any external agencies ready to create new political parties on the basis of some sophisticated political ideology and program. Therefore, the new democratic political parties were transitional and transitory; that is, they were brought into existence by the transition process and faded quickly or undergone significant changes because their original position on the political map was in response to the problems created by the transition (Elster et al. 1998). The specific starting point suggests that the new political parties were created in "something like an institutional vacuum" (Lijphart and Weisman 1996, 246).

In addition to the decision regarding the structure of the Parliament, the provisional legislative body had to opt for a new political system, to choose new electoral rules, and to decide the timing of the first free elections. CNSF opted for a proportional representation (PR) electoral system, with no electoral threshold and closed lists, and, following the French model, a semi-presidential system. The combination of PR, closed party lists, and no electoral threshold led to the creation of a significant number of political parties. Thus, in the first free elections that took place in May 1990, seventy one political parties entered the competition for the new Parliament. Following the 1990 elections and in an attempt to reduce the high degree of party fragmentation, it was introduced a 3 percent electoral threshold for political parties, which was increased to 5
percent in 2000. Additionally, an 8-10 percent electoral threshold was introduced for political alliances (Birsch et al. 2002). The changes made to the electoral rules affected the number of political parties, some of them disappearing completely and others being assimilated into other political parties, proving thus their transitory and transitional character. By 2004, the number of political parties was reduced to fifty-four, and the number of effective parties (i.e., political parties who won more than 1 seat in the Parliament) decreased to six (Alexandrescu and Stoica 2006).

The largest political party that managed to easily win the first free elections was the National Salvation Front (NSF), which was formed in December 1989. The rise to power of NSF was explained by several factors: first, the leader of the party, Ion Iliescu, became the most visible and popular political figure in the confused days of the Revolution; second, there was no viable or organized opposition (Hollis 1999); third, a high number of ex-party cadres joined the newly formed political party, the NSF; and fourth, the informal power relations made the transition almost unchanged (see below). In 1992, following internal struggle, NSF split and two new political parties were created: the Party of Social Democracy in Romania (PSDR) and the Democratic Party (DP) (Alexandrescu and Stoica 2006). Given the compulsory membership to RCP, it was not surprising that almost all members of NSF and its successor parties were former members of the RCP. What distinguished this party from the other political parties created in 1990s was the predominance of former communist nomenklatura and Securitate among the NSF members, who continued to dominate the most important political and economic

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29 The threshold for alliances is calculated as follows: 5 percent for the first party, 3 percent for the second party, and 1 percent for each additional party up to 10 percent.
positions. This in turn explains the domination of the political arena by the NSF and then the PSDR for the first six years of the transition.

4.1.3. The Securitate

The communist secret police service was perhaps the most hated institution in Romania. The Securitate, the main instrument of control and terror, was also one of the principle actors in the repression of revolutionaries in December 1989. It is not surprising that one of the first decrees of the new leadership was to transfer the control of the Department of State Security from the control of the Ministry of the Interior to the Ministry of Defense. A following decree, adopted on 30 December, dismantled the Securitate and placed its directorate chiefs under house arrest or in the reserve. From the disbandment of the Securitate were created no less than nine new security and intelligence services, attached to different institutions and lacking any form of centralized controlled. Some coordination of their activities was provided by the Supreme Defense Council, Consiliul Suprem de Apărare al Țării, an organism responsible to the President, but no Parliamentarian oversight or accountability was ensured (Deletant 2001). Nonetheless, at least officially, the Securitate ceased to exist along with its supreme leader, Nicolae Ceaușescu.

4.1.4. Public Procurement

The communist regime was characterized by state ownership and control over economy and there was no obvious justification for a public procurement sector. Hence, the tabula rasa argument can be reasonably applied to the creation of this formal
institution. The first legislation regulating the activity in this was adopted in 1991 and the new government opted for a central public procurement structure. However, the lack of experience with drafting legislation and regulations specific for this sector, associated with the lack of trained personnel capable to implement the new legislation made the establishment of this new institution a very long and contentious process (Wiehen 2000). The most important and major legislation and regulations were adopted and implemented only after 2000 and mainly in response to the external pressure exercised by the EU.

4.2. Replaced and/or Reformed Formal Institutions

As previously mentioned, there was a partial institutional tabula rasa left behind by the demise of the communist regime. Some institutions were not completely destroyed or dismantled, but they undergone more or less radical changes. Four institutions that fall into this category are briefly discussed in the next section: the Constitution, the judiciary, customs, and the military.

4.2.1. The Constitution

Under communism, constitutions did not play a significant role. Although constitutional texts existed and they were formally enforced, they were not design to constrain and obligate the power elite. The idea of constitutionalism became important in Central Eastern Europe after the demise of communism and it was perceived as the quintessence of political freedom (Elster et al. 1998). In Romania, the democratic Constitution was adopted in December 1991 and it established the defining elements of the Romanian state, the citizens’ rights and freedoms, and the fundamental rules by
which legislation and government were to be conducted. The 1991 Constitution replaced the old communist one and it marked the crucial change that took place in Romania in December 1989.

4.2.2. The Judiciary

Under communism judiciary was just one instrument of control and coercion and not even the most important one. Law was mainly used to support the communist political system, to enhance its legitimacy in the front of the people, and to annihilate any opposition (Herron and Randazzo 2003, 427). The jurisdiction of courts was circumscribed mainly to issues of public law, administrative and criminal law, and any judicial decision that would conflict with the state was solved in secrecy. Furthermore, it was common for political decisions and administrative regulations to take precedence over law at all levels of the political chain of command (Solomon and Foglesong 2000). Since no separation of powers was considered necessary, there was no need for an independent or active judiciary, but those features had to be changed in the new democratic system.

The judicial system inherited from the communist regime was weak, subordinated to the Communist Party, and it lacked public respect (Solomon and Foglesong 2000). Additionally, a specific feature of the communist judicial systems was the Office of the General Prosecutor or the Procuracy, Procuratura. This institution was established in Romania in 1952, following the Soviet model established by the infamous chief prosecutor during Stalin’s time, Andrei Vyshinski (Gallagher 2005). The Procuracy was

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30 The 1991 Constitution was amended in 2003 to expand the rights of minorities and to align the domestic legislation with the EU requirements.
endowed with extensive powers and it ensured that the communist legislation was enforced and that the nomenklatura's interests were respected. Hence, the inherited legal system was described as a “strong Procuracy and a weak judiciary” (Macovei 1999).

The establishment of the rule of law essential for a democratic system required the creation of a strong and independent judiciary. However, the re-creation of a new judicial system capable of upholding the rule of law impartially and independently was set to be a very difficult task. Some of the most significant changes that took place shortly after the regime change in December 1989 included the “reestablishment of the courts of appeal, the development and extension of the court network, the disestablishment of the military section of the High Court of Cassation and Justice, […] and last but not least the establishment of specialized panels of courts” (SoJust 2006, 77).

Many controversial features of the old judiciary were being reformed after 1989, but the Procuracy was not one of them. The powers assigned to prosecutors had remained intact for almost a decade after the beginning of the transition. Moreover, the 1991 Constitution failed to adhere firmly to the principle of separations of powers, which might explain the reluctance of judges to declare their independence, particularly that the political leadership was largely comprised of the same familiar figures as prior to 1989. The Law on the Judiciary, adopted in 1992, placed prosecutors under the subordination of the Ministry of Justice; but, unlike judges, there were no constitutional provisions that required prosecutors to exercise their powers transparently. The 1997 amendments to the law assigned exclusive judicial power to the courts, placing Procuracy inside the executive branch and legalizing its de facto status (Macovei 1999). The power of Procuracy had become increasingly important in the fight against corruption; the outcome
of a corruption case often depended on which prosecutor took that case (Gallagher 2005). It would require more than a decade for the powers of the prosecutors to be reduced and for the judiciary to begin asserting its officially declared independence.

4.2.3. Customs

The first measures undertaken by the communists after they gained power was to control the customs services, which was achieved by the replacement of “bourgeois” customs employees with loyal members of the RCP. In 1973, it was created the General Directorate of Customs (GDC), an institution with judicial independence that had the purpose to control and ensure the unitary functioning and effectiveness of customs policies and services in Romania. In order to guarantee the state’s control over the customs and the exact implementation and enforcement of state legislation, Securitate was charged with maintaining a close surveillance on the functioning of customs (Ciupala 2007). Thus, in December 1989, the Customs Authority was completely under the control of the communist regime and the country was almost completely isolated from the outside world, including the communist neighboring countries.

The demise of communism requested some changes in the structure and functioning of the customs sector. An important change was the removal of the control exercised by the Securitate forces as part of the dismantlement of the secret police service. Thus, the customs personnel had partially changed due to the replacement of the Securitate officers and to the creation of new regional and local units which required new personnel. The General Directorate of Customs and its subordinated regional units had continued to function under the subordination of the Ministry of Finance, but new
legislation was adopted as early as 1990. Nonetheless, some very important changes were introduced only after 1997 and within the context of the EU integration.

4.2.4. The Military

The Romanian Ministry of Defense was also among the first institutions to be reformed after the demise of the old regime. Beginning with mid 1970s, the regime actively pursued the political subordination of the military. It became common for those holding higher military positions to also be part of the top echelons in the Communist Party and by late 1980s the military was under the complete control of the Communist Party. However, Ceaușescu’s reliance on the Securitate forces, associated with the frequent use of military troops in agriculture, shipyards, and coal mines during 1980s, and the obstruction of military promotions in 1989 might explain the army’s reluctance to follow his orders during the demonstrations of December 1989. Hence, the military was one of the very few institutions that was trusted and respected in post-communist Romania. Nonetheless, a reform process was also necessary and the transformation of the Ministry of Defense was initiated in early 1990s. Initially, the measures aimed primarily at the elimination of the communist political control in the military and the control exercised by Romania’s membership in the Warsaw Treaty. After 1995, the reform process had continued with the restructuring of the Ministry of Defense and its subordinated units and the preparation of the Romanian army for joining the North Atlantic Treaty Organization\(^\text{31}\) (NATO) (Hentea et al. 2007).

\(^{31}\) Romania became a full NATO member in April 2004.
4.3. Mostly Unchanged Formal Institutions

Although reform and change were the dominant words in the early 1990s, they fail to materialize in all cases. Thus, some institutions made their transition to the new democratic system and continued to function mostly unchanged for almost a decade. Three such institutions are discussed below: the police, the health care system, and the bureaucratic apparatus.

4.3.1. The Police

In December 1989, the Ministry of the Interior\(^{32}\) (MI) was comprised of the following structures: the Securitate, the Militia, the Troops of Security and Firefighters, the Penitentiaries, and the State Archives. The first change that affected the structure of the MI took place on December 1989 when the Securitate was dismantled and the old Militia was assigned a new name, Police. The Border Police also became part of the MI (transferred from the Ministry of Defense) and a new unit, Gendarmerie was recreated (the Gendarmerie existed prior to the communist governance and it was part of the Ministry of Interior during the interwar period) (MIAR 2007). Although the number of the departments subordinated to the MI underwent a few changes, their composition remained largely the same throughout 1990s. As a result of the Securitate dissolution, a total of 2896 cadres were taken over by the Ministry of the Interior. The rest of them were placed in the reserve or were transferred to other departments (Deletant 2001, 40).

The adoption of the title “police” was intended to clean the bad name the former Militia had in Romania and to mark a complete break with the old regime. Although no

\(^{32}\) The literal translation of the Ministry of the Interior is the Ministry of the Domestic Affairs and, since 2003, the Ministry of Interior and Administration Reform.
Institution was more hated and feared than Securitate, Militia ranked high among the most detested institutions in communist Romania. The militiamen were despised and disrespected in private, but treated as cordially as possible in public. They were endowed with and enjoyed great discretionary powers not only in the implementation of laws, regulations, and rules but also in their choice of methods to implement and enforce them. It was common knowledge that their favorite method of interrogation was beating, which was applied indiscriminately, regardless of the severity of the crime committed, or the age and gender of the accused. It was also well known the fact that if stopped by Militia, one could not get by unless he/she would pay them the requested bribe or unless he/she would have connections at higher levels. The Militia made the transition carrying with it the former personnel, corrupt mentalities and working style that gave the old institution its bad reputation. The old European proverb, “the wolf changes his hair, but not his habit” accurately describes the transformation or lack of it made by the Romanian Police in the early years of transition.

Also part of the Ministry of the Interior was the Judiciary Police whose officers were responsible for conducting various judicial investigations. The structure and composition of that unit was submitted to the same incremental changes that affected the other departments subordinated to the MI. In other words, the old judicial police officers were also the new ones. The major change was with regard to the type of investigations they had to conduct. The democratization and marketization processes had unintentionally generated new opportunities for criminal activity to flourish and the investigation of corruption cases became an important part of the judicial officers’ activity. However, the lack of real reform meant that the same old judicial officers were
also in charge of investigated the new corruption cases under the supervision and control of public prosecutors, who themselves inherited large powers from the previous regime.

4.3.2. Health Care

The access to health care is considered to be a public right in European countries and it was promoted as such a right by the communist regimes. One of the few positive accomplishments of the old regime was the creation of a universal and free health care system. The “socialized medicine”, according to which every citizen was entitled to free health care services, made for an important propagandistic tool both nationally and internationally. At home, the regime boasted its merits by comparing the national health care system with those in the capitalist countries where poor people were left to die due to the exorbitant prices and physicians’ greed. Abroad, the communist health care system signified the progressive nature of the regime in comparison to the reactionary nature of the capitalist societies (Field 1999).

The health care system was designed as part of the governmental structure, and the health department functioned under the supreme authority of the Minister of Health, usually a physician (Field 1999). As part of the centralized feature of the old regime, all health policies and regulations were decided at the higher level, remaining to be implemented by the local administrative bodies. Although the health care was universal, not everyone had access to the same quality services. The discrimination became more obvious in 1980s due to the economic decline that affected all sectors and the living standards of the population. The shortages in the health care system varied from medical equipment and supplies, to medication, to funding for building repairs and medical
personnel. By 1989, many hospitals were in very poor condition, some of them lacking the most basic equipment for a medical facility (Field 1999). In addition, although the official slogan was that health care services were free, the reality was very different. Bribery, connections, and relations became very important and could make the difference between a quality health service and a poor one or between a health service and no service at all.

Despite the serious problems that characterized the health care system in 1989, the same highly centralized structure was maintained almost unchanged until 1998, when the Law on Social Health Insurance was implemented. Some small steps towards reforming the system were taken, such as an attempt to decentralize the system by transferring the responsibility of funding the local dispensaries to the district levels in 1991; the creation of a private health care beginning with 1993, which proved to be a very slow process in most sectors, except dentistry and pharmacy; and new laws regulating the medical professions (Bara et al. 2002). Although some changes were attempted, the health care system inherited from the communist regime continued to function in a similar way for another eight years after the demise of communism. The transition to democracy has introduced new medical technology, equipment, and medication, but, the perpetuation and increase of corruption made it more difficult for many people to have access to them and even to the basic health care services.

4.3.3. The Bureaucratic Apparatus

One of the characteristics of the communist regimes was their vast bureaucratic apparatus based on personal relations and a plethora of administrative regulations which
provided additional incentives to engage in corrupt behavior. According to Linz and Stepan (1996), one of the arenas that needed to be addressed during the transition was the creation of a state bureaucratic apparatus capable of implementing the reform policies. The state bureaucracy extends and overlaps to a certain degree with some of the formal institutions discussed so far. Nonetheless, given the significance of this arena for the democratization process, an additional discussion is considered necessary. The option for creating a completely new state bureaucracy was not feasible for at least several reasons: 1) there were not enough trained people that could replace the compromised bureaucracy; 2) there were very good specialists among the public officials that were already working in the bureaucracy and whose input was of great importance for the transition; 3) some of the new policy-makers had their own interests to protect and the old bureaucracy was better positioned to help them; 4) the bureaucracy itself was strongly connected and influential enough to pressure for the maintenance of the old structure; and 5) reforming the administrative apparatus was not a top priority for the new governments. Thus, the old structure of the bureaucratic apparatus had continued to function almost unchanged.

Additionally, reforming the state bureaucracy was bound to be a complex and difficult task to achieve. The bureaucratic apparatus is not a unitary body which can be easily restructured and changed, but it functions on different levels, with each level having more or less autonomy and interests in protecting their independence and status. Even if there was made a decision to reform the administrative sector at the central level, the implementation of the reform strategies would greatly depend on the lower levels. The process became increasingly complicated under the circumstances created by the previous informal power relations and informal institutions, which made the transition to
the new system almost intact. Furthermore, the high degree of formal institutional flux stimulated the development of informal institutions, and corruption was one of them.

5. The Legacy of Informal Power Relations

From an institutional perspective, the breakdown of communist regimes generated a very complex situation. Some institutions disappeared; others were replaced or reformed, while still other new institutions were created in an institutional void. All these changes affected not only the institutions, but also the people working there. Hence, important questions arise from these institutional changes: What happened to the communist nomenklatura and the Securitate officers? Did they vanish from the political scene along with their institutions? And where did they go? Although Elster et al. (1998) overstate the tabula rasa argument they do acknowledge the lack of change in social power relations during the transition period. The informal power relations and informal institutions that existed under the communist regime have continued to function basically unchanged. The individuals maintained their skills, positions, material resources associated to those positions, and the formal and informal connections they had prior to 1989. All these power relations became extremely important during the transition period and gave a significant advantage to the former party-cadres and Securitate officers, especially during the privatization process.

5.1. Privatization—Strategies and Main Beneficiaries

The privatization process entailed the transfer of state assets into private hands. Given its complexity, each country adopted a different strategy or set of strategies and
chose to implement them at different paces. Moreover, the strategies chosen to privatize state assets varied with regard to their potential for generating corruption. According to Kaufmann and Siegelbaum (1997), the strategies with the lowest potential for corruption are *voucher-based mass privatization* and *liquidation*. The former has low potential for corruption during the implementation and post-privatization process because it does not create long-term obligations for the state. The *liquidation* strategy is also perceived as effective for reducing the long-term corruption because of the complete change in ownership and control over the privatized assets. However, *liquidation* is also the least popular strategy among officials due to its high electoral costs; as its name implies, *liquidation* is often associated with the closure of the factory or enterprise that is being privatized with resulting unemployment, social disaffection, and poverty. Hence, that strategy has been used very little in all former communist countries.

The privatization strategies that are considered to have the highest potential for corruption are the *management-employee buy-out* (MEBO) and *spontaneous privatization*. As the name suggests, MEBO involves the selling of the enterprise to new owners, who are often the same managers of the state asset that is being privatized. As such, the strategy gives a clear advantage to the old managers, who have access to internal information regarding the state of the enterprise and the connections necessary to ensure that the price is not too high. This in turn creates new opportunities for corruption during the process. At least in theory, *spontaneous privatization* may lead to lower levels of corruption because it implies a complete change in ownership. In practice, the old partnerships and connections are being used to the advantage of some people, actually increasing the potential for corruption. Additionally, it can create "corrupt monopolistic
structures” (Kauffmann and Siegelbaum 1997, 445) by impeding fair competition in the medium term.

In Romania, MEBO – the strategy with the highest potential of corruption – was the dominant strategy used in the privatization process. Most of the forty-six foreign trade enterprises that functioned in Romania in 1980s were privatized by using the MEBO strategy with the prior management retaining the control of the enterprise. The main appeal of the enterprises was considered to be the connections established with foreign companies and other Romanian enterprises. For example, Viorel Cataramă worked for an enterprise that formerly exported furniture to Western Europe; he developed business relationships in Belgium and the Netherlands and used those relations after 1989 to expand his newly created business. Cataramă also served as undersecretary of commerce for a brief period, which also helped him develop his business (Brucan 1998, 86). Other examples of newly successful businessmen who used their old positions and connections include General Victor Atanasie Stănculescu, who was the chief of supply section in the Ministry of Defense in charge of the business of import and export of armaments and munitions and who set up a very lucrative insurance company specializing in shipping, airlines, and related fields; Dan Voiculescu, who worked at two export-import enterprises during Ceaușescu’s rule, and who became the owner of a mechanical factory and a media mogul, owning a daily newspaper, Jurnalul Național, and a private television company, Antena 1 (Brucan 1998); and the Paunescu brothers. George Constantin Păunescu started his career as chief of the Commercial Agency of Romania in Italy in the early 1980s and completed it in 1989 as the director of the Ministry of Foreign Trade (Brucan 1998). His brother Viorel worked in the restaurant business before 1989 and was able to gain
significant wealth by taking advantage of the shortage economy. After 1989, the Paunescu brothers soon became dollar multi-millionaires and the owners of the top hotels in Romania, including the Intercontinental which brings them an annual profit of about 20 million dollars (Gallagher 2005, 118).

The magnitude and complexity of the privatization process, associated with high administrative discretion and lack of transparency, clearly favored the former party nomenklatura. In 1990, several strategically important sectors were transformed into regii autonome, borrowing from the French Model. These regii autonome had a quasi-autonomous status from the state, but they were used by the new leadership to ensure its control over the most important and profitable assets in the economy, such as electricity, gas, and oil. One such regie autonoma is RENEL, the largest company in the country that has the monopoly of electricity. The PSDR used to reward its supporters with high positions in RENEL and other well-paid sectors of the state economy (Gallagher 2005, 116). As previously mentioned, PSDR (the former NSF) was comprised primarily of former nomenklatura and Securitate officers and it managed to dominate the political scene and to govern almost undisturbed for the first six years after transition. The combination of inherited power relations, new power positions, and the fluid institutional and legal context gave them a significant advantage and allowed them to use every opportunity to their benefit.

The importance and endurance of power relations was also demonstrated by Stoica’s analysis of the privatization process in post-communist countries (2004). He concluded that the former party cadres were the main winners because they had the advantage of managerial skills and experience accumulated prior to 1989. He also
claimed that network resources were crucial in starting a business or in ensuring its functioning. The importance of pile (connections or props) and relații (relations) varied from business to business with smaller businesses needing fewer pile or relații at the beginning than bigger businesses, but with all businesses requiring them for their efficient functioning. Thus, according to one Romanian ex-cadre,

“To start a big business you have to be “somebody” [yourself]. You have to know people, important people...otherwise no one will take you seriously. If you know the right people, some damn functionaries or other [political] hotshots, you have no problem, ab-so-lute-ly no problem in starting your own business. How do you think I started? I had no money whatsoever but I knew such people and they helped me out with loans and contracts [from the government]” (Stoica 2004, 265).

Another former party cadre said that he found the entire discussion about successful Romanian businessmen very amusing because “I read their names and it’s like reading the (communist) party list....It’s the former Communist Youth Organization plus other party secretaries. I know this for a fact! I was one of them” (Stoica 2004, 265). Hence, every new entrepreneur devoted time, energy, and resources to develop networks of pile and relații that would ensure the success of his business. Through the use of mici atenții (small gifts or bribes), new businessmen established connections with a variety of individuals from different sectors and who can greatly influence the well-functioning of their businesses, such as suppliers, local bureaucrats, beat cops, public officials from other government agencies, health and safety inspectors, and officers of the Financial Guard (the Romanian equivalent of the Internal Revenue Service) (Stoica 2004, 266).

Being a former communist cadre definitely constituted an advantage during the transition to market economy and having the right connections could make someone a millionaire in dollars almost overnight, even in the absence of the money necessary to
start the business in the first place. The financial aspect of big businesses was ensured by unsecured loans from state banks, loans that were often used in lucrative transactions with state companies or government agencies. Many of those banks were bankrupted by early 2000s, such as Bancorex, Banca Agricola, Dacia Felix, and the International Bank of Religions. Bancorex was involved in one of the biggest scandals of corruption, but for almost a decade managed to escape investigation because of the free credits offered to judges, prosecutors, and senior police officials (Gallagher, 2005, 117).

If former members of the nomenklatura were able to capitalize their old power positions and relations, the former Securitate officers were competing with them for piece of the pie. Besides using Securitate as the main instrument for coercion, Ceaușescu also relied on it to ensure the control of all foreign trade. As such, those officers were in a privileged position in the new regime and managed to successfully use that advantage and become the new rich in post-communist Romania. In 1990, a document that included the names of 400 Securitate officers who “were running the foreign trade organizations” was given to some foreign journalists and published in The Times on 22 May 1990 (Deletant 2001, 40). According to that document, Securitate colonels were holding all main positions in the Ministry of Foreign Trade. Therefore, it is of little surprise that many of the new businessmen in 1990s had worked for the secret police prior to 1989. Additionally, the new head of the Romanian Security Service (RSS), Virgil Măgureanu, was forced to resign after 1997 when it emerged in mass media that he built a forty-three room villa in his native village of Giurtelecul Hododului, in north-west Romania. Măgureanu claimed that his entire family contributed to the building of the villa, but after
his resignation it was revealed that he used his position and circumvented the legal provisions in order to build it (Gallagher 2005, 114).

As previously mentioned, under Ceaușescu, one of the duties assigned to Securitate forces was to supervise and control the customs sector. That control allowed for the creation of informal networks which were very profitable to all parties involved, i.e., party-cadre, Securitate officers and customs personnel. Those informal relations survived the breakdown of the communist regime and proved to be very lucrative in the new political context. One example is illustrative not only of the pervasiveness of corruption and the ramifications of the informal networks, but also of the government officials’ attitude towards curbing corruption. In 1998, the Romanian newspaper *Evenimentul Zilei* published the transcript of a discussion that took place five years earlier between Virgil Măgureanu, the head of the Romanian Secret Service (RSS), and Mike Nasser, a famous cigarettes smuggler whose brother and associate was jailed in Romania. Nasser informed Măgureanu that army officers had been paid $1.3 million for their cooperation for supplementing the cigarette smuggling with arms dealing, everything with the knowledge of the Romanian Secret Service. Iosif Boda, a member of the Social Democratic Party of Romania, claimed to have strongly advised the prime minister at the time, Nicolae Văcăroiu, to remove the head of the customs services and the Financial Guard. The latter had replied: “Leave them be, leave them to compromise themselves!” (Gallagher 2005, 119).
5.2. The Pervasiveness of Informal Institutions

The power of informal relations might also explain the lack of significant change in the state bureaucratic apparatus. A very informative example of how the local bureaucracy worked during the post-transition period and of its collaboration with elected officials can be found in agriculture. One of the main strategies in reforming the agricultural sector in post-communist Romania was land restitution, that is, the returning of land and land rights to the people who owned it prior to collectivization. The land law was adopted in 1991, but its implementation was largely left to the discretion of the local administrative unites, communes, and their leaders. Commune mayors had concentrated significant power in their hands and they managed to control the local land commissions by promoting their own people. Hence, commune mayors and village land commissions became real "hotbeds of corruption" (Verdery 2002, 12). Many of the local mayors were former party cadres who used their previous established connections in order to secure their current positions at the local level. As such, they made sure that every decision they made would have little chance of being overturned at higher administrative levels (i.e., the county land commission). As a rule, every decision that was contested at the county level was sent back to the commune mayor and his commission to be solved. Since the latter had the final say in every decision that was made, the implementation of land reform was at their discretion.

The high level of administrative discretion was enhanced by a loophole in the land law that failed to include any sanctions if local officials did not implement the law. Therefore, there was little that courts could do in a land dispute, although not many cases reached the inside of the courts. Besides having the authority to distribute the land with
discretionary powers, local officials also had the advantage of inside information. That advantage was highly significant, especially when faced with inaccurate information regarding the collective farms due to the communist party cadres' habit of falsifying information to please their superiors (Verdery 2002). The local officials could easily manipulate the lack of information to their benefit and to justify their decisions. Again, it comes to no surprise that the primary beneficiaries of land restitution were former party cadres and people with inside information and the right connections.

The communist legacy of corruption became especially problematic in the health care sector, where the embedded informal norms and rules put an additional burden on the poor. Studies showed that low income individuals paid proportionately more out-ofpockets payments than the high income group, and they were also more likely to report paying bribes to health care providers (Mastilica and Bozikov 1999). The old practice of bribery, relations and connections had become increasingly more important during the transition, especially in sectors that continued to function largely unreformed.

6. Conclusion

In post-communist countries corruption is part of the communist legacy and it is now "the main cause of departures from the rule of law" (Rose 2001, 101). Under communism, corruption was tolerated because it was considered to play a functional role. That is, corruption was required for the effective functioning of an increasingly deficient state command economy and as a substitute for institutional reform. However, by the late 1980s the functional corruption became dysfunctional and every aspect of communist societies was penetrated by the informal corrupt rules and norms. The breakdown of the
communist regimes left behind a fluid formal institutional context characterized by a partial *tabula rasa* and by different processes of institutional change and reform. The dismantling of the old and compromised formal institutions and the need for designing new democratic institution generated additional space for the informal institutions to thrive. Additionally, both new and reformed or replaced formal institutions needed time to become fully articulated and routinized; that is, the implementation and enforcement of new rules and norms required additional institutional structures, personnel, and funding, not to mention the willingness to invoke sanctions when necessary. Furthermore, the new rules and norms had to be accepted and legitimized by the mass public. Often, the democratic rules conflicted with the informal ones which were already socially embedded.

The transition to a market economy, especially the privatization process, also created new opportunities for corruption to thrive and to become “a problem of governing” and “a daily expectation among the mass publics” (Moreno 2002, 496). The old party *nomenklatura* and Securitate officers managed to not only maintain their informal power relations, but to also expand them in the post-communist setting. They were in position to influence the policy-making process, to profit from ambiguous laws and legislative loopholes, and to manipulate them to their benefits. Furthermore, their role in the expansion of corruption after 1989 was manifest at both central and local levels.

The expansion of corruption after 1989 demonstrates how informal institutions can be powerful and resilient and how they play a significant role in democratization processes. The success of the dual transition depends not only on the creation or re-
creation of strong and effective formal institutions, but also on the ability to control and reduce competing informal institutions. Curbing corruption might be one the most difficult tasks that new democratic regimes must address because, as Rose (2001, 101) put it, “Getting rid of a dictator is much easier than getting rid of corruption...Getting rid of corruption is less dramatic and more impersonal.”
CHAPTER III

THE EUROPEAN UNION CONDITIONALITY AND ITS ROLE IN CURBING CORRUPTION

1. Introduction

The EU was the most influential international actor in promoting democratic consolidation and fighting corruption in the former communist countries in Central and Eastern Europe (CEE). By the mid-1990s, the EU had developed a clear strategy of democracy promotion, and with the beginning of accession negotiations in 1997, the fight against corruption became part of the accession requirements. Thus, along with the transposition and implementation of the *acquis communautaire*, candidate countries had to convince the EU that they were capable of effectively tackling corruption. They agreed to be regularly monitored by the European Commission with regard to their progress in the preparations for the accession.

The goals of this chapter are first to briefly outline the EU strategy of democracy promotion by focusing specifically on the issue of conditionality and to briefly discuss the *acquis communautaire*. The next section reviews Romania’s road towards accession, followed by the analysis of EU pressure on the Romanian Government to transpose the *acquis* and fight corruption in each sector under study. The third section evaluates the EU impact on the domestic political will and the evolution of the EU

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33 Henceforth, the *acquis communautaire* will be referred to as the *acquis*.
pressure as illustrated in major newspapers. The last section briefly summarizes the findings.

2. The European Union and Democratic Consolidation in Central and Eastern Europe

The events of 1989 created the opportunity for the EU to demonstrate that it is an important actor in the global arena and that it can play a significant role in promoting democracy in the neighboring countries from which it was separated for almost five decades. When the communist regimes collapsed in CEE, the EU was not prepared for such a task, lacking a clearly defined strategy for democracy promotion in the former communist countries. Thus, in June 1993, the European Council elaborated a set of criteria, known as the Copenhagen criteria after the city where the decisions were made, that countries would have to fulfill in order to become EU members. The Copenhagen criteria included stability of institutions guaranteeing democracy, the rule of law, human rights, protection of minority rights, a functioning market economy and the capacity to manage the competitive pressure of the EU common market (Council of Europe 1993). The first four criteria became known as the political criteria and the last two as the economic criteria. According to the Treaty of the European Union (1997), a country that fulfills these criteria can apply for membership, which according to the EU meant that once a country has begun accession negotiations, it has fulfilled the Copenhagen criteria and has moved "convincingly towards consolidation" (Pridham 2006, 378). This, however, would not mean that democracy is consolidated, but that it would be on the path and that EU membership would ensure the achievement of that goal (i.e., democratic consolidation). Hence, while the EU did not play an important role in the democratization
process *per se*, mainly because by the time the EU began closely monitoring the candidate countries the latter had already adopted their new democratic institutions, it did significantly impact their democratic consolidation processes (Hughes et al. 2004, 166). The emphasis on strengthening the new democratic institutions in CEE was in line with EU interests in promoting stability in the area through the routinization of democratic norms (Pridham 2006) while maintaining the heterogeneity specific to the European continent in the area of political institutions.

The 1993 Copenhagen criteria were expanded in 1997 when the EU elaborated the Agenda 2000 regarding applications for EU membership of candidate countries, Romania included. Thus, the new pre-accession process required the “strengthening of state capacity, the independence of judiciaries, the pursuit of anti-corruption measures”, as well as other economic, social, and cultural rights, especially those dealing with “trafficking in women and children and gender equality” (Pridham 2006, 380). Those conditions became part of the Copenhagen criteria and were intended to minimize the risks associated with the inclusion of politically and/or economically unstable countries into the EU. The decision of the European Council to begin pre-accession negotiations with all candidate countries in December 1997 was an important step in promoting democratic consolidation, and the use of conditionality exercised in CEE countries became an essential tool for ensuring the success of that process. Despite being included in the pre-accession negotiations, Romania remained placed on the list of countries for which visas were required and human and drug trafficking were considered to be two of the main problems that the country was facing at the time, due largely to ineffective visa, admission and border control policy (EC Commission 1997, 93). However, political
considerations and security and stability issues (particularly in Balkan area) weighed heavily in the final decision to include Romania in the pre-accession negotiations.

2.1. EU Conditionality

EU conditionality is considered to follow the Western tradition of “second generation” aid conditionality that began developing in 1980s. It combines economic conditionality (the “first generation” conditionality) with political conditionality (Hughes et al. 2004, 15). In other words, beginning with 1980s, the international organizations that were already practicing economic conditionality, such as the World Bank, International Monetary Fund, and even the EU, started expanding their aid conditionality by including political criteria that would address good governance and democratic institutions. Among these international organizations, the EU has been the most influential in promoting democracy abroad, specifically in the CEE countries where, through the pre-accession preparations that these countries had to make in order to join the EU, it has developed a model of “democracy promotion through integration” (Dimitrova and Pridham 2004, 95).

The EU success in democracy promotion rests on the particular leverage that it exercised in the candidate countries. Since 1990, the EU has exercised two types of leverage: passive leverage, represented by the benefits of EU membership, and active leverage, which built upon the passive leverage but, as the name indicates, it involved a much more active role on the part of EU in promoting democracy in the candidate countries during the pre-accession process (Vachudova 2005, 63). Until the middle of

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34 Antoaneta Dimitrova and Geoffrey Pridham claim that there is a direct link between the EU’s ability to strengthen democracy abroad and the EU membership. Hence, the EU influence reduces significantly when the EU membership card is off the table. For a more elaborate discussion of this argument see “International Actors and Democracy Promotion in Central and Eastern Europe: The Integration Model and Its Limits”, Democratization 11 (December 2004): 91-112.
1990s, the EU primarily exercised its passive leverage of membership benefits. Nonetheless, the attraction of those benefits was substantial because they would bring international recognition of the new democratic system and would reunite the "old" European continent. Furthermore, the economic benefits associated with EU membership were even more considerable, especially when contrasted with the negative aspects of passive leverage. That is, the isolation from the other EU countries would have serious economic consequences such as the redirection of aid, expertise, and foreign direct investment to serious candidate countries as well as reduction of trade opportunities with EU members (Vachudova 2005, 71).

After 1995, the EU began exercising its active leverage more, which was much more powerful not only because it built on the passive leverage of membership benefits, but also because of the pre-accession requirements that candidate countries had to fulfill. Three characteristics of the pre-accession process are considered to have increased the power of active leverage, namely the asymmetric interdependence, enforcement, and meritocracy (Vachudova 2005, 106). Any type of aid conditionality is based on an asymmetric relationship between the donor and the recipient, with the donor having the advantageous position in this relationship. In this sense, EU conditionality was no different than the aid conditionality practiced by other international organizations. However, while the EU depended little on the CEE countries, economically or politically, the latter depended greatly on integration in order to increase their chances for a successful transition to market economy. The asymmetric interdependence allowed the EU to make credible threats of exclusion, which would have had significant consequences for those left outside the enlargement process. The asymmetric
interdependence was coupled with the enforcement of the EU non-negotiable accession requirements, which were designed to make candidate countries show their commitment with the EU policies (Vachudova 2005, pp. 109-11). Thus, the candidate countries had to demonstrate their capacity to implement European policies and to consistently enforce them prior to accession.

The third and important characteristic of EU active leverage is meritocracy. That is, the EU used a merit-based approach to evaluate the progress towards membership made by candidate countries, an approach that was designed to give credibility to the entire accession process. The meritocracy of the active leverage was ensured by the European Commission (EC), the institution responsible for assessing the candidate countries' progress in the transposition and implementation of the *acquis*. The instrument used to publicly present the results of the evaluation process took the form of *Regular Reports*. Although the *Regular Reports* were sometimes inconsistent with the reality on the ground or contained mistakes, "it is striking how in general they [candidate countries] accept[ed] the logic and the overall fairness of the process" (Vachudova 2005, p. 113). Börzel and Sedelmeier (2006) also emphasize the fact that the EU credibility rested on its ability to avoid political favoritism during the accession process. The assessment of the candidates' progress towards accession had to reflect to a large degree the reality on the ground; otherwise, the incentive structure created by the awarding of the membership on a merit base would have been undermined.

It is important to mention that the Eastern enlargement process was different from the previous enlargements. Thus, in the case of CEE countries, the EU insisted on a "strict, earlier, and comprehensive alignment...with the *acquis* (the existing body of EU
legislation, institutions and procedures) prior to accession” (Börzel and Sedelmeier 2006, 61). The adoption of the *acquis* in its entirety and without questioning was not only a requirement but it was also viewed as a proof of the candidates’ commitment and ability to uphold and enforce EU legislation and policies after the accession. Therefore, the candidates’ success rested upon their ability to adopt and transfer in practice the *acquis*. While it seemed a straightforward process, the reality was more complicated for several reasons. First, the adoption of the *acquis* resembled a top-down process in which the candidate countries had little say because their progress towards accession depended on the adoption of the EU legislation and the adjustment of the national legislation to the former in a rather inflexible way, particularly with regard to the market economy and certain sectoral policies (Börzel and Sedelmeier 2006, 63). Second, the adoption and implementation of the required *acquis* was sometimes associated with significant costs for the governments of the candidate countries, which explains their initial focus on the “easier” to adopt chapters of the *acquis*. Third, as an essential part of the EU conditionality, the adoption and implementation of the *acquis* was supposed to be accompanied by clear rules of transfers, benchmarks, and monitoring criteria, but often the rules were ambiguous and the implementation was ambivalent (Hughes et al. 2004, particularly 23-25). Despite all these problems, the enlargement process was largely considered to be fair and candidate countries strived to fulfill the EU requirements, largely due to the benefits provided by the EU membership.
2.2. The Acquis: Transposition and Implementation

The *acquis* amounts to 80,000 pages of legislative texts and is continuously growing in order to keep pace with the new EU developments in the fields of policy, directives and declarations, and jurisprudence (Grabbe 2002, 253). Broadly defined, the *acquis* applied to the CEE enlargement was defined as “all the real and potential rights and obligations of the EU system and its institutional framework” (Gialdino 1995 cited in Grabbe 2002, 253). This definition allows for more minimalist or maximalist interpretation of those rights and obligations and the EU “has presented a quite maximalist interpretation to applicants” (Grabbe 2002, 253). During the Eastern enlargement, the *acquis* was divided in 31 chapters\(^\text{35}\) in order to make the transposition and implementation process easier for the candidate countries. The *acquis* chapters differ in their complexity and importance attached to their adoption and implementation, but, in order to become full members, candidate countries must close all the *acquis* chapters opened during the accession negotiation process. The rule of law and corruption were given particular attention due to their significance for achieving democratic consolidation and therefore the progress made in establishing the rule of law and un-rooting corruption were closely monitored. Cleaning up corruption in the customs sector was another highly significant issue for the EU (Chapter 25 of the *acquis*) and public procurement sector would become increasingly more important as the accession date approached. As it will be discussed later, the EU does not have a unified health care policy and therefore reforming this sector was not part of the EU accession process *per se*.

\(^{35}\) The list of the chapters of the *acquis* is presented in the Appendix A.
An important aspect of the *acquis* refers to the costs of adopting and implementing EU legislation and policies. For example, the adoption of legislation included in the *Justice and Home Affairs* chapter (the 24th chapter of the *acquis*), while not extensive, was highly problematic due to the security ramifications that would result from imposing EU border regimes that would separate the candidate countries politically from their eastern neighbors and minority populations (Grabbe 2002, 255). That explains the EU’s demand for full compliance with its border policies well in advance of accession, while the CEE countries attempted to postpone the adoption and implementation of this chapter of the *acquis* until the last stages of pre-accession. That was the case of Hungary and Poland which delayed the adoption of Schengen rules to the final stages of their accession negotiations (Schimmelfenning and Sedelmeier 2005, 216). Additionally, judicial cooperation, another issue included in Chapter 24 and closely monitored, was difficult to achieve given the need for reform of the judicial systems in all former communist countries and particularly in Romania.

As mentioned, the EC was assigned the responsibility of closely monitoring candidates’ progress towards accession. The *Agenda 2000* that the EC issued in 1997 and that served as a foundation for the decision to begin pre-accession negotiations was used as a benchmark for the first round of evaluations conducted in 1998. The following *Regular Reports* would be issued annually and would assess the progress made since the previous report as well as the remaining problems to be addressed prior to accession. Thus, the EC used its monitoring reports to determine the major areas where the candidates’ legislation was contrary to the *acquis* and to set priorities in the Accession Partnership (Grabbe 2002, 258). The signing of the Accession Partnerships between the
EU and the applicant countries increased the power of EU conditionality especially because of the credible promise of membership and its important benefits. In addition, the Regular Reports were important tools of EU conditionality because they were used by the European Council to decide whether or not to grant a country admission to the next stage of the accession process (Grabbe 2002).

2.3. Romania’s Road towards Accession

Immediately after the change of regime in December 1989, Romania began renegotiating its relations with the EU as part of the process of returning to Europe after more than four decades of isolation. The first important step was marked on February 1, 1993 when the Romanian Government was the fourth in CEE to sign a Europe Agreement that provided for free trade in industrial goods, political dialogue with the EU and cooperation in a variety of areas (Phinnemore 2005). The Europe Agreement entered into force only two years later, but an interim agreement allowed for the trading provisions to be implemented beginning with May 1, 1993. The signing of the Europe Agreement opened the door to a closer cooperation for the CEE signatories, whose ministers and officials were invited to participate in the regular meetings of the European Council.

The entry into force on February 1, 1995 of the Europe Agreement gave a new impetus to Romania’s integration process due to the inclusion of the country into the pre-accession negotiations. The Romanian Government expressed its wish to be included in

36 The other three CEE countries were Hungary, Poland, and the former Czechoslovakia.
37 *Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and Romania, of the other part, OJL 81, April 2, 1993.*
the eastward expansion by submitting a formal application on June 22\textsuperscript{nd}, 1995, along with the “Snagov Declaration”, a document signed by the fourteen political parties in Parliament at the time that expressed their full support for EU membership (Jereb 2005). The EU’s decision regarding the Romanian application for membership came in July 1997, when the EC issued its opinion regarding all CEE applications for membership. The EC concluded that the country’s “new institutions are democratic and their stability now seems guaranteed”\textsuperscript{38} but they “need to be anchored by greater respect for the primacy of law at all levels of the apparatus of State” (EC Opinion 1997, 18). Furthermore, the EC recommended that “the negotiations for accession should be opened ...as soon as it [Romania] has made sufficient progress in satisfying the conditions of membership” (EC Commission 1997, 114). The report emphasized the serious difficulties that the country would face in areas of market economy and the considerable efforts that would be needed in such areas as the judiciary and border control. Despite the EC conclusion, the European Council decided to opt for a “comprehensive” and “inclusive” enlargement, with each state proceeding at its own pace, depending on its degree of preparedness for accession (European Council 1997, 1). This “regatta” approach (Bojkov 2004) to enlargement was designed, as previously mentioned, to ensure the meritocracy of the process and to allow candidate countries to conform to the EU requirements according to their domestic political, social, and economic conditions. In line with the same approach, the EC measured progress based on the “decisions actually taken, legislation actually adopted, international conventions actually ratified (with due attention given to implementation), and measures actually implemented” (EC Regular Report Romania 2000, 6). This measurement method was used consistently throughout the

\textsuperscript{38} Emphasis added.
accession process, particularly beginning with 2000. Prior to that date, progress in transposing the *acquis* was evaluated based mainly on adopted legislation (EC Regular Report Romania 1998 and 1999).

In March 1998, Romania and the EU signed the *Accession Partnership*, treaty that established within a legislative framework the country’s working priorities in the pre-accession process. A year later, the EC recommended the beginning of accession negotiation between the EU and Romania, alongside five other countries: Bulgaria, Latvia, Lithuania, Malta and Slovakia. The Helsinki European Council approved the EC recommendation and on February 15, 2000 Romania began accession negotiations with the EU. The EU decision was based mainly on political considerations and factors unrelated to Romania’s progress in establishing the rule of law and fighting corruption. Thus, the geographically strategic location of the country “in a region which is of key sensitivity for security in Europe” and its role during the war in Yugoslavia and the conflict in Kosovo weighed heavily in the EU’s decision. The importance of another geographical asset, namely the Danube, added to the final decision regarding the accession negotiations. The Danube was considered to be of special strategic importance because it offers access to the southern Caucasus region (EP Report 2000, 7 and 13-14). Additionally, the NATO decision not to issue a membership invitation to Romania in 1999 influenced the EU decision to begin accession negotiations with Romania. The EU considered that Romania should be rewarded for the economic consequences of the embargo on oil sales to Serbia, a feeling that was clearly expressed by the President Emil Constantinescu (Phinemore 2005, 17).\(^3\) Nonetheless, as the accession date approached,

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\(^3\) President Emil Constantinescu’s response to the NATO decision not to issue the membership invitation in April 1999 reflected the general feeling in Romania: “Every day, personalities from NATO and the EU come..."
the EU pressure on the Romanian authorities to demonstrate political commitment to implement reforms and curb corruption increased significantly, as it will be shown later in the chapter.

Of the 31 chapters of the *acquis* that Romania as a candidate country had to transpose prior to accession, five were soon opened and closed by the Romanian Government, followed by nine more chapters out of which one was also closed by the end of 2000. But the adoption and implementation of the *acquis* slowed down in the next years. Thus, by the end of 2002, only 16 chapters were closed whereas the negotiations with the other CEE countries, except Bulgaria, were completed (Phinnemore 2005, 4). Hence, Romania was not included in the first big enlargement that took place in 2004 and a new deadline for accession was set for January 2007, a date that seemed appropriate and more realistic to both parties involved (i.e., the EU and Romania).

Nonetheless, the appropriateness of the chosen accession date would be questioned by the EU over the next years particularly due to the slow progress shown by Romania in preparing for the accession, as it will be seen in the next sections.

3. The Role of the EU in Building Political Will to Fight Corruption

Building political will and sustaining it over time is a difficult endeavor and international actors can play an important role in pressuring for the creation and support to Bucharest and tell us that during the (Kosovo) conflict we behaved like member states of NATO. But nobody offers us security guarantees or speaks about recovering our losses in respect of the embargo . . . While we are patted on the back and congratulated, our losses mount day by day'. *International Herald Tribune*, 23 July 1999.

40 In 1995, when Romania applied for membership, the Romanian Government indicated that it would be ready for accession by 2000. When the accession negotiations were opened in 2000, the Romanian chief negotiator at the time, Aurel Ciobanu Dordea, indicated that 2010 would be a more realistic target date for Romania’s accession. The Romanian foreign minister, Petre Roman, declared shortly thereafter that Romania will be ready for EU membership by January 2007, which was established as the accession date (Phinnemore 2005).
of the domestic "islands" of political will necessary for fighting corruption. Since corruption is difficult to counteract due to its non-transparent and illegal nature, the domestic commitment to fighting corruption is an essential condition. Nonetheless, it is also necessary to gain the support of national and international actors and the EU role was to encourage the creation of and support for the domestic political will required for fighting corruption. Since the EU goal was to avoid a costly enlargement, the pressure was to reform particularly those sectors that were more likely to increase the costs if corruption was not addressed pre-accession, such as the judicial system on which rests the rule of law and the customs sector which is critical for the security and even economic prosperity of the EU members. Hence, it is no surprise that the highest priority was given to reforming and cleaning up of corruption of the judiciary and customs, while the public procurement sector increased in importance over time as the accession date approached. At the same time, the lack of a common European health care policy translated into insignificant pressure to reform and fight corruption in this sector.

3.1. EU Pressure

The following sections examine the pressure exercised by the European Union on the Romanian Government with regard to the adoption and implementation of institutional strategies, that is, strategies designed to reform and fight corruption within the judiciary, customs, public procurement, and health care sector. The EU pressure was measured by assessing 1) the EC *Regular Reports* (1997-2006, inclusive) evaluating the progress made in reforming and fighting corruption; 2) the European Parliament (EP) evaluation reports on Romania’s progress towards accession; 3) the presentation in the
written media of corruption in association with EU integration, the statements made by EU officials regarding the level of corruption in Romania, and the newspaper articles presenting corruption as an impediment for integration (i.e., reason for postponing the scheduled integration with one year) in the absence of visible progress in reducing corruption and implementing institutional reforms;\textsuperscript{41} 4) other studies and reports assessing the country's progress in reforming the judiciary, fighting corruption, and preparedness for accession; and 5) interviews with public officials, anticorruption experts, representatives of magistrates' associations, journalists, and NGO activists. Hence, the next four sections present in chronological order the pressure exercised by the EU on the Romanian Government as reflected in the European Commission (EC) annual monitoring reports on Romania's preparedness for accession. The last part analyzes the data from three national newspapers from 1997 until 2006 inclusive.

3.2. The Judiciary

The reform of the judicial system was one of the main requirements that any candidate country to EU accession had to fulfill. Hence, the establishment of the rule of law was consistently and closely monitored by the EC throughout the accession negotiation process. The first EC evaluation, issued in 1997, was the \textit{Agenda 2000-Commission's Opinion on Romania's Application for Membership of the European Union}. From the very first evaluation, the judiciary was at the center of the monitoring process due to its essential role in the establishment of the rule of law. In its 1997 \textit{Opinion}, the EC concluded that "much still remains to be done in rooting out corruption"

\textsuperscript{41} The three newspapers are: Evenimentul Zilei (The Daily Event), Jurnalul Național (The National Journal), and România Libera (The Free Romania).
(18) and that "steps need to be taken urgently in tackling it" (108). Furthermore, corruption was considered to be largely responsible for the low level of trust in public institutions.

In 1998, the EC Regular Report focused mainly on the state of the judicial system and the administrative problems that were considered to be a high priority for reform. Thus, problems such as long judicial proceedings and their ineffective enforcement, the absence of accessible case-studies and court verdicts, the low status and remuneration of the magistrates, and the high number of vacancies were considered to be some major concerns that the Romanian Government should address. The main emphasis was on designing a comprehensive reform strategy that included clear objectives, benchmarks, and monitoring instruments, and which would be adequately supported by the government in terms of funds and personnel. The EC recommended the adoption of immediate measures that would address the problems affecting the functioning and effectiveness of the judiciary and, implicitly, its role in fighting corruption. The judicial system was considered to be an essential institution in the fight against corruption, but that was difficult to achieve as long as the very integrity of the institution was affected by corruption.

A major impediment in curbing corruption was considered to be the lack of an anticorruption law that would specifically address the issue of corruption by clearly defining it, identifying its manifestations, the sanctions that corrupt activities would incur, the measures that would further prevent corruption, and the bodies responsible for the implementation of such a law. The absence of an anticorruption law was associated with the lack of anticorruption bodies that would specifically target corruption crimes.
Hence, in the presence of an incomplete legal basis for fighting corruption, the EC reached a similar conclusion as in 1997, namely that "[M]uch remains to be done in rooting out corruption" (EC Regular Report 1998, 50).

In 1997 the National Council for Action Against Corruption and Organized Crime was established, an anticorruption body that was designed to offer political support for the fight against corruption. However, the Council lacked the legal basis to act in corruption cases, those functions belonging to the Public Ministry (i.e., the Prosecutor’s Office), and therefore there was no surprise when the Legislative Council ruled that this anticorruption body had only a consultative role and it could not overlap with the judicial bodies responsible for investigating and prosecuting cases of corruption (Jurnalul Național, 04.18.1997). The very limited role that the Council played in the fight against corruption was noted by the EC in the 1999 Regular Report along with the lack of progress in curbing corruption and, very importantly, the lack of “sufficient determination” in effectively addressing the problem (14). Once again, the EC conclusion was that, in the absence of an anticorruption law, the legal basis for fighting corruption remained incomplete and the creation of anticorruption units within the Prosecutor’s Office was an ineffective measure as long as there was missing a clear and effective cooperation between the activities of those units.

The 1999 assessment acknowledged the progress made in reforming the judiciary by taking note of the implementation of several measures targeted at increasing the effectiveness of judicial activities. Among those measures were the improvement of promotion requirements and salary conditions for magistrates; the reduction of the powers of the Prosecutor’s Office and a restructuring of this office which led to more
effective prosecutions; the reduction of backlog of court cases; the consistent enforcement of judicial decisions; and the creation of specialized anticorruption sections within the Ministry of Judiciary (EC Regular Report 1999, 12-14). Despite the more optimistic tone, the EC concluded that “the judicial system remains weak” (EC Regular Report 1999, 13) and that “[F]urther measures are needed to ensure the independence and efficiency of the judiciary” (EC Regular Report 1999, 77).

Seven months after Romania began the accession negotiations with the EU and began the transposition of the first chapters of the acquis, the European Parliament noted that corruption was the second major obstacle to Romania’s accession to the EU (EP Report 2000, pp. 14-15).42 The EC acknowledged in its 2000 report that Romania had taken some steps in fighting corruption and reforming the judicial system, but that corruption continued to remain a “widespread and systemic problem” (EC Regular Report 2000, 18). While the adoption of the first anticorruption law (law no. 78/2000) was saluted as a “first step in the right direction”, the EC noted that “substantial actions will be required to address this problem” (EC Regular Report 2000, 19). As with regard to the functioning of the judiciary, the EC concluded that measures needed to be taken to increase its independence, administrative capacity, and transparency of the judicial procedures.

A year later, the EC assessment concluded that while “considerable advances” had been made in the previous years with regard to the reform of the judicial system, “Romania has made mixed progress in meeting the priorities related to...judicial capacity” (EC Regular Report 2001, 109). More specifically, the EC report highlighted

42 The first major problem in 2000, according to the European Parliament was the issue of institutionalized children.
several important recurrent problems such as the infringements on the independence of the judiciary (particularly from the executive); the extension of the General Prosecutor’s powers by allowing him to introduce extraordinary appeals against judicial decisions in cases where the latter are “obviously ungrounded”, but without clearly defining the criteria for such decisions; the lack of change in the poor working conditions of magistrates; and the lack of progress in introducing adequate IT systems that would facilitate case handling and would increase access to case law and legislation (EC Regular Report 2001, 20). Those problems were correlated with the lack of progress in fighting corruption and the ineffectiveness of the judiciary having a direct impact on the fight against corruption. Despite the adoption of the Law no. 78/2000, the implementation process was delayed due to the absence of secondary legislation stipulating the procedures necessary for enforcing the law in practice. Furthermore, the anticorruption section created within the General Prosecutor’s office and which was supposed to lead the fight against corruption was never operational due to a lack of funding, personnel, and equipment.

Another sensitive and recurrent issue noted by the EC was with regard to the freedom of information. While the principle of freedom of information was enshrined in the Constitution, its actual implementation was problematic and the EC’s recommendation was to urgently correct the problem. In October 13, 2001, a day prior to the publication of the EC Regular Report, Romania adopted the Freedom of Information Act (FOIA)\textsuperscript{43} complying thus partially with the EU requirement to guarantee the freedom of information. Just three months prior to the adoption of FOIA, the EP also “urged”

\textsuperscript{43} Law no. 544/2001.
Romania to “support social dialogue” with non-governmental actors whose interests were directly impacted by the adopted legislation (EP Report 2001, 11).

In 2001, the EC recommended that the Romanian government increase the independence of the judiciary, improve judicial capacity, and accelerate the fight against corruption by beginning the implementation of the anticorruption law, supporting the existing anticorruption bodies, and guaranteeing in practice the freedom of information. In addition, the EC criticized the lack of clear regulations of the “conflict of interest for both political and civil servant positions” and “the public disclosure of high ranking politicians and civil servants’ income and assets” (EP Report 2001, 16). Overall, the progress registered by Romania in the adoption and implementation of the acquis was considered to be modest.

Although an important step forward in the fight against corruption was taken in 2001 with the adoption of FOIA, the tone of the evaluation reports became increasingly more critical in 2002 when the EC determined that Romania has made limited progress in reforming the judiciary and that corruption continued to be a “widespread and systemic problem” (23-25). The main problems identified in the 2001 report were considered to have remained unsolved a year later with important consequences for the independence and effectiveness of the judiciary. Nonetheless, the EC noted the adoption in October 2001 of the first National Anticorruption Strategy (NACS I), applicable for 2001-2004, and it strongly encouraged its immediate implementation. The delay in the adoption of the secondary legislation necessary for the actual implementation of the NACS I a year after its adoption was considered to be a negative indicator for the commitment to curb corruption.
In November 2002, the EC also issued the *Roadmaps for Bulgaria and Romania* that would indicate the key steps that the two countries must undertake in order to prepare for the accession. The *Roadmaps* included benchmarks against which the countries’ progress in harmonizing their national legislation with the *acquis* and in developing their administrative capacities would be monitored. The *Roadmaps* specified the list of short and medium term issues that needed to be addressed and which would be continuously monitored and updated until the accession (EC *Roadmaps* 2002, 2). One of the aspects particularly emphasized was the close monitoring that the EC would provide for the reforming of the judicial system, an essential sector for the countries’ democratic consolidation. Some of the “serious concerns” in the judicial system which were considered to be a priority for Romania to address were the independence of the judiciary, the system of extraordinary appeals against final judicial decisions which affected the principle of legal certainty, the lack of a comprehensive strategy to improve the functioning of the judiciary, and corruption within the judicial system (EC *Roadmaps* 2002, 25).

The pressure to make further progress in reforming the judiciary and fighting corruption continued in 2003. That same year, the EC noted the adoption of the legislation known as the Anticorruption Package (Law no. 161/2003) and, particularly, of the provision regulating the declarations of income and assets in the conflict of interest for dignitaries and other public officials (EC *Regular Report* 2003, 121). Nonetheless, the EC also mentioned the absence of progress in ensuring the *de facto* independence of the judiciary and the continuous high influence that the Minister of Justice exercises through the direct appointment of judges and the influence of the decisions made by the Superior
Council of Magistracy (SCM), the body *de jure* responsible for the magistrates' careers and the independence of the judiciary. Furthermore, the report stressed the failure to allocate the resources necessary for ensuring the proper functioning of the National Anticorruption Prosecutor's Office, a fact that implicitly limited its capacity to prosecute cases of corruption and particularly of high-level corruption cases. The failure to thoroughly prepare the Anticorruption Package legislation and the decision to use the legislative mechanism of a vote of confidence severely restricted the opportunities for discussion, especially with non-governmental actors, and for improving the legislative proposal. Therefore, the Anticorruption Package, including the provision regarding the declarations of assets and incomes and the conflict of interests, contained potential loopholes and incomplete definitions of conflict of interest (EC *Regular Report* 2003, 21). Overall, the report concluded that there was no noticeable progress in curbing corruption or in guaranteeing the independence of the judiciary, but that there was the political will necessary to change that (EC *Regular Report* 2003, 121). An important recommendation that the EC made in 2003 and which was consistent with the previous reports regarded the enforcement of existing legislation. That is, the EC concluded that Romania had a good anticorruption legislative framework and that it should focus on implementing it. However, as the SIGMA noted in 2004, the Romanian Government focused mainly on introducing and proposing new legislation and less on implementing the already adopted legislation (SIGMA 2004, 3).

The slow progress in establishing the rule of law and fighting corruption was severely criticized by the European Parliament (EP) in February 2004. Thus, the EP report stated that "finalizing accession negotiations at the end of 2004 and becoming a
member in 2007 is impossible unless Romania fully implements [...] anti-corruption measures, especially addressing corruption at the political level” (European Parliament 2004, 5). The independence and functioning of the judiciary, the limitation of the powers of the Ministry of Justice, and the implementation of anticorruption measures, especially those measures addressing high-level corruption, were the most pressing problems underscored in the February report. Furthermore, the EP insisted that the European Commission (EC) would develop a new accession strategy for Romania, a strategy that would “give full priority...to the establishment of the rule of law” (EP Report 2004, 11).

In contrast to the EC conclusion in the previous year regarding the existence of the political will to fight corruption and reform the judiciary, the EP stressed the “need” for such political will.

The 2004 EC Regular Report underscored the significance of the judicial reform legislation adopted in July 2004 which was seen as an important step in reforming the judiciary and increasing its independence. Nonetheless, the EC also mentioned the problems that continued to affect the effectiveness and independence of judiciary, such as the power of the Minister of Justice to appoint judicial assistants, the non-permanent status of the members of the SCM which could lead to conflicts of interest, the powers of the General Prosecutor to launch extraordinary appeals in criminal cases, the lack of progress in the enforcement of judgments in civil cases, and the high number of vacancies among judges (EC Regular Report 2004, 19).

While judicial reform seemed to be moving forward, the fight against corruption continued to be perceived as problematic. Hence, there was no visible progress in reducing it, especially that the number of successful prosecutions of corruption cases
continued to be very low. Furthermore, the study emphasized another serious problem, namely the integrity of the institutions in charge with fighting corruption. In an attempt to stimulate the Romanian authorities in their fight against corruption and in the transposition and implementation of the acquis prior to the scheduled accession date, in December 2004, the European Council decided to adopt special safeguard clauses for Romania.\(^4\) Thus, the Accession Treaty signed between the EU and Romania included four such clauses: a general economic safeguard clause, an internal market safeguard clause, a specific Justice and Home Affairs (JHA) safeguard clause, and a postponement clause. The first three clauses were designated for a period of three years during which they could be activated if the EU considered that there was not enough progress made in reforming the relevant sectors. The JHA safeguard clause addressed specifically the issues of judicial reform and the fight against corruption and should progress be lacking in reforming the judiciary and curbing corruption, the clause would be activated. The fourth safeguard clause introduced a new and more severe condition that would allow the European Council, upon the recommendation of the EC, to activate it and to postpone the accession by one year, to January 2008 (EC Report 2005, 25).

The adoption of the safeguard clauses was unprecedented and it was designed to show Romania as well as other potential candidate countries that they have to demonstrate \textit{ex ante} their commitment to EU rules and institutions. Furthermore, the EU wanted to make sure that the new candidate countries (i.e., Romania and Bulgaria) would be prepared to meet EU requirements by the scheduled accession date, January 1\(^{st}\), 2007. After the first enlargement that expanded the EU with ten countries, the sentiment among EU members was less favorable. Thus, two years prior to the scheduled accession date,  

\(^4\) The safeguard clauses were adopted also for Bulgaria.
the EU decided to lean more on the "stick" approach in order to ensure Romania's preparedness for accession.

Additionally, 2004 was a year of increase tensions and changes within the EU. The Intergovernmental Conference (IGC), which started working on October 4th, 2003, was supposed to quickly revise the most important aspects of the European Constitution so that the final text could be approved by all member states. However, an agreement could not be reached under the Italian Presidency and the IGC continued its negotiations regarding the text of the Constitution in 2004 under the Irish Presidency. A political agreement was finally reached on June 18, 2004 and the IGC completed its work on October 29, 2004, when the Constitution was signed in Rome (European Union 2009). The intense negotiations have revealed the serious concerns among the old EU members regarding the future of their states and of the EU in the context of the Eastern expansion. Consequently, more pressure began to be exercised on the candidate countries to accelerate their judicial reforms, establish the rule of law, and combat corruption.

Moreover, 2004 was also the year when the Prodi Commission completed its mandate and was replaced with the new European Commission (EC) led by José Manuel Barroso. The EC led by the former Italian Prime Minister, Romano Prodi, was expected to implement comprehensive reforms that would improve its functioning and restore the good image of the institution severely damaged by the 1999 corruption scandals involving the Santer Commission. However, by mid-2004 it became obvious that the actual implementation of the ambitious reforms would be a priority for the next Commission, the team led by Prodi failing for the most part to move beyond the proposal stage of the reform process. The new Commission President, Barroso, was determined to
“revitalize” the reform process and to overcome the problems inherited from the previous EC (Cini 2005). That meant also increasing pressure on the candidate countries to demonstrate their commitment to reform and anticorruption efforts.

The increase in the external pressure and the change in leadership in Romania, as a result of the 2004 national elections, positively affected the speed of the reform process in the judicial system and in the fight against corruption. The progress in implementing institutional reform measures and in aligning the judicial system with the EU requirements was noted by the EC in its 2005 assessment report. Thus, the Regular Report acknowledged the adoption of important reform measures that were designed to increase the independence of the judiciary by limiting the role played by the Ministry of Justice and increasing the role of the SCM. The latter was recognized as the de facto guarantor of judicial independence and it became solely responsible for magistrates’ professional careers. Additionally, the National Anticorruption Prosecutor’s Office (NAPO) was given jurisdiction over the high cases of corruption and was assigned additional personnel and funding. Hence, a year after the adoption of safeguard clauses, the EC concluded that there was “an increase in the political will to tackle corruption” (EC Regular Report 2005, 11).

As in the previous years, the report also mentioned the continuous shortcomings in the effectiveness of judicial activity due to heavy workloads, frequent delays in obtaining court judgments, and lack of progress in the enforcement of judgments of civil cases. Furthermore, the EC emphasized the lack of progress in reducing the level of corruption which was assessed as being “serious and widespread” (EC Regular Report 2005, 11). One of the main problems identified was the poor implementation of existing
anticorruption legislation and the continuous existence of corruption within the judicial institutions responsible for fighting corruption. Hence, the EC recommended “immediate action [...] to increase Romania’s capacity to fight [corruption] effectively and to efficiently prosecute significant high-level corruption cases” (EC Regular Report 2005, 70). In addition to those criticisms, in Fall 2005 the EC assigned red flags to the chapter on judiciary and anticorruption. The red flags were designed to highlight the significance the EU attached to the fulfillment of EU requirements prior to accession and their determination in enforcing the sanctions (i.e., activate the safeguard clauses) attached for failure to reform the judiciary and curb corruption ex ante.

The closer and more detailed assessment of the implementation of the acquis and reform measures continued in 2006, when the EC issued two evaluation reports regarding Romania’s preparedness for the accession. At the time of the May 2006 report, there was still a significant level of uncertainty regarding the EU’s decision towards Romania’s accession in January 1st, 2007. However, the more interventionist approach adopted by the EU in 2004 led to changes, particularly in fighting corruption within the judiciary and reforming this sector, a fact illustrated by the change in the color of the flags attached to the judicial and anticorruption areas, which became yellow. Thus, the May 2006 EC report noted the continuous progress made by Romania in the implementation of the anticorruption legislation and in the efforts to eradicate corruption within the judicial institutions (EC Regular Report May 2006, 35). Despite those positive steps, the EC recommendation was to increase the efforts in fighting corruption.

The last pre-accession Regular Report issued by the EC in September 2006 emphasized once again Romania’s efforts to implement the acquis, to increase the
independence and effectiveness of the judicial system, as well as to curb corruption within judicial institutions. The report also mentioned the need for the continuous implementation of anticorruption strategies that would lead to a more transparent and efficient judicial process; that would increase the capacity and accountability of the SCM; and that would prevent and not only fight corruption. One of the requirements that Romania had to fulfill prior to accession was the creation of the National Agency of Integrity (NAI) responsible for monitoring the implementation of the laws regarding the declarations of income and assets, conflicts of interests, and incompatibilities with holding public office positions (EC Regular Report September 2006, 5). That requirement, however, was not fulfilled prior to accession and it became part of Romania’s obligations during the post-accession monitoring period. The failure to create such an institution and to allocate necessary funding and personnel for its effective functioning could potentially trigger the activation of the JHA safeguard clause.

3.3. Customs Sector

The EU has also focused attention on ensuring that the customs sector was aligned with European customs legislation and regulations and that corruption was effectively counteracted in the customs sector. One of the first steps towards preparedness for accession was to adopt and implement the acquis specific to the customs sector, which consisted of the Community Customs Code and its implementing provisions, the EU’s Combined Nomenclature, the Common Customs Tariff including trade preferences, tariff quotas and tariff suspensions, and other customs-related legislation outside the scope of the customs code. In addition, the 1995 Europe
Agreement, which served as the legal basis for Romania's relations with the EU, stipulated the creation of a free-trade area with the EU and the progressive elimination of customs duties on a broad range of products and according to a clear timetable set in accordance with the Romanian authorities (EC Agenda 1997, 97).

In 1997, when the EC issued its *Opinion on Romania's Application for Membership to the European Union*, the Romanian customs sector was undergoing organizational changes. The first EC assessment regarding the organization and functioning of the Romanian customs revealed that there were significant deficiencies that needed to be addressed and that it was "unlikely that Romania [would] be ready to fulfill the responsibilities of an EC customs administration within the next few years" (EC Agenda 1997, 99). More specifically, some of the main problems identified included legislation incompatible with the EU legislation; customs charges that have equivalent effect of customs duties (e.g., custom modernization charge); and the lack of an appropriate computerized system necessary for "the management, in the customs union/internal market, of the customs and indirect tax provision" and for the "mutual administrative assistance in custom, agricultural and indirect tax matters" (EC Agenda 1997, 98-99). In addition to legislative and procedural problems, other important issues were an insufficient number of qualified custom officers and low salaries allocated to customs personnel which in turn made the recruitment of qualified customs personnel increasingly more difficult. The heavy workload due to the inadequate number of customs officers commensurate with the work load and the low salaries associated with the heavy work negatively affected the "quality" of customs officers, in terms of integrity and honesty. Hence, the EC underscored the need for establishing a customs sector with
“motivated staff showing a high degree of integrity” and for taking steps to “urgently tackle corruption” within this sector (EC Agenda 1997, 98 and 108).

In 1998, the EC focused on assessing the progress made in aligning the Romanian customs sector with the European *acquis* in this area. Hence, the Regular Report acknowledged the adoption in 1997 of the new customs code as well as the secondary legislation necessary for its effective implementation; the adoption of a new statute on customs personnel; the creation of a special customs surveillance corridor along Romania’s borders that would allow for unexpected checks; and the increase in investments in physical and information infrastructure (EC Regular Report 1998, 42). However, corruption *per se* was not identified as an urgent problem in the customs sector at that time and the criticism focused on the deficient alignment of the Romanian Integrated Tariff (TARIR) system with the Community Integrated Tariff (TARIC); serious problems in the physical and information infrastructure; and the lack of compatibility between the Romanian and EU customs legislation (EC Regular Report 1998, 43-44).

A year later, in addition to evaluating progress made in aligning the customs sector with EU requirements, the EC noted also the progress made in fighting corruption within customs. Thus, the adoption of the Statute of rights and obligations of customs officers was considered to be a “major step forward” in fighting corruption and in improving the functioning of customs sector (EC Regular Report 1999, 75). Other measures that indirectly contributed to fighting corruption included improvements in supplying information to the users of customs services and the creation of a new division for counterfeited and pirated goods. Nonetheless, the harmonization of the Romanian
customs legislation with the European one was still lacking in certain areas (particularly counterfeited and pirated goods) and specialized training for customs officers was still absent (EC Regular Report 1999, 75). The latter problem was considered to be very important for curbing corruption by ensuring the uniform and non-discretionary application of customs regulations and procedures. The EC requirement for the creation of a Customs School that would offer initial and continuous training to customs personnel was based on the assumption that professional training would prepare customs officers in the areas of ethics and professional conduct, which would lead to the creation of an honest customs service. The EC's final conclusion was that progress has been made in improving the administrative capacity of the customs authorities, but that several outstanding problems needed special attention such as the uneven application of legislation, undue bureaucratic burdens imposed on economic operators, and the fight against corruption (EC Regular Report 1999, 76).

The efforts to increase legislative harmonization with the acquis in this sector, to improve administrative capacity, and to increase transparency and efficiency in customs procedures were part of the fight against corruption within customs. In 2000, the EC noted the efforts made by Romania to reform the customs sector, including the adoption of a five year development strategy of customs administration, applicable for the period 2000-2005, and the creation of new structures designed to increase control and combat illegal trafficking of goods. The EC also acknowledged the measures taken to more specifically address the problem of corruption, such as the adoption of the Code of Conduct in March 2000 and the introduction of financial incentives that would reward the professional performances of customs officers. But it also recognized their very limited
impact in reducing the level of corruption within customs (EC Regular Report 2000, 78-79). Furthermore, the positive measures were considered to be “undermined by corruption in the Romanian customs service” and corruption was still assessed as a serious recurrent problem, a problem that the Romanian Government should continue treating as a priority (EC Regular Report 2000, 75).

In 2001, the EC noted that limited progress was made in response to the recommendations and criticisms in the previous report and particularly in reducing the level of corruption in customs. Nonetheless, two changes were noted. The first instance of progress was the creation, in October 2000, of the National School of Public Finance and, in early 2001, of the Internal Control and Audit Division. Secondly, in an attempt to prevent and reduce corruption, cooperation protocols were established with other institutions that had border-related competencies, such as the border police, the national police, and the financial guard (EC Regular Report 2001, 91). This was an issue that had been highlighted by the EC in its previous Regular Reports and that was considered an important step towards increasing the efficiency of all border activities. Despite these positive developments, the EC’s conclusion was that “substantial efforts are still needed to fight fraud and corruption” within the Romanian customs sector (EC Regular Report 2001, 107). Additionally, the Regular Report noted that the short term priority of reforming and combating corruption within the customs sector was still yet to be completely fulfilled by Romania.

In the following year, corruption within Romanian customs was again an issue underscored by the EC in its annual evaluation report of Romania’s preparedness for accession. The EC recognized the positive developments that took place from 2001,
particularly the elaboration and adoption of the *Action Programme Against Corruption in the Customs Administration* and the *Sector Action Plan Against Corruption*, both part of the *National Action Plan Against Corruption*. In addition, at the beginning of 2002 the *Code of Conduct and Discipline of the Customs Staff* was adopted that responded to the EU requirements in that area (EC *Regular Report* 2002, 110). Moreover, cooperation with other domestic institutions responsible for border control continued in 2002 and new protocols of border cooperation were signed with customs agencies from neighboring countries (i.e., Bulgaria, the Federal Republic of Yugoslavia, the Republic of Moldova and Ukraine). Despite the positive developments made in aligning the Romanian customs legislation with the *acquis* and in achieving a good level of harmonization in this field of legislation, the EC underscored the need for further improvements of administrative capacity, the training offered to customs officers, and the uniform implementation of customs procedures and regulations. The continuous reliance on “on-the-job” training for customs personnel, the use of non-professionals to provide that training, and the little progress made in curbing corruption within this sector were all strongly criticized (EC *Regular Report* 2002, 115).

The consistent EC criticism appeared to have led to the adoption of new measures designed to increase the administrative and operational capacity within the customs sector and to tackle corruption. Thus, the *Regular Report* noted the creation, in July 2003, of the National Control Authority responsible for the coordination of a series of services within the customs administration; the undertaking of surveys to assess the level of corruption among customs personnel and the factors that lead to corruption, the adoption of a “policy of education and prevention for customs personnel”, and the organization of
a public awareness campaign (EC Regular Report 2003, 108). Two other positive developments were the introduction of the policy of rotating customs personnel and the establishment of consultative committees between customs administration and professional and employers’ associations in order to increase transparency and dialogue. In a similar effort to increase transparency and also to reduce bureaucratic discretion, measures were taken to modernize border control equipment.

Despite those positive developments, the EC highlighted in its report several important and recurrent problems and recommended the adoption of urgent measures to solve them. One of those problems was represented by corruption and, despite the assessment that Romania generally met “the commitments and requirements arising from accession negotiations in this field”, the EC recommended that additional efforts should be made to “develop customs ethics and combat corruption” (EC Regular Report 2003, 109). Two other serious problems regarded the limited progress in the “legal approximation in customs co-operation” and in the cooperation in practice between the customs administration and other institutions such as border police, financial guard, and the economic branch of the police specialized in tax crimes (EC Regular Report 2003, 107).

Beginning with 2004, the EC started focusing more on the issue of corruption in customs, a fact that coincided with the increased pressure on the Romanian Government to produce visible results in curbing corruption also in the judiciary. Thus, in 2004, corruption was assessed as being a “major problem” that was difficult to tackle due in part to the limited cooperation between the National Customs Authority and the organized trade associations and traders. The lack of professional induction and
management training for customs personnel and the absence of effective in-house training were considered as negatively affecting the implementation of customs rules and procedures and undermining the efforts to reduce corruption (EC Regular Report 2004, 131-132). The EC also noted the positive steps taken to tackle corruption, such as the adoption of a new Customs Officers Statute that replaced the old one in effect since 1998. In addition to rules on grades, functions, rights, obligations, and incompatibilities, the new Statute also contained several provisions addressing specifically the issue of corruption (EC Regular Report 2004, 130). Another positive development in the fight against corruption was the establishment of a hotline for the public to report corruption cases and the appointment of an external anticorruption counselor, for a limited period of two years, attached to the Prime Minister and responsible for advising on issues of anticorruption strategies within customs administration (EC Regular Report 2004, 131). However, the EC concluded that the Romanian authorities still had to show real progress in fighting corruption and that more efforts were necessary in order to effectively address corruption.

A year later, the limited success in fighting corruption was again highlighted in the EC Regular Report. More specifically, it was noted that despite the adoption in April 2005 of a new anticorruption strategy for the customs sector, “the practical inter-agency cooperation needs to become a daily reality” and enforcement of anticorruption measures are “needed urgently” (EC Regular Report 2005, 70). In addition, several other issues were considered to be major priorities, such as “plans to redeploy staff after accession, rationalizing the training approach and channels, and the full use of the School for Public Finance facilities” (EC Regular Report 2005, 72). The latter problem was once again
prompted by the limited specialized training available to customs officers, particularly in-housetraining, a recurrent problem in the Romanian customs sector. Nonetheless, progress was made in preparing the customs sector for the accession, particularly with regard to the uniform and consistent application of customs procedures, the alignment of Romanian legislation with the EU customs legislation, and the increased number of control and disciplinary measures for individual customs officers. While not enough to lead to a more positive evaluation, the steps forward were considered to be signs of political commitment to curb corruption within customs (EC Regular Report 2005, 72-73).

About half a year later, in May 2006, the EC evaluations revealed that “Romania has made significant progress on strengthening its administrative and operational capacity” and that it “generally meets the commitment and requirements arising from the accession negotiations in the area of customs” (EC Regular Report May 2006, 37). Corruption was assessed as a problem that was more aggressively and effectively addressed by the Romanian authorities. Thus, progress was noted in developing simplified procedures, increasing usage of IT services for clearing operations, and in uncovering and sanctioning corrupt customs officers. Importantly, the EC mentioned the fact that business operators were reporting an improvement in the operations of the Romanian Customs Authority. Overall, the report offered a positive evaluation of the customs sector but it still recommended the maintenance of the fight against corruption as a “top priority” (EC Regular Report May 2006, 38). In the last monitoring report issued by the EC prior to Romania’s accession, the fight against corruption in customs was assessed as registering real progress. The evaluation was based on the increasing number
of checks conducted by the National Customs Authority as a result of public complaints and on the increased number of disciplinary sanctions for customs officers (41 disciplinary sanctions and one criminal investigation). Moreover, in September 2006, 30 customs officers were arrested as a result of a joint operation between the National Anticorruption Directorate (NAD), the Ministry of Administration and Interior, and the Customs Authority, which was interpreted as a progress in the inter-institutional cooperation responsible for fighting against corruption and a sign of real political will to curb corruption (EC Regular Report September 2006, 35).

3.4. Public Procurement

The public procurement sector was consistently evaluated as part of the Romania’s alignment with the acquis regarding the European Union’s internal market as defined in the Article 7a of the European Treaty (i.e., Maastricht Treaty). According to that article, the internal market is “an area without internal frontiers in which the free movements of goods, persons, services and capital is ensured” (EC Regular Report 1998, 22). In order to align with the EU’s internal market, Romania had to ensure that it had an open-market economy that could sustain the EU competition and that was regulated by the common market principles. Public procurement was one aspect of the market economy that Romania had to adjust to EU legislation and procedures and in which corruption had to be addressed.

Until 2001, the EC focused its attention on evaluating the transposition of the acquis and the harmonization of Romania’s legislation in the public procurement sector with European legislation in this area. Previous reports mentioned the incompatibilities
between Romanian public procurement legislation and the European counterpart; the
national preference for awarding contracts; the cumbersome procedures regarding
contracting and ensuring that rules are applied (EC Agenda 2000 1997, 40); the lack of
adequate equipment and trained personnel (EC Regular Report 1998, 46); the lack of
central publication of tenders and registration; and the weak sanctions for non-
compliance with public procurement procedures (EC Regular Report 1999, 39 and 65). In
2000, the EC concluded that the short-term priority represented by the adoption and
implementation of public procurement legislation compatible with the European
legislation was achieved only to a “very limited extent” (EC Regular Report 2000, 39).
Nevertheless, corruption was not mentioned as a problem affecting particularly this sector
and consequently, there was no specific pressure exercised on the Romanian authorities
to address it.

The situation changed slightly in 2001, when the EC noted that an important step
forward in fighting corruption was represented by the adoption, in April 2001, of a
government ordinance that introduced new public procurement procedures and
established “the right to appeal against the award of public contracts” (EC Regular
Report 2001, 22). However, that was the sole mention of corruption in association with
public procurement, although the implication was that the major problems identified by
the EC in previous years were conducive to corruption in that sector and that by
addressing them, corruption was also being tackled. Thus, in 2002, the EC assessment
concluded that Romania had made progress in fighting corruption including in the public
procurement sector by “developing public procurement through electronic tenders” (EC
Regular Report 2002, 26). In 2003, the EC Regular Report focused mainly on the
transposition of the public procurement *acquis*, the level of actual implementation of the adopted legislation in this area, the administration of public procurement sector, and the development and functioning of electronic procurement.

The next year, in 2004, in addition to the problems identified in the previous reports with regard to the transposition of the *acquis* and the functioning of the public procurement sector, the EC noted a series of troublesome governmental *ad hoc* decisions derogating from the Romanian public procurement rules and procedures. The issue was particularly serious due to the value of the contracts awarded by the government without public tender. Such cases included the awarding of a contract of €2.242 billion for the construction of the Borș-Cluj-Brasov motorway, the awarding of a contract of €650 million for an integrated border surveillance system, and other contracts worth up to €2.023 billion in aggregate that were being negotiated at the time of the EC evaluation. Those *ad hoc* decisions led the EC to seriously question Romania’s commitment to implement and enforce open and transparent procurement rules (EC *Regular Report* 2004, 54). The concern was expressed again in 2005, when the EC concluded that “[U]nless legislation is fully aligned, coherent and implemented correctly, there is a serious risk that Romania would not have a functioning public procurement system in place in time” for the accession (EC *Regular Report* 2005, 33).

In 2006, the year prior to Romania’s accession to the EU, the EC noted that important efforts were made to align the legislation with the *acquis* in this area and to prepare this sector for integration. Thus, the conclusion of the 2006 *Regular Reports* (both in May and October) was that Romanian public procurement legislation was aligned with the *acquis* and that the country was prepared for the accession in that area.
Corruption in public procurement was no longer mentioned as being a problem in that sector *per se*, although corruption in Romania was still assessed as being widespread.

3.5. Health Care

The EU role in reforming and curbing corruption in the Romanian health care sector was significantly limited by the lack of a common European health care policy. According to the Treaty of the European Union, health care is the sole responsibility of member states and the EU does not play any role in regulating national health services. However, the same treaty specifies that the EU’s internal market includes the free movements of people, goods, and services and many of these activities (e.g., drugs, health professionals) are subject to the European Union law of competition or free movements (McKee 2004, McKee and Mossialos 2006). The result is a paradoxical situation where the delivery of health care is left to the discretion of the national states, but certain aspects of health care policy are subject to the EU legislation. However, the lack of a common health policy meant that there was little pressure on the candidate countries to make progress in reforming and improving the health care sector, and even less pressure to curb corruption in this sector.

Due to the absence of a unified EU health policy, it is not surprising that the EC evaluations of the Romanian health care sector were brief and limited to tracing the efforts to reform the system by decentralization, introduction and implementation of the Social Health Insurance System in 1999 (EC Regular Report 1999), and the adoption of the measures necessary for the introduction of the European Health Insurance Card as from the date of accession (EC Regular Report 2004). An important part of the brief
evaluation of the health care sector was to summarize the recurrent problems in the system, such as the precarious situation of the health system; the small budget allocated to the health care sector (which was much smaller compared to other EU countries); the poor quality of health services; the problems with access to health care of poor and minorities; and the need for the development of a coherent reform plan. Most of these problems were repeated in every EC Regular Report from 1997 until 2006 inclusive. Corruption was mentioned for the first time in the health care sector only in May 2006, when the EC concluded that petty corruption was a concern in that sector (EC Regular Report May 2006, 9). In the last EC report issued in September 2006, health care sector was once again mentioned as “particularly vulnerable” to corruption (EC Regular Report September 2006, 35). The major recommendations were to increase the efforts necessary to improve the health status of the population, the access to health care services, and transparency in the health system (EC Regular Report September 2006, 29). However, in order to achieve those goals, the Romanian Government would have to focus also on fighting corruption in health care sector.

3.6. European Union Pressure and Written Media Coverage

In addition to evaluating the data from official European and Romanian documents and studies, the EU pressure on Romanian Government is measured by monitoring the frequency of newspaper articles that address the issue of corruption in relation to Romania’s integration to the EU, the statements made by EU officials regarding the problem of corruption in Romania, and the articles focusing on corruption as an impediment to accession. From 1997 until 2006, a total of 296 articles covering EU
pressure were published in the three major newspapers. The data from newspapers shows a significant increase in the EU pressure in 2004 (see Figure 2 below), the year that Romania finalized the accession negotiations with the EU. That year was the one that brought the most severe criticisms from the European Parliament, criticisms that led to the elaboration by the European Commission of a new strategy for Romania’s preparation for accession. The year 2004 was crucial for Romania because it represented the necessary step towards EU membership in 2007. A failure to finalize the accession negotiations in December 2004 would have resulted in the automatic postponement of accession date.

In 2005, there was a decrease in the coverage of EU pressure in the newspapers, although the number of articles focusing on corruption in relation to Romania’s accession process continued to be higher than in the previous years. There are at least three explanations for the decline in the newspaper coverage in 2005 and 2006. First was the change in leadership as a result of the 2004 November national election which, at least rhetorically, was highly committed to ensure the country’s timely accession and to produce visible results in the fight against corruption. One such leader was particularly welcomed by the EU due to her previous anticorruption activity which won her international recognition. That leader was Monica Macovei who became the Minister of Justice in January 2005 and was highly praised by EU officials for her determination to establish the rule of law and fight corruption, particularly high-level corruption. A second explanation was the decrease, particularly in the second half of 2006, of EU officials’ statements regarding corruption in Romania. The May 2006 EC Regular Report concluded that there was a visible increase in the political will to fight corruption in
Romania, a conclusion that led to the change in the color of the flags (from red to yellow) raised in the previous report for the judiciary and anticorruption areas. Although, as indicated by a number of interviewees, the change in the EC assessment was based mostly on the promise of fighting corruption and the appearance of political will and less on the actual results in curbing corruption, the improved assessment of the country’s preparedness for accession appears to have affected both EU officials’ statements and their coverage in Romanian newspapers. The third explanation is based on the media’s propensity towards sensationalism. While corruption is always likely to attract many readers, positive stories are not so interesting for the newspaper editors and a change in the tone of EU officials’ statements might not have made for very interesting stories.

Figure 2

Presentation of the EU Pressure in Romanian Newspapers
Nonetheless, the evaluation of media coverage of EU pressure from 1997 until 2006 inclusive shows an increase in the EU pressure beginning with 2004. Thus, the closer the scheduled date for Romania’s accession, the higher the pressure to ensure the country’s preparedness for integration. The data clearly indicate the significant increase in 2004 of the EU pressure, an increase indicated also by the evaluation of the European documents regarding Romania’s preparation for EU membership. Furthermore, the EU pressure continued to be much higher throughout 2005 and 2006 compared to the previous years, which clearly indicates that the higher the significance the EU gave to corruption and the closer the accession date, the higher the pressure on the Romanian government to effectively address corruption.

4. EU Pressure and Romanian Political Will

This section analyzes the impact of EU pressure on the Romanian government and, more specifically, on the domestic political will to fight corruption. According to the theoretical model, the external pressure exercised throughout the decade prior to Romania’s accession to the EU should lead to an increase in the political will to effectively address corruption. Political will is analyzed by assessing: 1) the analytical rigor in diagnosing corruption, 2) the inclusion and cooperation of main stakeholders, 3) the anticorruption reforms adopted because of the EU pressure, 4) the creation of an objective monitoring system, 5) the statements made by political parties and political elites regarding the fight against corruption publicized in the major newspapers, and 6) the use of corruption as a campaign issue during the 2000 and 2004 national elections.
4.1. The Analytical Rigor in Diagnosing Corruption

A first indicator of real political will is represented by the thoroughness with which the government assessed the problem of corruption, its effects, the factors that sustain it, the institutions more vulnerable to corruption, and the potential solutions for effectively curbing corruption. Such assessments include a comprehensive diagnosis of corruption and an evaluation of the effectiveness of the anticorruption strategies at the national level. Additionally, assessments of corruption were conducted at the sectoral level, specifically in the judiciary and customs.

One such instance of political will manifested itself in 2000 three years after President Emil Constantinescu declared the war on corruption. From the first evaluation of Romania’s preparedness for accession, the EC noted the absence of an anticorruption law in Romania and consistently requested the adoption of such a law as well as the development of a coherent national anticorruption strategy. In order to be able to develop a comprehensive and effective anticorruption strategy, the first step required a complete assessment of the problem. Therefore, in 2000, the Romanian Government commissioned the World Bank to conduct a comprehensive Diagnostic Survey of Corruption in Romania, the first such assessment since 1990. The study provided information on both perceptions of the level of corruption and experiences with corruption, and concluded that corruption was perceived to be widespread in the country with half of the households declaring that it was part of their everyday life (World Bank 2000, 20). The customs sector was ranked as the most corrupt sector in the country followed closely by the judiciary. The health care sector was ranked the fifth most corrupt sector, after the State Property Fund and Parliament (see Figure 3 below).
The Perceived Level of Corruption in Customs, Judiciary, and Health Care Sectors (2000)


The study also included a series of strategies designed to reduce corruption and create an independent and accountable judicial system. Moreover, the survey asked respondents to evaluate their support for various anticorruption reforms. Enterprises and households favored the adoption and implementation of severe anticorruption laws (particularly those that would severely sanction corrupt officials), as well as reforms that would increase ethics education in schools and the transparency and effectiveness of public administration. The study found that public officials also supported the strengthening of public administration, as well as more severe punishments for bribe takers and bribe givers, increases in salary for public servants, the creation of a merit-
based promotion system, improvements of judicial activity, and increased transparency (World Bank 2000, 30-31). The World Bank study served as the foundation for drafting the first National Anticorruption Strategy (NACS I), applicable for 2001-2004.

Since public procurement is a sector relatively new in Romania and less visible to the general public, questions regarding the problem of corruption in this sector were not included in the surveys administered by the World Bank. Although corruption in public procurement has significant implications for the economy due to the way it distorts the way the public contracts are assigned, which in turn affects the quality of the services or products provided as a result of the corrupt transaction, it is not perceived as having a similar direct impact on peoples’ lives as the other three sectors. Hence, it is not surprising that evaluations of corruption in public procurement are not a priority for the Romanian government.

A similar instance of political will in response to the EU pressure manifested in 2005, when the government commissioned the Freedom House to assess the implementation and effectiveness of the NACS I. According to the Minister of Justice Macovei, the Freedom House Audit was specifically requested by the EU in order to identify the exact problems with the anticorruption strategy and its implementation and to identify the reasons for the lack of real progress in curbing corruption (Evenimentul Zilei, 11 February 2005). The report concluded that, despite of the inclusion in the NACS I of the suggestions made by the World Bank, its success was very limited, the strategy failing for the most part to achieve its proposed goals (Freedom House 2005, 18-20). Despite consistent requests from the EU to address the high level of corruption, specifically corruption at the political level, the primary focus of the NACS I was on
curbing petty corruption. Furthermore, the NACS I was perceived to be a “compilation of good intentions and thoughts without any prioritization...something without a beginning or an end” (Interview, L.Ștefan, Ministry of Justice, January 12, 2007).45 The same opinion was shared by representatives of civil society organizations, who characterized it as lacking clear objectives, effective monitoring instruments and necessary budgets for efficient implementation (Interview, NGO Representative 2, January 10, 2007). The findings and suggestions of the Freedom House report were incorporated into the second National Anticorruption Strategy (NACS II), applicable for the period 2005-2007. As such, the NACS II was better designed in terms of clear objectives, institutions responsible for the implementation of each objective, clear deadlines, budget, and monitoring criteria.

Also in response to the external pressure exercised by the EU, beginning with 2005, the Ministry of Justice commissioned Transparency International Romania (TI Romania) to conduct annual surveys of magistrates’ perception of judicial independence and the problems that affect it. According to the EU, the low but “sadly justified” level of public trust in the judiciary was mainly the result of corruption within the judicial system (European Parliament 2004, 11). In 2005, only 8.7 percent of magistrates considered corruption as having a negative impact on judicial independence. Moreover, they considered corruption to be the result of low salaries in the judicial system (TI Romania 2005, 9). However, as the 2006 TI Romania report also showed, magistrates did not perceive corruption as being a problem in the judicial system. Corruption as a major problem in the judiciary was considered to have been created artificially for political

45 Laura Stefan was the Director of the Department for Relations with the Public Ministry, Prevention of Criminality and Corruption within the Ministry of Justice. She resigned from her public office position after the Minister of Justice Macovei was forced to resign in May 2007.
reasons and to have been used by the executive to justify the problems in the system, problems due mainly to the lack of funds and personnel. The increase of magistrates’ salaries was considered to be the key to solving corruption because it would reduce the temptations of accepting bribes (Interview Magistrate Professional Organization, March 26 2007).

However, the perception of corruption as not being an important problem in the judiciary contradicted Minister Macovei’s assessment of the major issues affecting the independence and effectiveness of the judiciary. The Ministry’s position from 2005 until spring 2007 (while Macovei was Minister of Justice) was that corruption was a major problem in the judiciary that should be addressed more effectively. That approach led to severe disagreements between the Ministry of Justice and the Superior Council of the Magistracy, the guarantor of judicial independence in Romania. The latter claimed that corruption was a problem in the judiciary only because the Minister of Justice claimed it to be (Interview, L. Ștefan, Ministry of Justice, January 12, 2007). The anticorruption campaign launched by the Ministry of Justice in 2006 that targeted corruption in the judiciary only increased the tension in the relationship between the two institutions. TI Romania continued to monitor the magistrates’ perception of judicial independence and of the factors affecting it after Romania’s accession to the EU. Thus, in 2007, the study found that magistrates acknowledged the existence of corruption in the judiciary and that too little was being done to effectively address it. Moreover, magistrates expressed support for more severe sanctions against their corrupt colleagues, specifically their exclusion from magistracy, in order to improve the image of their institution (TI Romania 2007, 15).
EU pressure on the Romanian Government to curb corruption in customs sector led to a similar instance of political will. In 2006, the Romanian Customs National Authority (CNA) in collaboration with the British Embassy in Bucharest commissioned a survey of perceptions of corruption in customs sector. The survey assessed representatives of companies and customs officers’ perception of the factors affecting the effectiveness of customs activities, including corruption and one of its forms, unofficial payments. The study found that the companies perceived an improvement in the functioning of customs activity and a reduction in corruption in customs. Thus, only 29 percent of respondents’ perceived corruption in customs to be a serious or very serious problem in 2006 in contrast to 60 percent in 2004 (CIAD 2006a, 46). The customs officers’ perception was similar to that of the magistrates, namely that corruption was not a major problem in their sector. The results of those surveys were interpreted by the leaders of the CNA as a clear indicator of the success in fighting corruption in customs administration.

4.2. Inclusion of Main Stakeholders in the Policy Making Process

In 2001, FOIA was adopted as a result of the cooperation between government, opposition parties (specifically, the National Liberal Party), and civil society organizations. That marked the first real collaboration between government and non-governmental actors since 1990, considered to be an “atypical collaboration” (Interview Anticorruption expert 2, May 20, 2007). The adoption of FOIA was largely in response to the external pressure exercised by the EU, which was consistently requesting the regulation of the public’s access to information. In addition to the EC recommendations
for the adoption of such legislation, in July 2001, the European Parliament recommended that the Romanian government adopt a freedom of information act and open and support social dialogue (European Parliament 2004, 11). Seven months later, FOIA was adopted by the Romanian Parliament. In addition to the external pressure exercised by the EU, Romania also experienced pressure from the North Atlantic Treaty Organization (NATO). When Romania was not included in the first wave of NATO enlargement in 1999 despite supporting the war in Yugoslavia, the absence of the legislation regarding the access to information and classified information was considered to be one of the reasons for the decision (Interview Anticorruption expert 1, April 12, 2007).

In 2003, also in response to the EU pressure, the Romanian CNA established consultative committees composed of representatives of customs administration and of professional and employers’ associations (EC Regular Report 2003, 208). The activity of these committees was considered to be progress in the establishment of a dialogue between the customs administration and the professional associations. Nonetheless, in 2006, an evaluation study of the functioning of the customs sector found that there was still room for improvements in the openness of the dialogue and the collaboration between the parties involved in these committees (CIAD 2006b, 1).

Another example of political will came in 2005 when Minister Macovei initiated a close collaboration with the main stakeholders in the system (i.e., judges, prosecutors, their professional associations, and civil society organizations). Macovei was one of the founders of TI Romania and a renowned anticorruption expert within the EU. While it is undeniable that EU pressure increased significantly in 2004, it is also important to note Macovei’s commitment and “unhierarchical approach” to reform and the fight against
corruption (Pridham 2007, 541). Her commitment led to the close collaboration between
the Ministry of Justice and the main stakeholders in the system, particularly in the first
half of 2005, a collaboration that translated into the drafting of a legislative proposal
designed to further improve the process of judicial reform and reduce corruption. The
Constitutional Court's determination in early July 2005 that four of the articles included
in the bill were unconstitutional is considered to have triggered a change in Macovei's
attitude that led to a decrease of cooperation with non-governmental actors for her
remaining time in office (SoJust 2006, 27). Nonetheless, the EU role in that specific
instance was manifested mostly as support for the demonstrated domestic political will,
and less as pressure.\textsuperscript{46}

In 2005, another example of collaboration between government and professional
and civil society organizations can be found. The dialogue and cooperation between the
two parties led to the adoption of new public procurement legislation the following year
that introduced more objective and transparent criteria for the acquisition of advertising
space for public institutions and the granting of non-repayable funds to NGOs (Interview
Anticorruption expert 2, May 20, 2007). This instance of political will was noted by the
EC in the \textit{Regular Report} issued in October 2005 and was assessed as being a step
forward in the fight against corruption by increasing the transparency and effectiveness in
public procurement activities.

\textsuperscript{46} The overt EU support for Monica Macovei and her approach to fighting corruption was not well received by many officials in Romania, including Government, Parliament, and magistrates, a fact that was expressed by several magistrates during interviews and reflected in the mass media. Furthermore, in Spring 2007, the Parliament withdrew its support for the Minister of Justice and she was forced to resign.
4.3. Adoption of Anticorruption Reforms

A very important indicator of political will is represented by the adoption of anticorruption reforms and, specifically, of anticorruption reforms whose implementation leads to a reduction of corruption. This section summarizes the main anticorruption reforms adopted in response to EU pressure in the decade prior to Romania’s accession, whereas the impact of the reforms will be addressed in the sectoral chapters.

The first example of political will was the adoption in 2000 of the Law on Preventing, Detecting, and Punishing Acts of Corruption (Law no. 78/2000). The adoption of an anticorruption law was one of the main priorities on President Emil Constantinescu’s agenda during the 1996 electoral campaign and in his first year in office. Nonetheless, it took almost three years and two EC Regular Reports that criticized the incompleteness of the Romanian legal basis in the anticorruption area for this law to be finally adopted by the Romanian Parliament. In 2000, the law was considered to be an important step forward in the fight against corruption, but two years later, the EC noted that the enforcement of the law was weak and no substantial results could be seen in fighting corruption (EC Regular Report 2002, 26-28). In October 2000, also in response to external criticism, the law establishing the creation of the National School of Public Finance was adopted. The school was designed to offer continuous and professional training to customs officers, a problem that was consistently highlighted by the EC in its monitoring reports.

NATO’s attention to freedom of information issues came with Romania’s effort to obtain NATO membership in the second wave of enlargement and buttressed EU attempt to compel Romania to adopt the FOIA. Although imperfect, the law was considered to be
an important tool in the fight against corruption, particularly for the watchdog NGOs and newspapers in their investigations and monitoring of various governmental activities (Freedom House 2005, 49). In 2001, in another manifestation of political will in response to EU pressure, the Internal Control and Audit Division (ICAD) was created in the customs sector. ICAD was charged with monitoring the implementation of customs reforms at the national level and address corruption in customs sector. However, until 2005, the role of the ICAD in fighting corruption was limited to responding to allegations of corruption in customs by investigating them and sending a report to the Discipline Committee in the NCA (Interview S. Puică, 47 May 24, 2007). Also in response to external pressure, new public procurement procedures were adopted and implemented, including the right to appeal against the award of public contracts (Government Ordinance no. 60/2001). Interestingly, although the new legislation was set to enter into force in December 2001, the legislation entered into force in April 2001, one day after the meeting between European Commissioner Gunther Verheugen and the Romanian Prime Minister Adrian Năstase (Interview Public Procurement Expert, April 17, 2007).

A year later and in response to consistent EU criticism of the lack of progress in curbing corruption and particularly in addressing high-level corruption, the National Anticorruption Prosecutor’s Office (NAPO) was created. The new institution was designed to specifically respond to the EU request to fight against high-level corruption but, as it will be shown later, it largely failed to achieve its proposed goals prior to accession. The same year, two important instances of political will took place in the customs sector. In 2002, the Code of Conduct and Discipline of the Customs Staff was

47 Ștefan Puică is the Director of the Internal Control and Audit Division within the National Customs Authority.
adopted and implemented, a novelty in the Romanian customs administration. The aim of the Code was to reduce the level of bureaucracy and corruption in customs sector and it clearly stipulated what constituted proper and improper professional and personal conduct, the acts that would generate or constitute corruption, and the penalties for engaging in such acts (Code of Conduct of the Customs Staff 2002, 1 and 6). In addition, the Action Programme Against Corruption and the Sector Action Plan Against Corruption as part of the National Plan Against Corruption were elaborated and adopted. Both plans were designed to more effectively target corruption in customs by focusing on the implementation of anticorruption strategies in customs, including the implementation of the newly adopted Code, the identification of the factors that favor or sustain corruption in customs, the continuous training of customs officers, and the creation of a mechanism to report corrupt activities within customs sector (Studiu Impact Pre-Aderare 2002, 78).

One of the problems that was constantly criticized by the EU was the absence of legislation regulating the declarations of income and assets and the conflict of interests for dignitaries and other public officials. In 2003, as part of the legislative package known as the Anticorruption Package (Law no. 161/2003), a provision addressing specifically those issues was adopted. This legislation annulled the secrecy provision enshrined in the Law no. 115/1996 and it made mandatory the publication of declarations of assets, income, and interests. That instance of political will was considered to be especially important, with long-term positive consequences for the fight against corruption.
As EU pressure intensified in 2004, the overt threats to suspend accession negotiations in the absence of visible results, particularly but not limited to reducing corruption and increasing the independence of the judiciary, gave the EU more leverage in its relationship with Romania. The most important example of the EU impact on political will was the adoption and implementation of a major legislation package of judicial reforms, known colloquially as the three-law package.\(^48\) The EU pressure was so significant that year that, at the specific request of the EP, the European Commission participated directly in drafting the judicial reform legislation package that would be adopted in July 2004 (Pridham 2007, 357). The unprecedented measure taken by the EC was part of the more interventionist approach developed specifically for Romania. Also in an attempt to show the EU that there was the necessary political commitment to fight corruption, it was adopted a new Customs Officers Statute that replaced the one adopted in 1998. An important difference between the two Statutes was the inclusion in the 2004 version of several specific provisions addressing corruption in customs.

The pressure on Romania to comply with the EU requirements and to produce results in the fight against corruption continued in 2005 and was reflected in the increase in the number of instances of political will. One such instance was the adoption of NACS II that took into consideration the results of the Freedom House Audit of the NACS I. In addition to the general anticorruption strategy, the *Action Plan for Implementing the Reform Strategy in the Judicial System 2005-2007*, the *Anticorruption Strategy of the National Customs Authority 2005-2007*, and the *Reform Strategy of the Public Procurement System 2005-2007* were adopted. The three sectoral anticorruption

strategies were designed to demonstrate the EU the existence of political will to address corruption and fulfill EU requirements as scheduled. Furthermore, the new public procurement legislation adopted in May 2005 was supplemented by the establishment, in July, of the National Authority for Regulating and Monitoring Public Procurement (NARMPP) and the Review Council. The former, which began functioning that fall, was created in response to the criticism that there was ineffective central monitoring of public procurement activity, while the latter addressed the lack of an effective ex-ante review process. Perhaps the most important instance of political will was the transformation in fall 2005 of the National Anticorruption Prosecutor’s Office into the National Anticorruption Directorate, a change that increased the jurisdiction of NAPO\textsuperscript{49} to cases of high corruption.

In 2006, the impact of the external pressure and the possibility of missing the January 1\textsuperscript{st}, 2007 accession resulted in two other important instances of political will. The first such instance was in March 2006, when the jurisdiction of NAPO was extended to Members of Parliament (MPs), reversing the Constitutional Court’s decision from the previous year. According to that decision, only the Prosecutor’s Office attached to the High Court of Cassation and Justice could investigate and prosecute MPs. Thus, in spring 2006, NAPO was legally authorized to investigate and prosecute high-level cases of corruption involving MPs. Another important act of political will that spring was the adoption in April of the new Public Procurement Act through a Governmental Emergency Ordinance (OUG no. 34/2006). That same spring it was created the National Council for Resolving Contestations (NCRC) in public procurement sector, an institution

\textsuperscript{49} Although NAPO became NAD in Fall 2005, for the sake of consistency will be referred as NAPO throughout this study.
that the EU demanded to be created for years. The NCSA began functioning in January 2007, after Romania was already an EU member, but the adoption of the legislation stipulating the creation of such an institution along with the Government Decision no. 942/July 2006 establishing the Unit for Coordination and Verification of Public Procurement (UCVPP), was interpreted by the EU as being an indicator of real commitment to comply with the European public procurement procedures and regulations.

4.4. The Creation of a Monitoring System

Another indicator of political will is represented by the creation of a transparent monitoring system which evaluates the implementation and effectiveness of anticorruption strategies, publicizes the results, and identifies solutions for the potential problems uncovered during the evaluation process. The first such example of a monitoring system was represented by the creation in 2001 of the National Committee for the Prevention of Criminality (NCPC) responsible for the elaboration, integration, and monitoring of government’s policy for prevention of criminality at the national level (NACS I 2001, 3). Within the NCPC, a Central Group for the Analysis and Coordination of the Corruption Prevention Activities (CGACCPA) was created to ensure the implementation and monitoring of NACS I. The CGACCPA was composed of “experts from institutions with duties in the prevention and social control of corruption, and also representatives of the civil society, of the non-governmental organizations and international bodies” (NACS I 2001, 17). The monitoring activity conducted by the CGACCPA was considered to be deficient due to the constant transfer of de facto
responsibilities from NCPC to the Control Group of the government. The latter became the Control Group of the Prime Minister, only to be dismantled in 2004 after the responsibility for monitoring the implementation of NACS I was transferred to the Ministry of Justice (Ministry of Justice, *Raport de Activitate* 2004, 10). In addition, the format of reporting the progress made in the implementation of anticorruption strategies changed several times, thereby decreasing the possibility of comparing the results for the entire period of the NACS I (Freedom House 2005, 153).

An attempt to make the monitoring system more efficient was made in May 2003 when at the initiative of the Ministry of Justice, the body assigned the responsibility of enforcing the anticorruption measures, an electronic reporting format and data base named “Integrated Weekly Progress Reports” (IWPR) was created. The new data base was designed to gather information from 31 public institutions and to assist “the identification of practical results on corruption prevention as well as the monitoring of these results through measurable indicators” (Freedom House 2005, 153). However, once again, the system failed to achieve its proposed goals. First, the requirement of filling out weekly reports led to superficial and incomplete reports, which contained mostly general information and no reference to specific results. Second, many institutions failed to send the required weekly progress reports, which made the monitoring process incomplete and ineffective. And third, the progress reports were not available to the public (Freedom House 2005, 153-154).

In 2001, the Internal Control and Audit Division (ICAD), responsible for monitoring the implementation of reform measures and anticorruption strategies, was also created. As previously mentioned, ICAD began to be more actively involved in
monitoring the implementation of anticorruption strategies and in uncovering corrupt activities in 2005, after a year of increased pressure from the EU to produce visible results in reducing the levels of corruption. Thus, in 2005 territorial divisions responsible for offering a closer monitoring of anticorruption strategies were also created. The territorial divisions were considered to be an important step in increasing the effectiveness of ICAD and the implementation of anticorruption strategies in the customs sector (Interview S. Puică, May 24, 2007).

The increased EU criticism in 2004 and 2005 regarding the lack of progress in curbing corruption also led to the elaboration of a new monitoring system designed to assess the implementation of the NACS II. The monitoring system attempted to remedy the deficiencies identified by the Freedom House in the functioning of the previous system responsible for evaluating the implementation of NACS I. Thus, it was created a Council for the Coordination of the Implementation of the NACSII (CCI) composed of twelve representatives of public institutions organized under the authority of the Prime Minister and coordinated by the Minister of Justice (NACS II 2005, 9). As a change from previous years, a government Decision (HG no. 233/2005) stipulated that the quarterly meetings of the CCI were open to the representatives of civil society and foreign advisors in the area of corruption. In addition, a Technical Working Group (TWG) was formed with responsibility for monitoring the implementation of anticorruption strategies in the judiciary. The TWG was composed of representatives of the major institutions in the judicial system and it prepared monthly reports regarding the implementation of the anticorruption strategy in the judicial system, reports that were made available to the public. At the sectoral level, in July 2005 the National Authority for Regulating and
Monitoring Public Procurement (NARMPP)\textsuperscript{50}, responsible for ensuring a more efficient central monitoring of the activity in public procurement, was established.

4.5. The Statements Made by Romanian Elites Regarding the Fight against Corruption and the Use of Corruption as a Campaign Issue

These two indicators of political will assess the presentation in the written media of the declared political will to fight corruption. The evaluation of newspaper articles published between 1997 and 2006 inclusive and covering the politicians' statements regarding the fight against corruption and the presence of corruption on the politicians' electoral agendas indicates an increase in the media coverage of declared political will in the year following a national election (see Figure 4). That is, there is an increase in the number of articles on the statements regarding the fight against corruption in 1997, 2001 and 2005. While the increase in the number of articles presenting the politicians' statements about the fight against corruption in 2005 may have been in part a response to the EU pressure, there is nothing particularly different from 1997 or 2001 when the same pattern is visible. What the data show is an increase in the use of corruption as a campaign issue in 2004 compared to 2000, which indicates an increase in the significance of corruption on candidates' electoral agendas. The latter can be explained by the increase in the significance of corruption articulated by the EU and the increased external pressure exercised throughout 2004. The increase in the use of corruption as a campaign issue is especially important given the fact that the official election campaign in Romania begins 30 days prior to the national election date. Hence, the articles covering the use of

\textsuperscript{50} A detailed analysis of NARMPP and its activity is presented in Chapter VII, \textit{Public procurement: Fighting Corruption in a Newly Designed Sector}. 

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corruption as a campaign issue were published over a very short period of time. Nonetheless, the data from newspapers regarding the two indicators of political will do not show a significant increase in politicians’ rhetoric in response to the EU pressure in 2005 or 2006.

Figure 4

Presentation of Rhetorical Political Will in Romanian Newspapers

It is interesting to note the fact that the number of statements about fighting corruption was at its highest in 2002, a year when the EU pressure was less intense compared to 2004 and when there was no national election. But in 2002 the EU issued the Roadmaps for Romania and Bulgaria, document that emphasized the importance of curbing corruption and the fact that anticorruption strategies would be closely monitored.
for the remaining pre-accession period. In addition, 2002 was marked by tensions between President Ion Iliescu and Prime Minister Adrian Năstase with regard to the fight against corruption, which led to a series of articles presenting the exchange of statements regarding the two leaders’ visions and strategies to tackle corruption. Also in 2002, the legislation regarding the establishment of NAPO was developed and adopted, a legislative project that led to important disagreements between the governing coalition and the opposition parties with regard to the necessity of such an institution and the jurisdiction that NAPO would have if created. The result was an overall increase in the number of politicians’ statements regarding the fight against corruption and the strategies that would be utilized.

While the qualitative analysis is less conclusive with regard to the impact of the EU pressure on the rhetorical political will, the statistical analysis offers a more definitive conclusion. Thus, the Spearman rank correlation\textsuperscript{51} test revealed that the EU pressure is positively correlated with rhetorical political will, $r(40)= 0.342$, $p= 0.015$ (1-sided). Furthermore, the results confirmed the existence of a very significant relationship between the two variables, an increase in the number of newspaper articles that address the issue of corruption in relation to Romania’s integration to the EU being associated with an increase in the number of articles presenting statements made by policy-makers with regard to combating corruption. Hence, the impact of the EU pressure on rhetorical political will was both qualitatively and statistically significant during the decade prior to the country’s accession. Although less evident in the graphic representation of the qualitative data, the correlational analysis confirmed the existence of a statistically

\textsuperscript{51} Because count data do not conform to a normal distribution, a nonparametric Spearman rank correlation was used to evaluate the association between the two variables. For this test, the 10 year time span was divided into 40 quarters (4 per year) and the number of newspapers was aggregated quarterly.
significant relationship between EU pressure and political will. Furthermore, a one-way ANOVA test was run in order to determine if the EU pressure had significantly increased after 2004 and the results confirmed the existence of a statistically significant increase in the EU pressure, $F(1,38) = 21.514, p < 0.000$. The graphic presentation of the ANOVA test result is presented in Figure 5.

![Figure 5](image)

The Change in the EU Pressure

Because EU Pressure is a discrete variable, in the previous ANOVA test the assumptions of normality and homogeneity were violated, a fact confirmed by the Levene

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52 An F-value is a statistic used to determine whether the differences between the mean scores of two or more levels of the same variable are notably different from each other. The time variable was created by assigning the value of zero for the years prior to 2004 and the value of 1 for the years beginning with 2004.
statistic test of homogeneity of variances and the P-P plot of EU Pressure distribution. Consequently, a confirmatory rank ANOVA test was conducted and the results confirmed those obtained in the previous test, i.e., $F(1, 38) = 24.120$, $p < 0.0001$ (see Figure 6). Hence, the EU pressure not only increased as the deadline for Romania’s accession approached, but its impact on political will had become qualitatively and statistically significant.

Figure 6

The Change in the EU Pressure (with rank one-way ANOVA)

5. Conclusion

This chapter has demonstrated the impact of EU pressure on the political will of the Romanian leadership in the decade prior to the country’s accession. As hypothesized,
an increase in the significance of corruption for the EU resulted in an increased domestic political commitment to fight corruption, a change that was particularly visible in the last three years of the pre-accession period. The EU pressure was at its highest level in 2004, a fact evidenced by the data from EU documents and Romanian newspaper coverage. Although EU pressure decreased in intensity in the ensuing two years (2005 and 2006), it remained at much higher levels compared to the pre-2004 period. The impact of the EU pressure on the demonstrated political will is graphically presented in Figure 7, which shows an important increase in the instances of demonstrated political will in 2005.

Figure 7

Number of Instances of Demonstrated Political Will under EU Pressure

![Bar chart showing number of instances of demonstrated political will per year. The highest number is in 2005.]

53 To measure the demonstrated political will per year, the total number of instances of political will that manifested each year as measured by the four indicators of demonstrated political will (see pages 146-161) were summed together and the resulting numbers were then graphed to show the changes that occurred over time.
A comparison of the demonstrated and rhetorical political will (see Figure 8) shows a significant, although not unexpected, discrepancy between the two components of political will. As anticipated, rhetorical political will is constantly higher than the demonstrated counterpart indicating that it is easier to make statements and promises than to translate them into practice. Nonetheless, beginning with 2003 the trends of rhetorical and demonstrated political will follow a similar pattern, which is particularly visible in 2005 and 2006.

Figure 8

Demonstrated vs. Rhetorical Political Will

Hence, the analysis has shown that the increase in the external pressure led to an increase in the number of instances of political will, particularly in the last two years.
prior to accession. However, not all changes adopted under the EU pressure led to a decrease of corruption, as it will be shown in more detail in the next chapters. For example, the creation of NAPO failed to result in the investigation and conviction of cases of high corruption. Only under the threat of missing the January 1st, 2007 accession deadline has the jurisdiction of NAPO been changed so that the institution would be legally authorized to investigate and prosecute high-level cases of corruption involving MPs. Moreover, most changes in the public procurement sector were adopted in 2006, months prior to accession and, consequently, their impact in reducing corruption was unattainable. Moreover, the pressure exercised by the EU on the Romanian government differed from sector to sector. The analysis confirmed that the greatest pressure was exercised in the judiciary and customs sector, pressure that led to an increase of political will to reform and fight corruption in these two sectors. The lack of a unique EU health care policy resulted in an insignificant pressure on Romania to address corruption in this sector, while corruption in public procurement became more important for the EU in the last two years of the pre-accession process. Hence, although the presence of the EU pressure was clearly established and its impact on the Romanian political will demonstrated, the decrease of corruption depended also on the actual implementation of institutional strategies.
CHAPTER IV

PUBLIC OPINION AND POLITICAL WILL

1. Introduction

The fight against corruption is a difficult endeavor that requires, in addition to the political will to combat it, the support of the general public directly or indirectly affected by corruption. Public opinion is recognized in the literature on corruption as being an important element in fighting corruption, particularly in the long run, by pressuring the government to take action and by sustaining the efforts of those political actors really committed to anticorruption reforms. This chapter begins with a brief discussion of the role played by the public opinion in the fight against corruption. The next sections analyze the impact of the public opinion on political will. More specifically, I first assess the salience the public assigns to corruption by analyzing public polls data (i.e., Barometers of Public Opinion) from 1997 until 2006 inclusive. Then, I examine the role played by the media on reflecting the problem of corruption through the uncovering of corruption cases and the presentation of rhetorical political will. The data was collected from three Romanian newspapers (The Daily Event, The National Journal, and The Free Romania) and consists of articles presenting cases of corruption published in the ten-year period prior to the EU accession. The next section analyzes the reporting of rhetorical political will in the three Romanian newspapers by assessing articles presenting the policy-makers’ statements regarding the fight against corruption and the use of corruption
as a campaign issue and the statements made by three major political figures. Furthermore, I statistically test the relationship between the public opinion pressure and political will measured by the newspaper articles. The chapter concludes with a summary of findings and their limitations.

A cautionary note is in order here, namely the fact that it is methodologically difficult to clearly discern the impact of the EU from that of public opinion on political will. The main reason is due to the abundance of evidence showing the EU impact and the scarcity of proof revealing the direct impact of the public opinion, as it will become clear later in the chapter. Nonetheless, public opinion is a salient factor in fighting corruption and it is expected to affect the political leaders’ perception of how important curbing corruption is for the public, influencing thus their actions.

2. The Role of Public Opinion in Fighting Corruption

The fight against corruption entails a long lasting and combined effort of political actors, international institutions and/or organizations, and non-governmental domestic actors such as NGOs, professional organizations, and the general public. Political will is recognized as a crucial element in combating corruption, but even when it is present, the anticorruption advocates may face difficult obstacles in adopting and/or implementing anticorruption strategies. The public’s support for the fight against corruption becomes an important element in supporting it and in increasing the chances of success (World Bank 2001). According to Rasma Karklins (2002, 1), anticorruption policies in post-communist countries “will work only if they are based on the behavioral support of strategic subgroups of the populace”, particularly those subgroups that are most affected by
corruption. In other words, while political will is important, a sustained fight against corruption requires the long-term commitment and cooperation of the public. Furthermore, public opinion can have an impact by pressuring policy-makers to take action in corrupt cases, as it was the case in Latvia in 2002 when due to public opinion pressure the government stopped the privatization of a youth sports facility, the Sun-Park, built in 1913 (Karklins 2002, 8). The public’s victory in that case has two implications: first, it demonstrates that massive public support for or against a specific policy or government action can be successful; and second, it shows that public opinion pressure offers an impetus and support for those political actors committed to introduce reforms to take action, that is, the public supports the creation and sustenance of the political will necessary to fight corruption.

Public opinion and particularly the impact of public opinion on elections, public policies, and public attitudes have captured scholars’ attention for decades. Studies have shown that public’s attitude towards formal institutions, public policies, and/or political leaders are largely shaped by the perceptions of collective-level experiences (Mutz 1998). In other words, people are more likely to evaluate the government’s performance based on the perceptions of the experiences of others and less on their own personal experiences. Through the information provided by mass media, people either learn that their experiences are shared by others, in which case they are holding political leaders and governmental policies accountable, or that they are alone in their experiences, in which case they are discouraged to attribute their experiences to political leaders and their policies. Hence, individuals’ perceptions about collective experiences largely shape their opinions and influence their attitudes toward government and political leaders.
Individuals’ personal experiences are not to be dismissed either because they do contribute to the creation of one’s personal opinion and attitude towards government and its policies, but they tend to be reinforced and influenced by the perceptions of collective experiences. Another important aspect is that the perceptions of collective experiences tend to be more negative than the aggregate individual experiences, which may explain the public’s tendency to be more dissatisfied with the government’s performance at the aggregate level compared to the individual level (Mutz 1998).

In a study of corruption and how people deal with it in post-communist countries, William A. Miller and his collaborators (2001, 91) found that the public’s perceptions of government and public officials were extremely negative and that they were much more negative than the individuals’ actual experiences with corruption in official dealings. Furthermore, they found that perceptions of corruption in Eastern Europe, as in other countries, are “grossly inflated”. Nonetheless, as Diane C. Mutz (1998) points out, the perceptions of collective experiences are very important and they influence the public’s attitude towards government and other public institutions as well as the public’s trust in democratic institutions. Even though the actual experiences of corruption may be smaller than the perceptions of corruption, the latter may still very well have significant impacts, such as the undermining of democratic institutions.

In countries where corruption is systemic, as is the case of Romania, the presentation in the media of corruption scandals and of victims of corruption is likely to influence the public’s perception of corruption and their attitude towards political leaders, formal institutions, and governmental policies designed to curb corruption. The individuals’ experiences of corruption or those of their relatives or friends will be
reinforced by learning that corruption is not an isolated occurrence. The public opinion with regard to corruption is therefore expected to be largely negative, given that corruption is an economically, socially, and morally damaging phenomenon which affects particularly the less economically wealthy part of society.

If public opinion is influenced by the information presented by the mass media, one can hypothesize that an increase in the coverage of corruption cases in the media is likely to lead to a more negative public attitude towards political leaders, government, and the effectiveness of anticorruption strategies. The latter would be true only if the anticorruption strategies adopted by the government are presented in a negative light and if the public perceives them to have no impact. An important aspect though is represented by the influence that the public may exert on mass media with regard to corruption. It may be the case that high levels of perceptions of corruption influence mass media by stimulating it to focus more on uncovering and presenting cases of corruption, particularly from the sectors in which people perceive corruption to be most damaging for their lives. Therefore, it may well be the case that while public opinion is being shaped by the mass media, the latter is also responding to signals sent by the public by focusing more on corruption. In other words, there is a reciprocal relationship between mass media and public opinion which makes it difficult to establish with absolute certainty the direction of causality. Hence, the presentation in the written media of corruption cases may be an indicator of the impact produced by the public opinion and a means to test if there is a relationship between public opinion and political will.

Monitoring public opinion through surveys is an important part of democratic politics because it assesses the public’s attitudes toward formal institutions, political
leaders, and public policies. Furthermore, it helps identify and define problems in society and design or refine strategies to solve them by mobilizing the necessary political will required for successfully addressing the problems (Center for Democracy and Governance 1999, 13). Due to the hidden nature of corruption, surveys remain the most common avenue for assessing public’s perceptions and experiences of corruption. When conducted regularly and in a similar format, surveys can serve as important tools for identifying trends and changes in public opinion and attitudes toward corruption, in the perceived levels of corruption, and in the perceived effectiveness of anticorruption strategies. Surveys can also serve as important tools for policy-makers to learn what problems the public perceives to be the most important, how effective the measures designed to address those problems are, what the public expects them to do in order to effectively address the identified problems, and what the level of trust in public institutions is. Moreover, surveys can give incumbents crucial information that would help them prepare for re-election and increase their chances of success. Hence, elections and, more importantly, the potential for electoral defeat may represent an important constraint on outright corruption if incumbents believe that they run the risk of being investigated and prosecuted upon leaving office (Rose-Ackerman 2002, 3). Even in the absence of such a high risk, the public can more directly participate in the fight against corruption by the simple exposure of corrupt officials who depend largely on their public image for maintaining their positions (Karklins 2005). Thus, elections become important tools for the public to directly show its satisfaction with the policy-makers’ fight against corruption and to penalize those perceived to have failed to keep their electoral promises by either playing a minimal (or no role) in fighting corruption or by engaging themselves
in corrupt activities. Since one of the policy-makers goals is to be in office, they have to appeal to the public and make sure that they address or, at minimum, promise to address the problems the public considers to be most pressing.

3. The Salience of Corruption for the Public

The salience of corruption for the public is assessed by analyzing data from the World Bank's *Diagnostic Survey of Corruption in Romania*, Gallup Organization in Romania, and the Barometers of Public Opinion (BOPs) conducted in Romania from 1997 until 2006, inclusive. The BOPs were administered twice per year, in spring and fall, at the request of the Open Society Foundation Romania and they were designed to evaluate the public opinion on a variety of issues, such as the state of the economy, their attitude towards democracy, satisfaction with Government's performance, trust in public institutions, and corruption, among other issues. An important limitation of these surveys is represented by the fact that only a very small number of questions were repeated in every survey. Thus, some of the questions assessing directly the problem of corruption were included beginning in 1998, others were added in 2003 or later, and only one set of questions was asked in almost every survey. Hence, in order to determine the existence of a pattern in public's perceptions of corruption and the significance they attribute to this problem, I have selected three sets of questions from the BOPs. The first set of questions assesses the public's perception of corruption at the national level from spring 2003 until

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54 Although the BOPs were conducted twice per year, they were conducted at uneven intervals. For example, the 1997 public opinion surveys were conducted in June and December, while the 1998 BOPs were conducted in May and October. The list with the exact dates and BOP codes is included in Appendix D.

55 The question I am referring to and which was asked every year beginning with 1998, except 2002 and 2006, assesses the respondents' experiences with corruption and is analyzed in a later chapter.
spring 2006. The second set of questions evaluates the public’s trust in public institutions\textsuperscript{56} from 1998 until 2006 inclusive. The third set of questions analyzed in this chapter evaluates the public’s perception regarding the most corrupt sectors in the country from spring 2003 until spring 2005.\textsuperscript{57}

3.1. Public’s Perception of Corruption

The 2001 World Bank *Diagnostic Survey of Corruption in Romania*, conducted at the request of the Romanian Government, revealed not only the seriousness of corruption in Romania, a fact already established by other international institutions and organizations, such as the EU, Transparency International, or Freedom House, but also the significance the public attributes to corruption. The study analyzed the data collected through a national survey administered in Romania in 2000 and found that about sixty seven percent of the public believed that “all” or “most” officials are corrupt and that corruption was a widespread problem (World Bank 2001, 6). In 2002, the Gallup Organization conducted a regional study of corruption in the Balkan area and concluded that, for the second year in a row, sixty percent of Romanians considered corruption as being the most important problem in the country (Gallup Organization, 2002, 4). The perception of corruption as being widespread was again expressed in 2003, when another national survey showed that eighty percent of Romanians believed corruption to be generalized (BOP Spring 2003). Two years later, in 2005, the percentage of those perceiving corruption as being pervasive in all sector and at all levels of society

\textsuperscript{56} The public institutions included in this set of questions are presidency, government, Parliament, judiciary, and political parties. The latter were not included in the question asked in the 2004 BOPs. 

\textsuperscript{57} Unfortunately, this set of questions was included only in spring 2003 and dropped after spring 2005 limiting thus the possibility of drawing a definite conclusion upon their analysis.
continued to remain very high (BOP Spring 2005). Furthermore, half a year prior to Romania’s accession to the EU, eighty three percent of Romanians believed that corruption was the cause for the problems the country was facing (OSF, BOP Spring 2006), as illustrated in Figure 9.

Figure 9
Perception of Corruption as a Salient Problem

![Bar chart showing perception of corruption as a salient problem from 2000 to 2006.](chart)


What these results show is the consistent perception of corruption as being generalized and a major problem that negatively affects people’s lives. Moreover, the increase in the level of perception of corruption suggests that corruption is believed to have become a more serious problem and to be responsible for the further deterioration of
the living standards. An alternative explanation of the increased perception of corruption may be the higher exposure people have to information about corruption and its negative consequences. The exposure to campaigns of raising awareness about corruption is likely to sensitize the public to the existence of this problem and to make it less tolerant to corrupt behavior, not necessarily less likely to engage in corruption if that is required in their daily lives. The side effect of anticorruption campaigns and overexposure of corruption cases is the creation of an environment where every act of misconduct or incompetence may be viewed as corruption. Nonetheless, if people perceive corruption as being generalized, their trust in public institutions is also affected and, implicitly, their trust in democracy. Hence, if the public believes that corruption is a major if not the major problem in the country, it indicates that corruption is a highly salient problem for the citizens.

3.2. Public’s Trust in Democratic Institutions

The trust people have in democratic institutions influences the stability and legitimacy of those institutions. Low levels of trust in public institutions risk undermining the latter’s legitimacy, a fact particularly perilous in societies undergoing transitions to democracy or in those attempting to consolidate the newly created democratic institutions. Post-communist countries in Central and Eastern Europe are characterized by significant levels of distrust in government and other public institutions, distrust that emerges from centuries of negative experiences with their government, the more recent legacy of the communist regimes, and the current everyday experiences in dealing with public officials (Rose-Ackerman 2002, 1). Susan Rose-Ackerman (2002, 2) differentiates
between two types of trust in post-communist societies: trust that one will receive a preferential treatment in his/her dealings with public officials and trust that rules will be enforced fairly and impartially. For democracy to consolidate and to achieve legitimacy in the eyes of the people, the second type of trust needs to prevail. In other words, governments need to be accountable to the people for their actions and they need to be as transparent and open in their activities as possible in order to increase people’s trust in democratic institutions and to legitimize them, particularly in countries characterized by decades of distrust in public institutions. Furthermore, Rose-Ackerman (2002) finds that corruption has a corrosive effect with regard to trust in democratic institutions. The predominance of the first type of trust, in which individuals rely on their personal connections and the belief that you have to pay extra in order to receive the service one is legally entitled to, erodes even further people’s trust in government and other public institutions.

In countries where corruption is systemic, low levels of trust in public institutions are a reflection of the perceived high levels of corruption. Hence, trust in public institutions may be used as a proxy measure of corruption in order to assess the public’s perception of the extension of corruption. In the Romanian case, where corruption has been assessed to be widespread, trust in public institutions provides a basis for inferring the public’s concern with corruption. It should, however, be noted that corruption is only one of the factors that influence the level of trust in public institutions. Other factors such as poverty, unemployment, low living standards, or high prices may also influence the citizens’ trust in formal institutions. However, if corruption is generalized and considered to be responsible for the problems a country is facing, then one can infer that trust is
negatively correlated with corruption (i.e., when corruption is low, trust in public institutions is high). Therefore, the BOP questions\textsuperscript{58} assessing the public’s trust in public institutions from 1997 until 2006 inclusive were analyzed in order to indirectly determine the significance the public assigns to corruption by determining the levels of trust and how they changed throughout the decade under study.

The analysis revealed, as shown in Figure 10, that throughout the entire ten-year period, the public expressed a low level of trust in public institutions. Thus, if at the beginning of 1997 the average percent of people expressed “some trust” in public institutions, the following years their level of trust decreased significantly so that in 2000, the level of trust was at the lowest score of the entire decade of less than “little” but more than “very little” trust. The electoral victory of the democratic forces in the 1996 election, which marked the first political turnover of power since the fall of communism, explains the high level of trust expressed by the public in the spring 1997 survey.

The coming to power of the former opposition forces, the Romanian Democratic Convention (RDC) and its leader, Emil Constantinescu brought not only international recognition that Romania was on its path to democracy, but also high hopes for citizens that things would improve and corruption would be combated. People’s hopes and trust in the new leadership were first expressed in the 1996 elections which ensured the democratic forces a clear majority in Parliament and Constantinescu’s victory in the presidential election. The latter’s declaration of war against corruption in early January 1997 associated with the expectations of a more rapid democratization process and an

\textsuperscript{58} The questions used slightly different scales in 2001, 2002, 2003, and 2006, which required adjusting the scales to a common scale for all twenty surveys. The common scale for the question: “How much trust do you have in the following institutions?” rates respondents’ answers on a four-point scale: 1 = “Very Little”, 2 = “Little”, 3 = “Much”, and 4 = “Very Much”.

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improvement of the living standards explain the higher levels of trust the people had in public institutions.

Figure 10
Public’s Trust in Formal Institutions

Source: Barometer of Public Opinion 1997-2006, Open Society Foundation Romania

The delay in the adoption of the anticorruption law until the next electoral year (i.e., 2000), associated with the ineffectiveness of the National Council for Action Against Corruption and Organized Crime, created in 1997 but lacking any legal basis to act in corrupt cases, and the implicit lack of visible result in reducing the levels of corruption explain the continuous decline of people’s trust in public institutions. The uncovering of a series of corruption scandals in which high ranking officers and public
officials, including members of the executive, Government, and Parliament, further undermined the public’s trust in the Romanian democratic institutions. For example, in April 1998 and just two months prior to the administration of the first 1998 BOP, the media began coverage of one of the biggest corruption scandals during Constantinescu’s administration. The scandal which started as a cigarette-smuggling case became the top story for all Romanian newspapers for weeks due to the extent of corrupt relations uncovered and the importance of those involved (i.e., high ranking army and customs officers, members of the Protection and Guard Service responsible with the President’s protection, and other high ranking public officials). The Cigarette I scandal, as was called by the media, was followed shortly by two other scandals, Cigarette II and Cigarette III, whose impacts on the public’s trust in public institutions was made visible in the spring 1998 BOP.

The uncovering in 1999 of new cases of corruption involving high governmental officials and members of Parliament undermined even more the public’s trust in public institutions. Two examples of such big scandals involved members of the former Social Democratic Party of Romania (PDSR)\(^59\), including its leader and former President of Romania, Ion Iliescu. The first scandal, known as the Costea Affair, named after the French businessman of Romanian descent Adrian Costea, was brought first to the attention of the Romanian media by the French authorities who were suspecting Costea of laundering around €6.5 million. As part of the French investigation, numerous MPs, ministers, and also a former prosecutor were called to testify before a commission of French judges and prosecutors. During an interview with a journalist from *Evenimentul*

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\(^59\) PDSR (Romanian acronym) became the Social Democratic Party (PSD) in June 2001. See Chapter I for more information on its transformation.
Zilei (May 18, 2000), Costea claimed that he provided the Party of Social Democracy in Romania (PSDR) with hundreds of tons of posters for Ion Iliescu’s 1996 presidential campaign. Less than a year later, the Romanian media claimed that Costea was also involved in a second big scandal of corruption regarding the illegal smuggling of petroleum over the Yugoslav border during the UN embargo (Open Society Institute 2002, 479). In this second case, allegations of corruption and investigations were brought upon a series of ministers, state managers, and other high ranking officials from customs and police sectors.

Despite the involvement in a series of big scandals, the PDSR and its leader, Ion Iliescu, were victorious in the 2000 elections. The public’s disappointment with the performance of both President Constantinescu and his party was clearly expressed when the Christian-Democratic National Peasant’s Party (CDNPP), the main party in the RDC, did not pass the three percent electoral threshold and has never managed to enter the Parliament again. The adoption in 2000 of the Law on Preventing, Detecting, and Punishing Acts of Corruption (Law no. 78/2000) was too small and too late a measure to save the CDNPP and its leader from an electoral defeat.\(^{60}\) However, the adoption of the first anticorruption legislation, associated with the change in leadership, which brought to power what appeared to be a changed PSDR, and the promise of a less disappointing management of the economy and fight against corruption may explain the statistically significant improvement of public’s trust in public institutions in 2001 to slightly more than “little”. The adoption in 2001 of the Freedom of Information Act (FOIA) and the first National Anticorruption Strategy (NACS I), applicable for 2001-2004, the creation

\(^{60}\) In an unexpected move, Emil Constantinescu decided to leave the presidential campaign in mid-July 2000, surprising his supporters and the other political candidates to the presidency.
of the National Anticorruption Prosecutor’s Office in 2002 helped maintain the public’s trust in a plateau for the two year-period (i.e., 2001-2002).

The increasing external pressure exercised by the EU on the Romanian authorities to more effectively fight against corruption which coincided with another election year (i.e., 2004) appears to have slightly affected the level of trust the public expressed to have in country’s democratic institutions. Nonetheless, on the four-point scale, the average level of trust continued to be assessed as “little” suggesting at least two important things: first, that corruption had consistently been perceived as a very serious problem that affected people’s lives; and, second, that the anticorruption strategies adopted by the Romanian authorities appeared to be perceived as having a limited impact, an effect that was captured by the low levels of trust people have in government, Parliament, president, political parties, and the judiciary.

3.3. Public’s Perception of the Most Corrupt Sectors in Romania

For the purpose of this study, it is of particular importance to assess the public perception of corruption in the four sectors. If the public believes that corruption is a major problem in the judiciary, customs, health care, or public procurement, then one can expect more pressure on the Government to curb corruption in those sectors. Hence, high levels of perception of corruption are expected to have an impact on the political will necessary to fight corruption. One flaw of these surveys is represented by the fact that they do not ask questions regarding the public procurement sector, which is not very surprising given the fact that the general public is less directly involved or affected by the public procurement transactions, although it may be affected due to the lower quality of
the services provided as a result of corrupt transaction. Hence, this section assesses the public’s perception of corruption in the judiciary, customs, and health care.

3.3.1. The Judiciary

The first assessment of the most corrupt sectors in Romania was done by the World Bank in a 2000 survey and the data was incorporated in the 2001 Diagnostic Survey of Corruption in Romania. The study found that more than fifty percent of respondents perceived “all” or “most” officials in the judiciary to be corrupt. The surveys conducted by the Gallup Organization in its assessment of corruption in the Balkan area in 2001 and 2002 revealed similar results. Thus, for the two consecutive years, more than fifty percent of Romanians believed that “all” or “most” officials in this sector are corrupt. The patterns established in early 2000 appears to have continued almost unchanged for the next three years, according to the data collected by the Open Society Foundation Romania. If in spring 2003, almost sixty percent of respondents perceive magistrates as being corrupt, a year later the percent of those believing that “all” or “most” magistrates are corrupt decrease to almost fifty percent. Nonetheless, the following year the perception of the judiciary as being corrupt increased again to almost sixty percent, as summarized in Figure 11.

The high perceived levels of corruption in the judiciary shows the significance the public attributes not only to corruption but also to this sector. Judiciary, as a crucial institution in establishing the rule of law and in ensuring the fair and impartial implementation of the legal norms, is particularly important to be corruption-free. The fact that the public believes corruption to be such an important problem in this sector
clearly indicates the significance people also attribute to curbing corruption in the judiciary.

Figure 11
Public’s Perception of Corruption in the Judiciary

3.3.2. Customs

Although corruption in customs affects less people directly compared to the judiciary or health care, people indirectly feel the impact of corruption in customs because the latter plays an important economic role by levying taxes and customs duties and by ensuring the flux of trades. Customs also plays an important role in combating the illegal trafficking with human beings and illegal goods, especially drugs. Hence, people may have less direct contact with customs officials, although the opening of borders and
the new economic opportunities have led to an increase of those dealing with customs officials, but their lives are still affected if corruption is a problem in this sector.

In the 2000 assessment of corruption in customs, the World Bank (2001) found that more than fifty percent of Romanians believed customs officials to be corrupt. The perception of corruption in customs increased in 2001, when Gallup Organization found that more than sixty percent of respondents believed that “all” or “most” customs officials are corrupt. The perception of corruption slightly decreased in 2002, but it continued to be high with more than fifty percent of respondents believing customs officials to be corrupt (Gallup Organization 2002), as presented in Figure 12.

Figure 12
Public’s Perception of Corruption in the Customs Sector

Unfortunately, the public was no longer asked to assess the problem of corruption in this sector and therefore, it is difficult to establish a longer pattern. The fact that
corruption was perceived as being so high among customs officials indicates that this sector was of significance for the public. On the other hand, the absence of questions regarding corruption in customs sector suggests that corruption in this sector was assigned less significance by those commissioning the public polls.

3.3.3. Health Care

If a corrupt judiciary or a corrupt customs sector has more or less direct implications for the public, corruption in health care affects them in a more direct and sometimes tragic way. Since health is a highly valuable commodity that people cherish dearly, they are also more likely to press for the cleaning up of this sector from corrupt elements and for reducing the opportunities for corruption. If in 2000, the percent of those believing that “all” or “most” officials in the health care sector are corrupt was less than fifty percent, by 2005 their number increased to almost sixty percent. As Figure 13 shows, beginning with 2001, the percent of Romanians believing health care sector to be corrupt slightly increased over time.

It is interesting to note the fact that corruption in health care and corruption in the judiciary are perceived to be almost at similarly high levels. Although only some individuals are directly affected by corruption in the judiciary, unofficial payments in health care sector are heavy burdens for many people who find health care inaccessible. Furthermore, corruption in this sector has important consequences for the “social equity” the Romanian health care system appears to provide (World Bank 2001, XII) and therefore it ranks high on people’s priority list regarding the eradication of corruption.
4. Mass Media and Political Will

The relationship between the public opinion and mass media is complex and it makes it difficult to establish a clear direction of causality. If public opinion is influenced by the mass media, one can also expect to see a reaction from mass media in response to the concerns expressed by the people in the public opinion surveys. As the fourth estate, the media can also affect the fight against corruption by the pressure exercised through the exposure of corruption. Corruption is a very incendiary topic and newspaper editors know that big scandals are more likely to sell, especially if those scandals are directly salient for the public. It may also be the case that certain decisions to expose corruption scandals or to publish alleged corrupt affairs are motivated less by a desire to combat
corruption or high ratings and more by the intent to smear the reputation of political or business rivals. While it would be interesting to identify the real motivations behind the publication of corruption scandals and their impact on political will, the role played by mass media is outside of the scope of this study. Nonetheless, an assessment of the newspaper articles uncovering corruption is still pertinent for this study and it may well reflect a reaction of the media to the public’s perception of corruption and thus, an indirect measure of the public opinion’s effect on political will. Hence, this section presents the number of newspaper articles presenting cases of corruption that have been published from 1997 until 2006 inclusive in *The Daily Event*, *The National Journal*, and *The Free Romania* by disaggregating them sector by sector (i.e., the four studied sectors) and by discussing the total number of articles.

Two thousand eight hundred and one (2,801) articles presenting cases of corruption were collected from the three newspapers61 from 1997 until 2006 inclusive. In order to count the number of cases of corruption in the four sectors under study, it was necessary to develop a coding rubric that disaggregates the total number of articles by cases of corruption in different sectors. The coding rubric was created by analyzing the cases of corruption presented in the articles and developing a list of 15 codes.62 To confirm the correct interpretation of the qualitative data and the application of the coding rubric, two other Romanian raters were asked to code every single article. The three independent ratings were then used to calculate the kappa coefficient for multiple raters,

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61 If a newspaper presented the exactly same article that covered the exact same case of corruption over several days, the article was counted only once. If the same case of corruption was presented in more than one newspaper, all the articles were counted because they reflected coverage in different newspapers. Therefore, some cases of corruption were reported in all three newspapers, while others were presented only in one or two of the three newspapers analyzed. Furthermore, some cases of corruption received more coverage (i.e., multiple articles) in the same newspaper than others. As long as they were not identical and they presented new information about the case, they were counted.

62 A complete list of codes is presented in Appendix B.
which estimates the proportion of agreement among raters after accounting for chance (Stemler, 2007). SAS code was used to estimate the kappa coefficient by employing Fleiss’ method for establishing agreement among three or more raters for nominal data (Fleiss, 1981). A kappa coefficient of 0.70 was estimated, which, according to Landis and Koch (1997), indicates a substantial agreement among raters. For this study, four codes are of particular importance, namely Judiciary, Customs, Health Care, and Public Procurement, which allow the identification of the number of cases of corruption presented in newspapers in each of these four sectors over the decade prior to the country’s accession to the EU.

From the total number of articles regarding cases of corruption, 13.63 percent (382 articles) was represented by articles presenting cases of corruption in the judiciary. The number of articles exposing cases of corruption in the other three sectors was smaller, varying from 4.32 percent (121 articles) in customs, 3.14 percent in health care (88 articles), to 4.56 (128 articles) percent in public procurement. Figure 14 graphically summarizes the number of articles presenting cases of corruption in the four sectors from 1997 until 2006 inclusive.

As expected, the number of articles uncovering cases of corruption in the judiciary is predominant, clearly indicating the significance attributed to this sector and to combating judicial corruption. The graph also shows that the highest number of articles about corruption in the judiciary was published in 2001, the first year after the adoption of the Law on Preventing, Detecting, and Punishing Acts of Corruption (Law no. 78/2000) and the first year of the Iliescu-Năstase administration.63 It appears that, at least

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63 This was Ion Iliescu’s third official term as president, although only the second full term, the first term being for only two years (i.e., 1990-1992), and Adrian Năstase’s first term as Prime Minister.
with regard to corruption in the judiciary, the pressure exercised by the written media, as captured by the number of newspaper articles, was the highest at the beginning of the Social Democrats’ (i.e., SDP) coming to power, only to decrease over the next four years.

Figure 14

Publicized Cases of Corruption Per Sector

Nonetheless, the number of articles uncovering cases of corruption in the four sectors does not appear to correlate well with the perception of corruption in the four sectors under study, as captured by the public opinion survey data. The latter indicates high and constant levels of corruption in the judiciary and health care sectors (Figures 11 and 13.), while the newspaper articles reveal a very low percentage of articles uncovering corruption in the health care sector. Furthermore, while the high number of cases of
corruption in the judiciary in 2001 does match the high perception of corruption in this sector for that year, the relationship does not hold for the next years when corruption was perceived to have slightly increased (e.g., 2003 and 2005). Hence, it appears that the exposure of corruption case by the written media is quite limited in all sectors under study except the judiciary. However, this does not necessarily mean that mass media has not paid attention to corruption, but that most of those articles focused on cases of corruption which, as shown in Appendix B, fall in two collective categories of firms and public officials. Thus, only these two broad categories encompass more cases of corruption than the judiciary, which ranks third with 13.63 percent of the total number of newspaper articles. Moreover, the police sector follows closely the judiciary with regard to the number of cases of corruption exposed by the written media (12.74 percent), a fact of particular importance since police is part of the justice system and the high level of corruption in this sector will enhance the perception of a corrupt judicial system.

At the aggregate level, the total number of articles appears to capture the concern the public has with regard to corruption, particularly after 2001, as illustrated in Figure 15. Hence, the written media appears to have played a role in the fight against corruption by exposing sometimes the involvement of high public officials in corrupt affairs and by bringing to the public’s attention the extent of corruption and the declarations of rhetorical political will made by various actors, as it will be shown in the next section.
5. Rhetorical Political Will

Political will has two obvious components, namely, the declared or rhetorical component and the demonstrated component. While the latter is more difficult to assess and requires the analysis of tangible acts of political will such as legislation, policies, establishment of anticorruption agencies, rhetorical political will is easier to observe. In Romanian case, the rhetorical component of political will is discernable and it can be inferred that the public declarations of political commitment to curb corruption are, at least in part, due to the high levels of perception of corruption expressed by the public. Unfortunately, the lack of data\textsuperscript{64} showing the direct impact of the public opinion on

\textsuperscript{64} Such data may include anticorruption public demonstrations, letters written to representatives requesting the adoption and implementation of more effective anticorruption measures, or elections. Only the latter are
political will makes it difficult to definitely confirm the relationship between the two variables. Rhetorical political will is assessed by evaluating the number of articles presenting statements made by political parties and political elites regarding the fight against corruption and the number of articles presenting the use of corruption as a campaign issue during the 2000 and 2004 national election (i.e., 405 articles). Additionally, I analyze public statements made by three high officials, namely President Emil Constantinescu (1997-2000), Prime Minister (PM) Adrian Năstase (2001-2004), and President Traian Băsescu (2004-2006).

5.1. Newspaper Articles and Rhetorical Political Will

As mentioned in the previous chapter, there is an increase in the number of articles presenting statements made by policy-makers with regard to the fight against corruption in the first year when a new administration is in office (i.e., 1997, 2001, and 2005), as illustrated in Figure 4.6., below. This indicates that, at least rhetorically, every new government declared itself to be highly committed to combat corruption and perceived the first year as the opportunity to demonstrate to the public that it deserved its votes and trust.

The comparison of the number of newspaper articles presenting statements regarding the fight against corruption and the articles presenting cases of corruption, from 1997 until 2006 inclusive (see Figure 13), shows the existence of a relationship between rhetorical political will and public opinion. That is, the increase in statements indicating a

available and the data clearly indicates that the public sanctioned the policy-makers for their failure to effectively address the problem in all three national elections (i.e., 1996, 2000, and 2004). The use of corruption during elections and the consequences of anticorruption rhetoric are discussed in the next section.
higher rhetorical political will coincides with the increase in the number of articles uncovering cases of corruption. Moreover, the correlation analysis\textsuperscript{65} revealed that the number of articles presenting cases of corruption is strongly positively correlated with political will. The correlation\textsuperscript{66} value of \( r (20) = 0.745, p < 0.01 \) reveals that an increase in the number of articles uncovering cases of corruption leads to an increase in the number of statements made by policy-makers to fight against corruption. If the increase in the number of corruption articles is the result of the high perception of corruption, then one could infer that there is a statistically significant relationship between public opinion and rhetorical political will. However, since the motivations behind the publication of those corruption articles is not entirely known, one could only speculate that public opinion is one factor that explains the existence of this statistically significant relationship.

The evaluation of the articles presenting the use of corruption as a campaign issue in 2000 and 2004 indicates an increase in the number of those articles from one election to the other (see Figure 16). Although the increase appears to be small (only 11 articles), it follows the same pattern as the number of articles uncovering cases of corruption. Furthermore, when counted together with the articles presenting statements about combating corruption, the increasing trend becomes more visible, with 39 articles in 2000 and 57 articles in 2004.

\textsuperscript{65} The Spearman rank correlation 1-tailed test conducted in this case is appropriate for testing the existence of a hypothesized relationship between two variables. However, the statistical significance of this correlation remains unchanged when the Spearman rank correlation 2-tailed test is conducted.

\textsuperscript{66} A correlation measures the degree of linear association between two variables. The values for a correlation range between ±1, with larger values denoting stronger associations and the sign indicating whether the values for the two variables increase correspondingly or in opposing direction with each other.
Nonetheless, the small number of newspaper articles presenting declarations of rhetorical political will indicates that the policy-makers’ response to public opinion concerns regarding corruption is poorly captured by the written mass media. The implication is also that the politicians do not react to the signals sent by public opinion surveys, in which case it would be expected to see them less concerned about corruption during election campaigns and the voters less likely to sanction the incumbents for poor performance in combating corruption, which is the subject of the next section.
5.2. Politicians, Elections and Rhetorical Political Will

The 1996 national elections were the first elections when corruption was a main campaign issue, a fact illustrated by the declarations made by the presidential candidate of the main opposition party at the time, the Christian-Democratic National Peasant’s Party (CDNPP). Thus, in August 1996, while preparing for the presidential campaign, Emil Constantinescu made a public statement presenting the position of the party he was leading, i.e., CDNPP, with regard to corruption and the fight against it. In his statement Constantinescu claimed that the country was facing a very difficult situation marked by the expansion of corruption at the highest levels with serious consequences for the public. In his opinion, the only means to redress the situation was for him and his party to win the elections because they were not involved in the previous administration and therefore, they were not part of the abuses committed by Ion Iliescu’s administration (Constantinescu, Discursuri 1996). Hence, it seemed only logical for new political actors to take the reins of power and to steer the country in the right direction which would result in a society without corruption. The determination to combat corruption was again expressed at the National Conference of the CDR in October 21, 1996 when Constantinescu stated that “a vote for CDR means a vote for departure from poverty and corruption” (Constantinescu, Discursuri 1996a).

The first public manifestation of President Constantinescu’s rhetorical political will took place shortly after he took office. Thus, on January 8, 1997 he addressed the Romanian public in a televised message in which he was calling for their support in the fight against corruption. In his message, Constantinescu acknowledged that he was “elected president after a campaign that assigned the problem of generalized corruption
as the highest priority” and that corruption was a threat to national security and therefore it required immediate and decisive attention (Constantinescu, Discursuri 1997). That day marked the beginning of the “war on corruption”, a battle that later proved to be more difficult to carry out than initially thought, as any other big wars, such as the American “war on drugs” or “war on terrorism”. One of the sectors singled out in that speech was customs, a sector where corruption was a problem with large consequences for the country’s economy due to the important amounts of money diverted from the national budget every year. Constantinescu’s speech was intended to mark the beginning of a new era dominated by political will to combat corruption, establishment of the rule of law, and the beginning of the real transition to democracy in Romania, a fact recognized also by external actors and scholars.

The optimism manifested immediately after the November 1996 elections continued for the first few months in office, when the fight against corruption became a “national priority and a component of the programs of European and Euro-Atlantic integration” (Constantinescu, Discursuri 1997a, 3). While the translation into practice of electoral promises proved to be difficult, the instances of rhetorical political will continued to manifest throughout the next three years, although they were increasingly becoming mixed with feelings of frustration at the lack of visible results in the fight against corruption. Thus, in 1998, Constantinescu’s discourse changed from unlimited optimism to the recognition that corruption cannot be completely eradicated and that what was needed was a “Clean Reform” (Reforma Curată), a process that emphasized upholding moral values and ethics in governance. Furthermore, the new message sent by the President Constantinescu was that, while combating corruption was important, it
should not be done at the expense of democracy (Constantinescu, Discursuri 1998). That is, not all means justify the ends and sacrificing democratic principles is not worth the eradication of corruption.

One of the last examples of President Constantinescu’s declarations of political will to fight corruption dates back to March 2000 when he claimed that “the results of the fight against corruption are concrete and verifiable” and that the fight “did not and will not differentiate based on the social or political affiliation” of those corrupt (Constantinescu, Discursuri 2000, 1-2). Hence, throughout his entire presidential mandate, Constantinescu made public declarations of political will to fight corruption. Unfortunately, his declared determination to address the problem of corruption was undermined by the frequent scandals of corruption and in which close members of Constantinescu’s administration were allegedly involved (e.g., Cigarette I and Cigarette II are two illustrative examples of the large scale of high level corruption at the time).

The 2000 national election for Parliament and Presidency brought again the problem of corruption on the list of issues debated by the candidates. As in the previous election, it proved to be easier to use corruption as a campaign issue by the political parties in the opposition, which had an easier time to assign blame for the lack of progress in reducing corruption as well as for all the other problems the country was facing at the time, such as low salaries, unemployment, and poverty. In his final speech, Constantinescu claimed that his administration achieved a “fundamental objective”, namely “the dismantling of networks of big corrupts”, although, in the fight against everyday corruption, he admitted that the state institutions lost the battle (Constantinescu 2000a). He also criticized the SDP’s attack with regard to his administration’s failure to
effectively tackle corruption, a fact that by Constantinescu’s own admission was a reality but which was still seen by the former President as an unfair attack given the fact that the first anticorruption law (Law no. 78/2000) was adopted during his administration.

The lack of success in the “war on corruption” was presented by the former Prime Minister Adrian Năstase in his book, *European Romania: A Social-Democrat Project (România Europeană: Un Proiect Politic Social-Democrat)*, in which he presents the problems Romania was facing when he became PM in December 2000 and the accomplishments achieved during his mandate. According to him, the Constantinescu administration managed very poorly both the internal and external affairs of the country. Not only did the previous administration fail to accomplish the electoral promises with regard to combating corruption and establishing the rule of law, but it got itself involved in corruption scandals and grossly mismanaged the economy. Furthermore, according to Năstase (2007, 102), the dialogue between the EU and Romania “decreased in intensity”, which in turn affected the EU’s decision to open accession negotiations with Romania and delayed by three years the country’s accession to the EU.

In addition to the external situation regarding the country’s preparation for the EU accession, the new SDP government established after the 2000 elections had to deal with a domestic situation characterized by a “deterioration of the relationship between the government and the governed”, a relationship undermined by the latter’s lack of trust in the former (Năstase 2007, 109). Moreover, according to the former Prime Minister Năstase, the weakness of the Constantinescu’s central administration set the stage for the development of the “local barons”, i.e., the local leaders with significant power and influence in that region, who were being consistently exposed by mass media as principle
actors in corruption scandals. Hence, the SDP government inherited "generalized corruption in administration, doubled by a chronic lack of competent personnel at both central and local levels" (Năstase 2007, 112).

What is particularly striking in Năstase's recollection is the fact that the "local barons" are presented as a problem developed during the previous administration and for which the SDP was not to blame, especially when most of the "local barons" who made the front page of newspapers in corruption scandals were from Năstase's own political party, i.e., SDP. His assessment regarding the strength of the previous central administration was accurate and it may well explain the development of the "local barons", but the latter did not disappeared during Iliescu's administration, when Năstase was PM. Contrary to what one might expect from such a strong statement made by Năstase, the "local barons" continued to expand their power and influence and to increase in number during the four year of SDP governance. For example, in Gorj county the prefect67 acted like a "local baron" throughout the entire Năstase government, controlling the entire local administration and thus reinforcing the perception of government officials as "patrons of corruption" (Precupetu 2007, 17).

While Năstase was quick to assign the whole responsibility for the generalized corruption in the country to the previous administration— notwithstanding the fact that his own party was in power for the first six years after the transition— he failed to account for the maintenance of the high levels of perceived corruption in the country or for the harsh criticism made by the EU throughout his party's governance, criticism which peaked in early spring 2004 and which led to the drafting of the safeguard clauses for Romania, a novelty in the EU enlargement history. Moreover, the EP criticism in

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67 The prefects are governmental political appointees and the highest public officials at the country levels.
February 2004 regarding the lack of progress in curbing corruption emboldened Năstase to make other declarations of political will to tackle corruption by declaring a month later that his government is dedicated to “zero tolerance towards corruption” (Big Brother e la Guvern! 2004). Nonetheless, his public declarations of commitment to combat corruption proved unsuccessful because the electorate’s response in November 2004 led to Năstase’s defeat in the presidential election and the removal from power of his political party.

The declarations of political will continued to be part of the electoral campaign in 2004, when the opposition candidates found themselves once again in a position to assign blame for the lack of progress in reducing corruption. Thus, the presidential candidate Traian Băsescu said in one of his speeches that, “[I]f there will be a single minister suspect of corruption, I will execute him myself” (Mihai 2004). This and other attacks on the government (e.g., “Năstase is a Mafioso”) made Băsescu popular among the electorate and ensured his victory in the presidential campaign. At the same time, Băsescu’s party, the Democratic Party (DP), which participated in elections as part of a coalition with the National Liberal Party (NLP), won enough votes to allow them to form a governing coalition without SDP. Like his predecessor, Ion Iliescu, Băsescu included corruption on the list of threats to the national security, particularly high level corruption, and made the fight against corruption a national priority. Furthermore, in his inaugural speech in front of the Parliament, Băsescu promised to save the country from corruption and poverty, the former being intimately connected with the latter (Istodor 2004). The examples of rhetorical political will continued to appear throughout the next couple of years and they proved to be effective enough for the EU to conclude that Romania has
demonstrated the existence of a real commitment to fight corruption and establish the rule of law.

6. Conclusion

This chapter has attempted to demonstrate the relation between the public opinion and political will in the decade prior to Romania’s accession to the EU. The analysis showed that corruption has been a major concern on the public’s agenda throughout the period under study and that it almost certainly affected the public’s trust in public institutions. Thus, the levels of perception of corruption continued to increase after 2000 with more than eighty percent of respondents considering it as being generalized at all levels of society in the year prior to the country’s accession to the EU. As expected, high levels of corruption were negatively correlated with trust in public institutions, the latter being low throughout the decade and indicating a generalized mistrust in the formal institutions responsible for curbing corruption, such as the Parliament, government, presidency, judiciary, and political parties. The survey data also revealed that the public perceived corruption in the judiciary and health care as being very serious problems, and corruption in customs sector was also ranked high when the respondents were asked to evaluate it. Public procurement, on the other hand, was never part of a national survey and therefore there is no data available to assess the public’s perception of corruption in this sector.

The analysis also revealed the difficulty in demonstrating with absolute certainty the impact of public opinion on political will. This was due in part to the absence of evidence showing that anticorruption measures were adopted and implemented in
response to the pressure exercised by the public opinion. While one can infer that anticorruption strategies have been developed also in response to the high significance the public attributes to the problem of corruption, in the absence of concrete proof, the relationship remains somewhat speculative. The fact that in three elections, 1996, 2000 and 2004, the government was voted out of office indicates that the public has an important tool at its disposal to exercise pressure on the government, namely elections. The fact that political parties were successful in their employment of anticorruption rhetoric when in opposition indicates also that this type of discourse is a useful tool only under limited conditions and that it invariably hurts the governing parties which cannot successfully defend themselves against accusations of corruption. The use of corruption as a campaign issue and the consistent manifestation of rhetorical political will do indicate the existence of a pressure exercised by the public opinion on the policy-makers to address this issue. Nonetheless, the link between public opinion and demonstrated political will is difficult to conclusively demonstrate. Furthermore, the abundance of evidence showing the impact of the EU on political will makes it even more difficult to discern the effect of public opinion on political will. Whereas the EU pressure is supported by evidence, the impact of public opinion pressure is verifiable at the rhetorical level of political will.

Hence, it appears that the theoretical model is less precise as initially designed and that it is not only difficult to discern the effects of the domestic and external actors on political will, but it is also difficult to prove the impact of the former on the demonstrated political will. The analysis revealed that another factor, mass media, may play an important role in fighting corruption and influencing political will. However, since the
role of the fourth power in state is beyond the scope of this study, its impact on political will was not analyzed in detail. What this chapter has shown was the existence of a statistically significant positive correlation between the number of articles presenting cases of corruption and rhetorical political will, measured as number of articles presenting statements made by policy-makers regarding the fight against corruption and articles reporting the use of corruption as a campaign issue during the two national election years, 2000 and 2004. Nevertheless, the number of corruption cases publicized was poorly correlated with the high levels of perception of corruption captured by the public opinion surveys, which indicates that while mass media may play a role in fighting corruption and in shaping public opinion, more data is necessary to discern the exact role and its impact.
CHAPTER IV

CORRUPTION AND THE RULE OF LAW: REFORMING THE JUDICIARY

"In Romania, judiciary is the poster boy for corruption". 68

1. Introduction

The success of democratization process rests greatly on the ability to develop an independent, accountable, and transparent judiciary capable of implementing the rule of law. The rule of law represents one of the main tenets of a democratic system and its absence endangers the democratization process and the survival of newly created democratic institutions. In post-communist countries, such as Romania, a major challenge was not the creation of new judicial systems but of reforming the old ones inherited from the communist era, a task perhaps more challenging than starting from a tabula rasa situation. In addition to redesigning the judicial systems, the new democracies had to tackle another problem inherited from the previous regimes, namely corruption. In doing that, they had to adopt a series of institutional strategies designed to reform the system and, at the same time, to combat corruption.

This chapter focuses on the institutional anticorruption strategies adopted by the Romanian government in the decade prior to the country’s accession to the EU. The first section briefly presents the organizational structure of the Romanian judicial system. The

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following section presents the measures used to assess the institutional strategies and analyzes each strategy adopted and implemented in the Romanian judiciary from 1997 until 2006 inclusive. The final section assesses the effectiveness of institutional strategies and their impact on combating corruption in the judiciary.

2. The Structure of the Romanian Judiciary

2.1. Brief History of the Judiciary

The modern Romanian legal system originated in mid-nineteenth century and it has its basis in the Napoleonic Code. The structure of the judiciary follows closely the French model, with the Ministry of Justice playing an important role in its administration and in the maintenance of law and order (ABA/CEELI69 2002). After the Second World War, the Ministry of Justice was responsible for defending the communist order, protecting individual rights, and “reeducating those who violate the country’s law, in that order of preference” (Library of Congress Countries Studies, accessed December 2008).

The Office of the Prosecutor General (Procuratura), established in 1952, represented the main instrument through which the Ministry of Justice operated and exercised its authority. The Procuratura functioned through the court system and it had the following main tasks: to decide jurisdictional questions, to compile statistics on crime, and to oversee the central criminology institute and forensic science laboratory. Theoretically, the judicial system was independent during the entire communist period, but the Romanian Communist Party (RCP) managed to control it through the appointed judges, the enforcement of the party discipline, and especially through its two main

69ABA/CEELI is the acronym of the American Bar Association/Central European and Eurasian Legislative Initiative.
instruments of control—the Ministry of Interior and the security service (Securitate). The Procuratura was required to investigate and resolve any charges issued by the Ministry of Interior and Securitate and to represent the interests of the party and government in all legal disputes. Prosecutors at both national and lower-level had greater latitude in issuing arrest warrants, reviewing evidence, monitoring investigations, arraigning suspects, and filing suits than did prosecutors in other legal systems (Library of Congress Country Studies, accessed December 2008).

The socialist legal system was dominated by public law—administrative and criminal law—and the institutions necessary to enforce it. Hence, the judiciary was responsible primarily for noneconomic matters, which in turn explains the lack of judges and lawyers who have expertise in the areas of law applicable to market economy (Anderson et al. 2005). Therefore, the judicial system was marked by a lack of independence during the entire communist period, serving mainly to protect the interests of the Communist Party and the communist nomenklatura. While the 1989 anticommunist revolution brought with it a significant wave of change, the principle of the separation and balance of powers—legislative, executive and judicial—was explicitly stipulated only in the revised 2003 Constitution (Article 1, Paragraph 4). The lack of a specific stipulation of the state being organized on the principle of the separation of powers may have affected the judicial reform process and it may explain the continuous interference of the executive power in the activity of the judiciary.
2.2. The Structure of the Courts System

The Romanian judiciary operates on four tiers: local courts or the courts of first instance in the large cities (judecătorii), county courts (tribunals), courts of appeal, and the High Court of Cassation and Justice.\textsuperscript{70} The judecătorii hear low-level criminal and civil cases, usually involving cases of divorce, separation of goods, property claims, and minor crimes, and they preside over cases individually. The tribunals are the next tier and hierarchically superior to judecătorii. They are organized at the level of each county and in addition to hearing appeals (de novo) from the judecătorii, they act as courts of first instance for more important civil and criminal cases, as well as administrative and commercial law cases. The tribunals are comprised of specialized sections for criminal, civil, commercial, and administrative law cases (ABA/CEELI 2002, 1). In the last few years, four specialized tribunals were created in Romania: one Tribunal for Minors and Family in Brașov, and three Tribunals for Commercial Cases in Cluj, Mureș, and Argeș (Justitia Română, accessed March 2009). The third type of primary courts is the Courts of Appeal, which were created in 1993 when the Law on Judicial organization went into effect (ABA/CEELI 2002, 2). There are a total of fifteen Courts of Appeal in Romania and each of them has in its district tribunals and, where they exist, specialized tribunals (Justitia Română, accessed March 2009). The Courts of Appeal act as courts of first instance in serious civil and criminal matters, hear appeals from the tribunals, and act as courts of last appeal for cases that originate in judecătorii and in bankruptcies cases. The court of last resort in Romania is the High Court of Cassation and Justice (HCCJ) which hears appeals from the Courts of Appeal and the military courts, as well as nullification

\textsuperscript{70} Prior to October 2003, the High Court of Cassation and Justice was called the Supreme Court. For consistency reasons, the former name will be used throughout the dissertation.
petitions. In some cases in which high-level officials are charged with serious crimes, the HCCJ has first-instance jurisdiction (ABA/CEELI 2002, 2). The HHCJ is divided into four specialized sections: civil and intellectual property, criminal, commercial, and administrative law matters. The court usually sits in panels of three, but for some matters it sits in panels of nine or in plenary (Justiția Română, accessed March 2009). In the Romanian court system, all judges and prosecutors are considered “magistrates” and they are members of the “magistracy” (ABA/CEELI 2001, 1).

There are also three specialized courts: the Constitutional Court, the Courts of Accounts, and the military courts. The Constitutional Court is responsible for reviewing whether Parliament has passed laws in accordance with the Constitution and for supervising the procedures for electing the President and conducting national referenda (ABA/CEELI 2002, 2). Art. 142 of the 2003 Constitution stipulates that the Constitutional Court has nine members, each of whom is elected for a period of nine years with no possibility of renewal. Three members are appointed by the Chamber of Deputies, three by the Senate, and three by the President. Additionally, the composition of the Court is renewed by one-third every three years, and each of the qualified public authorities nominates one appointee. The Court of Accounts is a special court responsible for ensuring that government funds are being used properly by the public institutions. The appeals from this court are heard first by the Courts of Appeal and then by the HCCJ. The military courts represent a separate court system similar to the regular court system but which hear only matters involving military personnel and police (in this case, the latter are considered to be part of the military system). The military courts are managed and funded by the Ministry of Defense (ABA/CEELI 2002, 2).
Since 1990, the Ministry of Justice administers the lower courts by overseeing budgetary and personnel matters, while the HCCJ and the Constitutional Court are self-managing. The article 125 of the 1991 Constitution stipulates that, "Justice shall be administered by the Supreme Court of Justice and other courts established by law." Additionally, in accordance to the article 130 of the Constitution, the Office of the Prosecutors is replaced by the Public Ministry which has the duty "to represent the general interests of the society and defend legal order, as well as the citizens' rights and freedoms" and which discharges its powers through Public Prosecutors. The structure of the Prosecutors' Office is similar with the structure of the court system with Prosecutors' Offices attached to the courts at each tier as presented in Figure 17.

Figure 17

The Structure of the Romanian Judicial System

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HIGH COURT OF CASSATION AND JUSTICE

COURTS OF APPEAL

COUNTY COURTS (Tribunals)

LOCAL COURTS (Judecătorii)

PROSECUTOR'S OFFICE ATTACHED TO THE HCCJ

PROSECUTOR'S OFFICE ATTACHED TO THE COURTS OF APPEAL

PROSECUTOR'S OFFICE ATTACHED TO TRIBUNALS

PROSECUTOR'S OFFICE ATTACHED TO JUDECATORII
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This study focuses on the reforms developed and implemented in the judicial system and, more specifically, on the institutional strategies designed to restructure and clean up the courts system and the prosecutors' offices attached to them. Since lawyers are not considered officers of the court (as are judges and prosecutors) their role will be mentioned only to the degree that it is relevant to the current analysis.

3. Institutional Strategies

The process of reforming the judiciary and fighting corruption within the sector requires the adoption and implementation of complex institutional strategies. Some of these strategies have a general impact and some are designed to target specifically corruption within the judiciary. The effectiveness of these institutional strategies depends not only on their implementation but also on how they were designed and, implicitly, on the political will that led to their adoption. That is, if there was demonstrated political will to curb corruption, the anticorruption institutional strategies would be more likely to succeed in achieving the intended goals. Hence, the analysis of institutional strategies will implicitly reveal the existence of demonstrated or merely rhetorical political will to fight corruption.

The literature on corruption suggests a set of strategies that should be implemented in order to efficiently reform the judicial system and curb corruption at the same time. There appears to be a consensus among anticorruption scholars and judicial reform analysts with regard to the strategies that need to be developed and implemented in order to increase the independence of the judiciary, strengthen its accountability, and increasing the transparency (Larkins 1996, Magalhaes 1999, ABA/CEELI 2002, Botero
et al. 2003, Anderson et al. 2005). The institutional strategies analyzed here include 1) the enforcement of legislation, 2) the creation and effectiveness of oversight institutions and anticorruption agencies, 3) the increase in transparency, 4) the adoption and implementation of the Freedom of Information Act (FOIA), 5) the adoption, implementation, and effectiveness of whistleblower and witness protection, 6) the adoption and implementation of ethics codes, and 7) the existence and implementation of merit-based civil service. Some of these institutional strategies have a general applicability that extends beyond the boundaries of one sector while some of them are specific to each sector. The latter institutional strategies, specifically, the enforcement of anticorruption legislation within the judicial institutions (i.e., courts and prosecutor’s offices), the anticorruption organization (NAPO), the Freedom of Information Act (FOIA), and the whistleblower and witness protection, are discussed in more detail in this chapter with regard to the process of adopting the original legislation and the following legislative iterations. In the next empirical chapters, these institutional strategies will be assessed specifically with regard to their implementation.

3.1. The Legislative Foundation

One of the most direct means of assessing the fight against corruption is to evaluate the implementation and enforcement of legislation designed to combat corruption. If political will to fight corruption consists of more than simple public declarations intended to impress domestic and external audiences, it should materialize in the adoption and implementation of anticorruption legislation. Furthermore, demonstrated political will should lead to the adoption of anticorruption legislation that is effective and
not merely adopted to boost the policy-makers’ image as anticorruption fighters. That is, effective anticorruption legislation should be comprehensive in nature, it should have a clear and precise language (i.e., it does not leave room for multiple interpretations), it should clearly stipulate the sanctions for breaking the rules, and it should include measures designed to prevent and not only to punish corrupt behavior. The ideal anticorruption legislation should be able to achieve the balance between preventing and sanctioning corruption, but since it is hard to tell what that balance should be, legislation that incorporates preventative measures would be considered more comprehensive than a legislation that focuses exclusively on sanctioning corrupt behavior.

The existence of well-designed anticorruption legislation represents an important but insufficient step in the fight against corruption. The next difficult task in combating corruption consists of the actual implementation and enforcement of this legislation. The judiciary, as the guarantor of the rule of law, is responsible for ensuring the effective implementation and enforcement of anticorruption legislation. Therefore, all cases of corruption, regardless of the sectors where they were committed, are being investigated, prosecuted, and sanctioned by the magistrates, as the officers of the law. This section assesses the magistrates’ success in the fight against corruption by evaluating the cases of corruption investigated, indicted, and sanctioned in the decade prior to the country’s accession to the EU. Prior to analyzing the available data, a brief discussion of the two main anticorruption laws adopted and implemented in that period is in order.
3.1.1. Anticorruption Legislation

As mentioned in the previous chapters, the first legislation specifically addressing the problem of corruption was adopted in 2000 and mainly in response to the external pressure exercised by the EU. Prior to that year, the corruption offenses were covered by the Penal Code which criminalizes four types of offenses: bribe taking (Art. 254), bribe offering (Art. 255), receiving unjustified advantages (Art. 256), and influence peddling (Art. 257). The need for adopting an anticorruption law was also emphasized by President Emil Constantinescu during his 1996 presidential campaign, when he also promised to decidedly tackle corruption once in office. However, the political reality characterized by conflicts between the members of the governing coalition (particularly between the Christian-Democrats and the Liberals), conflicts that resulted in three government reshuffles in four years, and corruption scandals involving high profile members of the government delayed the adoption of a legislation that would make it more difficult to continue engaging in corrupt activities.

Nonetheless, in May 2000, the *Law on Preventing, Detecting, and Punishing Acts of Corruption* (Law no. 78/2000 and henceforth, Anticorruption Law) was published in the *Official Journal of Romania (Monitorul Oficial)* nr. 219/18, two months after the law was adopted by the Parliament. Intended to be comprehensive, the law mainly reinforces the list of offenses and the corresponding sanctions already described in the Penal Code, although it additionally criminalizes offenses associated with corruption which were not covered in the Penal Code. However, the Anticorruption Law did not define the concept

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71 The first Government was led by Victor Ciorbea (CDNPP) from December 12, 1996 until April 17, 1998; the second Government, led by the Prime Minister Radu Vasile (CDNPP), lasted until 22 December 1999; and the third and last Government during Constantinescu's presidency was led by Mugur Isarescu (Independent) from 22 December 1999 until 28 December 2000.
of corruption and it failed to create an institution responsible for the investigation and prosecution of corruption offenses as stated in the initial proposal. The government’s proposal to create such an institution under its own supervision was quickly rejected by the Parliament, which saw in it an attempt of the executive to expand its power (Chamber of Deputies, November 9, 1999). More importantly, the law failed to differentiate between grand and petty corruption and the severity of sanctions led to concerns about potentially uneven application of the law because judges might be reluctant to uphold it in cases of petty corruption (Pruna 2000). The law also failed to offer any protection for whistleblowers or those denouncing cases of corruption. Additionally, the secondary legislation necessary for the implementation of the law was delayed more than a year, as noted by the EC in its 2002 Regular Report on Romania. Despite its flaws and delays in implementation, the Anticorruption Law was significant because it was the first anticorruption legislation. The law was amended in 2004 (Law no. 521) when the abuse in service against the public interest was added to the list of offenses of corruption covered by the original law.

A second important piece of legislation known as the Anticorruption Package, or Law 161, was adopted in 2003. As the name indicates, this legislation attempted to be among the most comprehensive anticorruption legislation adopted in the post-communist Romania. The Anticorruption Package introduced a very important provision that abolished the 1996 provision of confidentiality regarding the declarations of income and assets and the conflict of interests for dignitaries and other public officials.\textsuperscript{72} The mandatory publication of these declarations made it more difficult for public officials to

\textsuperscript{72} According to the Law no. 115/1996, the declarations of assets of dignitaries and other public officials were confidential.
hide their illegally acquired assets and/or the incompatibilities with holding a public office position. Furthermore, the law stipulated that the declarations of assets must be updated annually and another declaration must be completed before leaving the public office. Failure to update the declarations of assets by the end of each year (i.e., December 31) may attract an audit conducted by the Commission for the Control of Assets organized within the Court of Appeals that has jurisdiction in that area. Except for this provision, the Anticorruption Package fell short of achieving the ambitious goals, namely, the introduction of substantive changes in the fight against corruption. Thus, the Government opted for the legislative mechanism of a “vote of no confidence”, which severely restricted the opportunities for discussion, especially with non-governmental actors. The package included several new laws and amendments to other nine laws that covered a variety of issues from business to public procurement, and which were considered even by some of those who supported the package (i.e., members of the Democratic Alliance of Hungarians in Romania (DAHR)) as not belonging to this package. Additionally, the provisions regarding the sanctions and monitoring of the very declarations of assets and conflict of interests were incomplete and not clear enough (Romanian Parliament, March 31, 2003). Furthermore, whistleblowers were required to submit “convincing evidence” to the commissions set up for investigating such matters in order for an investigation to be launched. Failure to produce the “convincing evidence”, which implied the conduct of a private investigation for gathering the necessary evidence to support the allegation, might result in libel punishable with prison time from six

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73 In 2004, the Center for Judicial Resources concluded that the activity of the Commissions for the Control of Assets was still not made public and from the sixteen Commissions organized throughout the country, only one answered to their FOIA request (CRU 2004). In addition, I was unable to find any information regarding the activity of these Commissions on the web pages of the Courts of Appeals within which the former are functioning.
months to three years (Freedom House 2005, 40). Nonetheless, the public disclosure of politicians and public servants' income and assets as well as their declarations of interests opened the door to irreversible changes in the fight against corruption, which in association with the FOIA made it easier for civil society, mass media, and private citizens to find information and expose corrupt public officials.

3.1.2. Enforcement of Anticorruption Legislation

The adoption of anticorruption legislation was an important step forward for Romania in the fight against corruption. Nonetheless, the implementation and enforcement of this legislation is another if not more important step in combating corruption. A law that it is not enforced loses any power since those who break it know that they can get away without being sanctioned. Hence, the actual enforcement of the legislation and the sanctioning of those found guilty of committing corruption offenses is an essential part of the fight against corruption. Furthermore, punishing corrupt behavior is supposed to deter others from engaging in corrupt behavior, especially if the sanctions match the crime.

The data regarding the number of convictions in corruption cases (i.e., received definitive sentences) in the decade under study were obtained from the Ministry of Justice upon filing a FOIA request in April 2007. The data include the number of corruption cases divided per type of offenses, as presented in the Table 3. As the data show, 1997 and 1998 are the years with the highest number of corruption cases solved, which would suggest that the fight against corruption was much more effective at the beginning of the decade under study and prior to the adoption of anticorruption
legislation. Despite the higher number of convictions given for offenses of corruption in those two years (see also Figure 18), the impact of those successes was not perceived by either the Romanian public or the EU.

Table 3
Total Number of Corruption Convictions (1997-2006)

<table>
<thead>
<tr>
<th>Year</th>
<th>Bribe Taking</th>
<th>Bribe Offering</th>
<th>Receiving of Unjustified Advantages</th>
<th>Influence Peddling</th>
<th>Offenses Connected to Corruption</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>314</td>
<td>124</td>
<td>33</td>
<td>165</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>215</td>
<td>107</td>
<td>22</td>
<td>190</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>168</td>
<td>57</td>
<td>13</td>
<td>143</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>117</td>
<td>35</td>
<td>10</td>
<td>136</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>123</td>
<td>75</td>
<td>6</td>
<td>131</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>145</td>
<td>52</td>
<td>9</td>
<td>154</td>
<td>1</td>
</tr>
<tr>
<td>2003</td>
<td>119</td>
<td>56</td>
<td>1</td>
<td>126</td>
<td>1</td>
</tr>
<tr>
<td>2004</td>
<td>139</td>
<td>72</td>
<td>3</td>
<td>120</td>
<td>18</td>
</tr>
<tr>
<td>2005</td>
<td>79</td>
<td>76</td>
<td>1</td>
<td>98</td>
<td>38</td>
</tr>
<tr>
<td>2006</td>
<td>75</td>
<td>59</td>
<td>1</td>
<td>90</td>
<td>55</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1494</td>
<td>713</td>
<td>99</td>
<td>1353</td>
<td>113</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice, Response to FOIA Request (June 26, 2007)

What these data do not tell us is the value of the damage caused by the corruption offenses, the rank of the individuals sanctioned for corrupt behavior (e.g., high public officials, elected official, low public officials, private individuals) or the sectors in which the corruption offenses occurred. Unfortunately, the Ministry of Justice did not compile the data according to the abovementioned parameters and, therefore, it is impossible to decipher, based on this data, the cases of corruption prosecuted, indicted, and convicted by sector and/or by the value of the damaged produced. Nonetheless, the data are still valuable because they indicate the changes in the enforcement of anticorruption legislation.
The evolution of the total cases of corruption convictions every year from 1997 until 2006 is presented in Figure 18. The high number of cases of corruption solved in 1997 and 1998 may be explained by the significance of those cases. That is, if most of the convictions in those two years were for small cases of corruption (i.e., cases where the value of the damage was small and the quality of the individuals sanctioned was that of low-level public servant), the high number of convictions may reflect a very active agenda but a less effective fight against corruption, as long as corruption was perceived as being associated with high public officials and politicians.

Figure 18

The Evolution of Total Corruption Convictions per Year (1997-2006)\textsuperscript{74}

Source: Ministry of Justice, Response to FOIA Request (May 9, 2009)

\textsuperscript{74} The values represent the aggregated number of corruption convictions given each year regardless of the type of corruption offense.
Hence, the conviction of one hundred train conductors for receiving small bribes is less likely to be perceived as an effective fight against corruption as long as the "big fish" go unpunished. As one former junior staffer\textsuperscript{75} at a judicial institution mentioned in a personal interview she was extremely disappointed when an analysis of corruption cases prior to 2006 revealed that train conductors were the most corrupt category of public employees in the country (NGO Interviewee 1, January 2 2007).

While the Ministry of Justice did not provide details regarding the value of the damage caused or the quality of the public officials convicted for corruption, the EC Regular Reports consistently criticized Romania for failing to bring to justice a single high case of corruption prior to the adoption of anticorruption legislation. Furthermore, the national written media and civil society seconded the external criticism regarding the Government's failure to enforce the legislation in cases of high or grand corruption. Therefore, it is not very surprising that after the, Anticorruption Law and Anticorruption Package were adopted and started being implemented, the number of corruption cases and of the individuals convicted for corruption offenses decreased as reflected in the Figure 19.

The decline in the number of cases of corruption solved and in the number of individuals convicted for corruption offenses after 2002 may be explained by the creation of the National Anticorruption Prosecutor's Office (NAPO). The details regarding this special anticorruption body will be presented in the next section; for now, it is important to mention the fact that NAPO was created to investigate and prosecute medium and high level corruption and it became the main institution to address cases of corruption in Romania. Hence, the change of focus in the fight against corruption means also a smaller

\textsuperscript{75} The identity of the interviewee will remain anonymous at her request.
number of cases of corruption indicted and sentenced. That is due, at least in part, to the complex nature of medium and high level corruption cases which require more time and the combination of experts from various areas in order to gather the appropriate evidence for court trials.

Figure 19

Total Number of Individuals Convicted for Corruption Offenses

Source: Ministry of Justice, Response to FOIA Request (May 9, 2009)

As NAPO adjunct chief-prosecutor Carmen Gâlcâ explained in a personal interview (February 23, 2007), due to their secret nature corruption cases are difficult to prove in court and therefore require more time to gather all the necessary evidence that would increase the chances of a successful indictment and prosecution. Additionally, the complexity of high corruption cases, the continuous challenge of keeping up with the new anticorruption legislation, the long duration of judicial procedures and of solving all the
appeals invoked by the defendants’ “army of lawyers” affect even more the effectiveness of anticorruption prosecutors measured as number of corruption convictions. Hence, the shift of focus to more complex cases of corruption explains the decrease in the number of corruption convictions given since the establishment of NAPO. The activity of the NAPO since it began functioning is summarized in Figure 20.

Figure 20

NAPO Activity 2003-2006


As Figure 20 indicates, the activity of NAPO has constantly increased since it started functioning in 2003. The increase in the number of cases solved by NAPO in 2004
is explained by the change in the anticorruption office's jurisdiction that year. Thus, in 2004, the jurisdiction of NAPO was expanded to include also small cases of corruption, as it will be explained in more detail below. Nonetheless, the increase of total number of cases that NAPO had to solve each year was due in part to the cases remained unsolved from the previous year or years. Column two in Figure 20 presents the percentage of cases solved from the total number of cases. Moreover, most cases were dismissed due to the lack of evidence or because they were falling outside of NAPO jurisdiction and only a small percentage of cases were indicted (column three, Figure 20). However, if in 2003 only 15 percent of indictments ended in convictions, in 2006 convictions were pronounced in almost 60 percent of the cases indicted. Hence, the data indicates an improvement in the activity of NAPO to successfully investigate and prosecute cases of corruption.

Additionally, in 2006, NAPO began the investigation of a very high profile public official, the former Prime Minister Adrian Năstase, an investigation that at the time appeared to be a clear sign of demonstrated political will and effectiveness in enforcing the rule of law. However, the investigation was stopped in 2007 due to procedural problems and the Parliament's failure to vote in favor of lifting the parliamentary immunity for, at the time, Senator Năstase. The same year, nine judges and six prosecutors were investigated for corruption offenses and five of them (four judges and one prosecutor) were indicted for such offenses. One judge and one prosecutor received definitive sentences and four other judges were convicted for corruption offenses by the end of the year (SCM 2006, 197).

76 On March 4th 2009, the Parliament voted for the lifting of Năstase's parliamentary immunity, which allows NAPO to continue the investigation started in 2006.
The number of cases of corruption prosecuted and convicted is an explicit indicator of the way anticorruption legislation is enforced, but the publications of declarations of interest and assets is also part of the anticorruption legislation and its enforcement also reveals the consistency and effectiveness in fighting corruption. As officers of the law, magistrates should set an example with respect to the compliance with the formal rules by filling out and making public their declarations of interest and assets as required by the Anticorruption Package. The situation for the three years after the adoption of this anticorruption law was not very encouraging, magistrates failing for the most part to comply with these legal requirements. Thus, a study conducted by the Society for Justice (SoJust) in 2006 found that many of the financial disclosure statements (i.e., declarations of assets) were not signed which would indicate that the authors were reluctant to assume responsibility for their declarations.\textsuperscript{77} Moreover, a closer examination of those declarations of assets revealed that some magistrates were shareholders in private businesses, including nine judges and six prosecutors within the HCCJ, a situation specifically forbidden by the law.\textsuperscript{78} The Superior Council of the Magistracy, the institution responsible for noting and taking appropriate measures to solve those infractions of discipline, failed to take any action (So Just 2006, 21). As with regard to the publication of the declarations of interest, the same study found that there were courts that failed to comply with the provisions of the Anticorruption Package and make public those declarations. Among those courts were the HCCJ and some local

\textsuperscript{77} A brief examination of the declarations of assets conducted by this author in March 2009 revealed that the situation remains unchanged in many local courts. Moreover, there are some cases when the declarations are signed but left completely blank.

\textsuperscript{78} The position of magistrates is incompatible with any other professional positions, except that of a university professor, in order to ensure the magistrates' objectivity in carrying out investigations and sentences.
courts (*judecătorii*), such as those in Brașov (SoJust 2006, 85). These findings suggest that, at least until the end of 2006, the enforcement of the Anticorruption Package was deficient within the very sector responsible for the enforcement of those legal provisions. Furthermore, it indicates the existence of an internal resistance to reform, which may explain the difficulty in combating corruption and improving the image of the judicial institution in the eyes of the general public.

### 3.2. Oversight Institutions and Anticorruption Agencies

Internal oversight institutions (e.g., judicial councils) that have the power to oversee the administration of justice and internal audits may also strengthen the accountability of the judicial process and increase its performance. Judicial councils composed of judges are considered to better assess the needs of the institution or branch rather than the individual interests. They may deter some of the pressure from the executive and legislative branches to intervene in the administration of justice. Additionally, the existence of an internal disciplinary process may allow magistrates to be free from threats of retaliation from other branches for decisions they may have delivered while still being held accountable for their activities (Dakolias and Thachuk 2000, 385). Furthermore, oversight institutions can play a role in fighting corruption by ensuring that magistrates’ behavior is compatible with their important public function and that no behavior that threatens the image and effectiveness of the institutions goes unpunished. In addition to internal audit oversight institutions, the creation of anticorruption agencies increases the chances of success in fighting corruption. An institution responsible with specifically targeting corruption is likely to be more effective
if the appropriate resources are made available and if it has the necessary authority to investigate and prosecute corruption offenses. The next two sections evaluate the Superior Council of the Magistracy (SCM), the internal audit institution, and the National Anticorruption Prosecutor’s Office (NAPO), the main anticorruption body created in post-communist Romania.  

3.2.1. The Superior Council of the Magistracy

Article 133 of the 1991 Constitution stipulates that the Superior Council of the Magistracy recommends to the President of Romania the magistrates for the positions of judges or prosecutors and that it is the body responsible for solving the infractions of discipline committed by magistrates. While the 1991 Constitution assigned limited responsibilities to the SCM, the latter’s role changed radically with the adoption of the revised Constitution in 2003. Thus, the new Constitution stipulates that the main role of the SCM is to “guarantee judicial independence” (Article 133, Paragraph 1) and that it is the sole body responsible for the magistrates’ careers. The adoption in 2004 of the Law on the Superior Council of the Magistracy (Law no.317), as part of the judicial reform package, has further strengthened the role of the SCM and since February 2005, when the formal transfer of powers from the Ministry of Justice to the SCM was completed, the SCM is exercising in practice its authority.

The main competences of the SCM, as described by the Operating Rules Regarding the Activity of the SCM (SCM Decision no. 326, 24 August 2005), include

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79 The anticorruption literature mentions the important role that the Ombudsman may have in fighting corruption. However, that is not the case in Romania where this institution plays no role in combating corruption and was reluctant to any suggestion that might have expanded its role to the area of anticorruption (Interview Anticorruption Expert 2, May 20, 2007).
defending the magistrates against any acts that could affect their independence and impartiality; protecting magistrates' professional reputation; ensuring the observance of the law; and ensuring the observance of the criteria of competence and professional ethics in the course of magistrates' careers. In addition to the duties regarding the career of judges and prosecutors (i.e., proposing to the President of Romania the appointment and removal from office, ordaining the promotion of magistrates, proposing to the President of Romania the bestowing of distinctions upon judges and prosecutors), the SCM also has specific duties concerning the admission in magistracy, the evaluation, training, and examinations of judges and prosecutors;\textsuperscript{80} tasks regarding the organization and functioning of courts and prosecutor's offices; and responsibilities concerning disciplinary actions.

According to the SCM Law (i.e., Law 317/2004), the institution is organized in two sections (one for judges and one for prosecutors) and has nineteen individual members (nine judges, five prosecutors, two representatives of civil society, and three \textit{de jure} members with no right to vote—the Minister of Justice, the president of the HCCJ, and the General Prosecutor). The elected members of the SCM (i.e., judges and prosecutors) are chosen by their peers after a brief campaign in which those interested in a membership position at the SCM propose their candidacies. The latter are publicized on the SCM's webpage and in the \textit{Official Journal (Monitorul Oficial)} in order to ensure the access of every magistrate to the list of candidates' names and professional biographies. The first election took place in December 2004, when the SCM members were elected for six-nonrenewable years. The elections were contested by the civil society on procedural grounds because many candidates were appointed by their hierarchical chiefs (i.e,

\textsuperscript{80} The duties regarding the magistrates' careers will be discussed in more detail later in this chapter.
presidents of courts or chief prosecutors) and no challengers attempted to run against them. Some of the low ranking magistrates who applied for the SCM positions were subjected to pressure from their superiors to quit the campaign (SoJust 2006, 6). Under those circumstances many magistrates were reluctant to propose their candidacies considering it too risky to potentially defeat a hierarchical superior (Interview Judicial Expert, May 22, 2007). Hence, those elected were again people with old mentalities whose motto was “to introduce small changes and see what happens”, being afraid to substantially reform the system. Furthermore, the SCM candidates were elected without most of the magistrates knowing who they are and what, if any, their platform is (Interview Magistrate Professional Organization, March 26, 2007). The situation was tainted even more when the media discovered that one of the prosecutors elected to the SCM, Ilie Picioruș, had participated during communism in a political investigation that resulted in the death in preventive arrest of a Romanian dissident (Freedom House 2005, 101). That case was of particular importance not only for the reputation of the new judicial institution, but also because the SCM Law stipulates that those who collaborated with Securitate during communism could not be elected to the SCM. While Picioruș was not found to have been an informant to the Securitate, his involvement in that investigation tainted his reputation as a prosecutor.

Article 23, Paragraph 2 of the SCM Law stipulates that the activity of the members of the SCM has a full-time, exclusive character and that those elected to serve in the SCM must suspend their positions at the courts of law or prosecutors’ offices for the duration of their mandate at the SCM. Given the important responsibilities bestowed upon the new SCM, the new members were required to devote their entire working time
to ensure the effective functioning of this institution. However, the SCM Decision no. 326/24 August 2005 stipulates that those elected members that had a dual mandate at the time the decision was published could “choose” to suspend their positions as judges or prosecutors in which case they must express their request in writing. This specification gave the elected members the option to continue holding dual mandates and most of them chose to keep their previous jobs as judges or prosecutors. The unusual situation was noted by the EC in the Regular Reports from 2005 and May 2006 and it strongly recommended that dual mandates be disallowed. The external recommendations were also supported by the President Traian Băsescu, the magistrates’ professional organizations, and civil society organizations all of them emphasizing that the large amount of work and important responsibilities that are assigned to the SCM require a complete dedication and dual mandates negatively impact the effectiveness of their activity as members of the SCM. In response to the EC recommendation against dual mandates (EC Regular Report 2005, 11), the President of the SCM claimed that “the technical staff is well prepared” to carry out daily activities and that the SCM “carries out its activity in plenary session and on panels” (SoJust 2006, 10). The SCM members’ reluctance to suspend their positions at the courts of law or prosecutors offices led to the situation where they received payments for two different positions with overlapping working hours. Besides the issues of illegality and ineffectiveness that might arise, the situation poses an ethical question especially when those members were the ones in charge of defending the integrity and good reputation of all magistrates. Nonetheless, by the end of 2006 only six of the total sixteen members with the right to vote chose to end their dual mandate and opted for permanent activity at the SCM (SoJust 2006, 9).
An indicator of demonstrated political will to fight corruption is represented not only by the creation of institutions designed to actively participate in this fight, but also by the human and financial resources allocated for the effective functioning of these institutions. In order to effectively conduct its activity, the SCM has its own administrative apparatus organized in departments, offices, and commissions responsible among other things with managing human resources, administrating financial resources, managing the legal issues regarding the judiciary and the magistrates, EU integration and the implementation of PHARE programs, public relations, and conducting of internal audits. In order to develop its complex organizational structure and to ensure a proper functioning of the institution, in 2005, the SCM was assigned 139 administrative positions and 23 management positions. By the end of that year, 130 of the administrative and 21 of the management positions were staffed (EC Regular Report 2005, 11). In 2006, the total number of positions representing the technical staff of the SCM was increased to 234, 78 percent of those positions being staffed by May 2006 (EC Regular Report 2006, 7). The increase in personnel was influenced by the changes in the budget allocated to the SCM.81 Thus, if in the first year of activity the budget allocated to the SCM was 224,950,600,000 ROL ($20,992,695),82 the following year, the financial resources allocated almost doubled, increasing to 456,320,000,000 ROL ($37,238,754) (SCM 2005a, 17). The significant increase in the financial and human resources show a positive change in the political will to reform and clean up the judiciary, a change that indicates a continuity and even escalation of efforts to establish the rule of law and clean corruption.

81 Prior to 2005, the SCM did not have a separate budget allocated being under the direct subordination of the Ministry of Justice.
82 ROL is the Romanian currency. All values were adjusted for inflation and discounting and are expressed in real 1997 USD, the first year of the research study. See Chapter VI for a detailed explanation of the adjusting calculations.
An important part of the SCM organizational structure is represented by the working groups and the commission responsible for monitoring the implementation of the judicial reform process. In May 2005, the SCM organized six working groups composed of elected members of the SCM, members of its technical staff, judges and prosecutors, university professors, psychologists and other professional categories depending on the specific task of the working group (SCM Decision no. 152, 26 April 2005). The working groups were responsible for coordinating and ensuring the effective implementation of the Action Plan for the implementation of the Judicial Reform Strategy (JRS) applicable for 2005-2007 and the 2004 Twinning Programs funded by the EU through PHARE program. An evaluation of the working groups conducted by the Society for Justice in 2006 concluded that the working groups are “unproductive” and that there was “strong evidence to question whether the magistrates’ career is seriously treated” (So Just 2006, 10). Among the irregularities uncovered by the report were cases when the members of the working groups who missed a meeting were informed that they “abstained” from voting or cases when absent members were told that they have been appointed to conduct other working groups.

To ensure the effective monitoring regarding the achievement of the Action Plan for the implementation of the JRS, the Monitoring Commission of the SCM and the local monitoring commissions were created. The local monitoring commissions presented monthly reports which were discussed at the central level and which, according to the SCM Activity Report for 2006 (16), ensured a permanent dialogue between the SCM,

83 The six working groups are: 1) Legislation; 2) Organizational Structure and Administration of the SCM, of Judicial Courts and Prosecutors’ Offices, and of the Other Institutions Coordinated by the SCM; 3) Socio-professional Profile of Judges and Prosecutors and their Professional Formation; 4) Optimum Amount of Activity of Judges and Prosecutors and the Restructuring of Courts and Prosecutors’ Offices; 5) Ethics Code of Judges and Prosecutors; and 6) Relation with Mass-Media and Civil Society.
courts and prosecutors’ offices, the National Institute of Magistracy, and the National School for Clerks, and which increased the level of responsibility and accountability of those in charge with implementing the reform measures. The central Monitoring Commission met four times in the two years prior to Romania’s accession to the EU (two meetings per year) to assess the state of the judicial reform (15 April and 23 September in 2005 and 18 April and 13 November in 2006). From the minutes of the meetings, one can learn that while efforts were made to implement the reform measures, the complexity of those measures, insufficient funds, and inconsistent legislation affected the process of implementing the JRS. Nonetheless, the minutes of those meetings lack detail and while they present the main objectives discussed during the meetings, for the most part they fail to specify the exact problems identified in the implementation of the reform measures. For example, at the first meeting that took place in April 2006, the Commission discussed the establishment of objective criteria necessary for ensuring the random assignment of cases to judges and prosecutors, but it did not present any information regarding the actual implementation of those legal provisions. Hence, there is a lack of data regarding the random assignment of cases to judges and prosecutors, the problems encountered in practice, and/or the cases when the exceptions to the law were applied making the measurement of the effectiveness of these legal provisions difficult to assess.

In fall 2005, the Ministry of Justice commissioned Transparency International Romania (TIRo) to conduct a study assessing the magistrates’ perception of judicial independence. The study was repeated in 2006 and the magistrates’ response with regard to the activity of the SCM is summarized in Table 4. The data show that in 2005 the magistrates revealed significant levels of contentment with the activity of the SCM, sixty
one percent of magistrates declaring a high and very high level of satisfaction with the activity of the institution.

Table 4
Magistrates’ Satisfaction with the SCM Activity

<table>
<thead>
<tr>
<th>Level of satisfaction (Percent)</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very high</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>High</td>
<td>53</td>
<td>36</td>
</tr>
<tr>
<td>Low</td>
<td>28</td>
<td>30</td>
</tr>
<tr>
<td>Very low</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>Not at all</td>
<td>3</td>
<td>6</td>
</tr>
</tbody>
</table>


The magistrates’ responses changed in 2006, when the percentage of those declaring a high level of contentment with the SCM activity decreased thirteen percent. The change may be explained by the fact that in 2005, the SCM was still a very new institution and magistrates’ responses reflected more their expectations regarding the SCM activity and its role in protecting them and guarantying judicial independence. A year later, the magistrates’ evaluation of the SCM activity was based on more information and, as one interviewee said, the SCM was inefficient because it lacked clear objectives and priorities and it was like “placing the wagon in front of the horses” (Interview Magistrate Professional Organization, March 26 2007).

An important reason for which the magistrates’ evaluation of the SCM was less positive in 2006 has to do also with the way they assessed the response of the institution responsible for guaranteeing their independence and protecting them from external pressures and infringements in their activities. Thus, if in 2005 sixty four percent of
respondents said that the SCM “sometimes” has a prompt reaction to infringements in their activities, in 2006 the number of similar responses decreased to 34 percent. The number of those answering “yes” to the question regarding the SCM’s ability to guarantee the magistrates’ independence from political pressure decreased 17 percent in 2006 (specifically, to 43 percent) (TI Romania 2006, 53-54). All of these results support the previous conclusion, namely that the satisfaction with the activity of the SCM and the trust in its ability to actually guarantee judicial independence was in 2005 based more on expectations than reality. Furthermore, the magistrates’ disappointment was influenced by the manner in which the SCM conducts its activity, namely, solving all the problems, regardless of their importance, in plenary sessions. In addition to loading unnecessarily the schedule of plenary meetings, that way of conducting their activity was perceived by magistrates as inefficiency and lack of responsibility (NGO Interviewee 4, March 16 2007). However, it should be mentioned that the SCM is still a very young institution and it is still in the process of consolidating and finding its way in a changing environment.

3.2.2. The National Anticorruption Prosecutor’s Office

This major anticorruption institution was created two years after the adoption of the Anticorruption Law and in response to the EU criticisms regarding the lack of results in the fight against corruption that followed its adoption. The creation of NAPO was intended to be a clear demonstration of political will to fight corruption, specifically high and medium level corruption, and to show both the EU and the Romanian public that no one is above the law. Nonetheless, the initial steps in the creation of NAPO indicate that the establishment of an institution that would have jurisdiction in cases of high corruption
was a complicated process that would require significant political will and willingness to compromise of all the parties involved in the legislative process. The parliamentary debates regarding the adoption of the NAPO legislation revealed significant disagreements between members of Parliament in the opposition parties and those represented in the governing coalition. The opposition parties’ attempts to increase the independence of NAPO from political interference failed almost entirely. A small victory was attained regarding the appointment of the NAPO chief prosecutor by the Minister of Justice at the recommendation of the SCM, creating thus an appearance of independence from the executive power.

The legislation regarding the creation of NAPO was among the most amended and changed legislation in post-communist Romania. Since 2002, the original legislation was amended and changed no less than ten times, sometimes even twice in the same month. The frequent changes were in response to the external pressure of the EU for substantive reforms and the domestic pressure to protect particularistic interests and maintain the status quo through non-substantive reforms. The changes attempted to address the weaknesses in the initial legislation regarding mainly the competencies of NAPO, the prosecutors’ power to issue warrants, the status of judicial officers delegated to NAPO, and the budget. Thus, the competencies of NAPO were modified first in 2003 through the Anticorruption Package, which expanded the NAPO jurisdiction to all cases where the damages caused by the corrupt act exceeds the equivalent in RON of €100,000

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84 The three main opposition parties were The Democratic Party, The National Liberal Party, and The Party of Great Romania.

85 The predominant political party in both the Parliament and Government was the Social Democratic Party; the other two main political parties in the governing coalition were the Democratic Alliance of Hungarians in Romania and The Conservative Party.
(as stipulated by the initial NAPO legislation86) or the value of the object or service that is used to facilitate the corrupt transaction (i.e., the bribe) exceeds €10,000. The same legislation also introduced a distinction between the corruption cases that fall under the jurisdiction of the central NAPO and those that are to be investigated and prosecuted by its territorial services. Thus, the latter would investigate cases of corruption when the damages were between the equivalent in RON of €100,000 and 10,000 and the value of the bribe was between €10,000 and 3,000. These specific stipulations were changed again in the following years. Thus, in 2004 the NAPO jurisdiction was initially decreased to cases of corruption where the damages caused were no higher than €10,000 (Emergency Ordinance 24/2004) and than a few weeks later increased again to €100,000 (Emergency Ordinance 103/2004). The value of the bribe followed a similar pattern, being first decreased to €3,000 and later increased to €5,000. These changes in competencies in a period of weeks indicate first the attempt to reduce the jurisdiction of NAPO to small cases of corruption (something that NAPO was already focusing on, despite its initial provisions) and the failure to demonstrate political will to fight high corruption. Second, the changes in jurisdiction in matters of weeks reflected the effect of the external pressure exercised by the EU. Thus, after the adoption of the Emergency Ordinance 24/2004, the EC issued its Regular Report on Romania in which it criticized the reduction of NAPO competencies and warned against the shift of focus from high corruption to petty corruption. As a result, a new Emergency Ordinance was adopted (no. 103/2004) that increased again the competencies of NAPO.

86 NAPO was created based on the Government Emergency Ordinance no. 43/2002, Ordinance that passed the Parliament and was adopted as the Law no. 503/2002.
However, all these changes did not affect the initial provisions regarding the NAPO jurisdiction to investigate and prosecute members of government and/or the Parliament. Thus, according to the Constitution, only the Prosecutor’s Office of the High Court of Cassation and Justice can investigate and prosecute these high officials. That decision was reinforced in May 2005, when the Constitutional Court ruled that NAPO does not have the competency to investigate and prosecute MPs and other members of government. The situation changed in 2006 when a new law was adopted (Law no. 54) that extends the NAPO competency to government officials and MPs. Despite this new provision, the procedures required in investigating an MP for corruption continue to remain complicated and long, which may give the defendants the opportunity to hide or destroy any compromising material.

The establishment and functioning of NAPO depended also on the financial and human resources allocated. The evolution of the NAPO personnel since its first year of activity (i.e., 2003) until the end of 2006 is summarized in Table 5. As the data show, the number of prosecutors, judicial police officers, experts, and auxiliary staff (including specialists in finances and public administration) has increased every year.

Table 5

The Evolution of NAPO Personnel

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecutors</th>
<th>Judicial Police</th>
<th>Experts</th>
<th>Auxiliary Personnel</th>
<th>Total occupied</th>
<th>Total allocated</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>35</td>
<td>22</td>
<td>16</td>
<td>37</td>
<td>110</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>91</td>
<td>130</td>
<td>31</td>
<td>121</td>
<td>373</td>
<td>462</td>
</tr>
<tr>
<td>2004</td>
<td>110</td>
<td>161</td>
<td>41</td>
<td>150</td>
<td>462</td>
<td>510</td>
</tr>
<tr>
<td>2005</td>
<td>111</td>
<td>149</td>
<td>43</td>
<td>149</td>
<td>452</td>
<td>510</td>
</tr>
<tr>
<td>2006</td>
<td>118</td>
<td>162</td>
<td>52</td>
<td>169</td>
<td>501</td>
<td>566</td>
</tr>
</tbody>
</table>

While the positions allocated to NAPO have increased, the number of positions filled each year was a little less than ninety percent throughout the entire period. According to the NAPO adjunct chief-prosecutor Gâlcă, filling out the positions poses a challenge because not too many prosecutors are interested in working there due to the high pressure and exhausting working hours that investigating and prosecuting sometimes very difficult and politically charged corruption cases require (Personal Interview, February 23 2007). Nonetheless, the positive change regarding the human resources allocated indicate a real concern for fighting corruption and a demonstration of political will to address this issue. The increase in personnel was influenced by the changes in the financial resources allocated to the NAPO. Table 6 presents the evolution of the budget allocated to this anticorruption institution from 2003 until 2006. As the amounts in ROL indicate, the budget allocated to NAPO in 2004 was almost three times higher than in the previous year, which does coincide with the increased external pressure exercised by the EU. The following two years the budget decreased although, even in 2006, it continued to be more than twice the budget allocated for the first year of NAPO activity.

Table 6
The Evolution of NAPO Budget

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget (ROL)</th>
<th>Budget (USD)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>168,700,000,000</td>
<td>20,348,982.28</td>
</tr>
<tr>
<td>2004</td>
<td>542,188,000,000</td>
<td>57,630,454.22</td>
</tr>
<tr>
<td>2005</td>
<td>522,322,500,000</td>
<td>48,743,843.80</td>
</tr>
<tr>
<td>2006</td>
<td>524,484,950,000</td>
<td>42,801,468.77</td>
</tr>
</tbody>
</table>


*The USD budgets are adjusted for inflation and discounting and expressed in real USD 1997 value.
Despite the frequent changes in the legal provisions regarding the organization and functioning of the NAPO, the evidence shows that this institution played an important role in fighting corruption. The increase in the human and financial resources allocated to NAPO also indicate a demonstrated political will to tackle medium and high corruption, although the external pressure played an important role in stimulating the manifestation of such political will. Moreover, the change in the statute of NAPO in fall 2005, followed by the adoption of the provision assigning NAPO jurisdiction to investigate MPs represents another important positive change in combating corruption and increasing the effectiveness of this anticorruption institution.

4. Transparency

Another important set of anticorruption strategies focus on increasing the transparency of judicial procedures. Transparency and accountability are very much intertwined and strengthening one relies on strengthening the other. Judicial transparency plays an essential role in the fight against corruption, particularly in a country where secrecy and lack of transparency have ruled people’s lives for decades. In addition to the adoption of legislation that guarantees the freedom of information and the access to information of public interest, transparency in the judicial sector can be increased by allowing the public and media access to judicial proceedings, the publication of judicial records, and the maintenance of trial records that could be accessed by those interested in learning more about the judicial proceedings in specific cases. Furthermore, one of the main goals of the Strategy for the Reform of the Judiciary (SRJ) applicable for the period 2005-2007 was to ensure the increase of transparency of judicial proceedings. The next
two sections assess the existence and implementation of such strategies in the Romanian judiciary.

4.1. Public and Media Access to Proceedings

A means to deter corrupt behavior in the judiciary is to hold public trials allowing citizens and the media to observe the behavior of judges and prosecutors in action. According to the Romanian Constitution (art. 128) the “[p]roceedings shall be public, except for the cases provided by law.” The same provision can be found also in the Law on the Organization of the Judiciary (henceforth the Organization Law), Law no. 304/2004, Article 11. The civil procedure code and the criminal procedure code specify that, if an open hearing risks threatening the public order, the morality, or the parties involved the proceedings will be closed. However, there were no reports that those provisions have been abused in practice (ABA/CEELI 2002, 29).

Additionally, Article 106 of the Organization Law stipulates that every court and prosecutor’s office must establish a Bureau for Public Information and Relations. The next article of the same law establishes the role of this Bureau, namely to ensure the communication between the judicial institutions and the public and mass media in order to guarantee the transparency of the judicial proceedings. The 2005 Report on the State of the Judiciary elaborated by the SCM lists the progress made in making the activity of the judiciary more transparent. Thus, with regard to the communication between citizens and the judiciary, departments of information and relations with the public were created at the local courts and the prosecutors’ offices attached to them and they were endowed with new equipment necessary for their effective functioning (internet connection, faxes, copy
machines) and trained personnel. Furthermore, web pages were created for the major judicial institutions such as the Ministry of Justice, SCM, HCCJ, Prosecutor’s Office attached to the HCCJ, and the National Institute of Magistracy. These web pages are used to make available information of public interest regarding the organization, financial and human resources, and the activity of those institutions.

In addition to these measures, beginning with 2005, the SCM organizes every year an “Open Doors’ Day” on the European Day of Civil Justice (i.e., October 25), a manifestation designed to familiarize the public with the activity and role of the institution in guaranteeing the independence of the judiciary and monitoring the implementation of the judicial reform. Furthermore, this manifestation is organized at all judicial courts and prosecutors’ offices in the country in an attempt to educate the public about the way the judicial institutions work and the means to gain access to more information regarding the activity of those institutions. According to the 2005 SCM Activity Report, the “Open Doors’ Day” manifestations were a success; many students, journalists, civil society representatives, and members of the general public visited the judicial institutions on October 25, 2005. The events were interpreted as increasing the public’s confidence in the judicial system (SCM 2005a, 69). These efforts were supplemented with the publication and distribution of thirty two Guides for the Public, which offered information regarding the evolution of judicial proceedings and the SCM competences. The guides were distributed during the Open Doors’ Day events in 2005 and 2006 and they were also made available on the web page of the SCM (SCM 2006, 261). Hence, anyone interested in learning more about the functioning of the judiciary or specific judicial procedures can consult the guides published on the SCM web page.
In 2006, the SCM also published a *Guide for Good Cooperation between Courts, Prosecutors’ Offices, and Mass Media* in an attempt to improve the relationship with the media, a relationship that had been very tense for more than a decade. Thus, in 2005, fifty seven percent of the magistrates that participated in a study regarding the independence of the judiciary conducted by TI Romania said that the media “often” and “very often” exercise pressure on the judicial system. Furthermore, seventy four percent of them identified the mass media as having the most negative influence on the independence of the judiciary because it influences judicial decisions and rulings. The number of those considering mass media having the greatest influence on their judicial activity continued to be high in 2006, with fifty-six percent of judges and forty one percent of prosecutors ranking the media as the number one source of interference in their activity (TI Romania 2006, 23-24). Some of the blame for the tense relationship may be placed with the media. According to one interviewee, the problem in Romania is the lack of a

“responsible media that knows how the justice system works. Media tends to cover scandals and they [journalists] often write what is happening which only shows how little they know about the justice system; they do not have the facts right; they do not have the notion of ‘presumption of innocence’, so when an accused is released before the trial, the judge is immediately considered as being corrupt. Moreover, that happened even if the judge acted correctly and applied the law—all these influence the judges and influence them because it puts pressure on them” (Interview Judicial Expert, May 22 2007).

For example, a judge found out from reading a newspaper about a decision that she was yet to make (Interview Magistrate Professional Organization, March 26 2007).

Although some journalists lack the necessary judicial knowledge or may have their own personal agenda, the situation improved over time and more attention has been given to the way they cover judicial cases, a fact confirmed by a representative of the
magistrates’ professional organization in a personal interview (March 26, 2007).
Nonetheless, magistrates continue to perceive the media as having played a major role in
portraying a negative image of the judicial system, thus affecting the trust people have in
judicial institutions. However, the changes introduced since 2004 in the judicial system
give magistrates the means to defend against unfair attacks from the media, the SCM
being responsible for defending the magistrates’ reputation and protection from any
external interference. Therefore, decisions based on anything else but the law cannot be
justified by external influences made by the media, the executive, or interest groups.
Although the SCM considers the implementation of the measures designed to increase the
transparency of the judiciary a success story, the magistrates seem to be less optimistic
with regard to their relationship with the media and the public continues to perceive the
judicial system as being afflicted by corruption.

4.2. Publication of Judicial Decisions and Maintenance of Trial Records

An important means of ensuring the transparency of the judicial process is to
make public the judicial decisions and appellate opinions, to publish the latter and even to
open them to academic debate. The decisions of the High Court of Cassation and Justice
are published on an annual basis as are some the important decisions of the courts of
appeal and tribunals. Beginning with 2001, HCCJ has also posted on its website an
annual report of its activity (i.e., cases entered at the beginning of the year, cases solved
and unsolved by the end of that year). Lower court decisions are not usually published,
but since 2000 all judges are required to issue written opinions. Prior to that, judges were
required to issue written opinions in civil and commercial cases only if one party
requested it or intended to appeal the court’s decision. There are also a number of journals that publish law reviews and comment on the developments in the law and/or on important judicial such as Dreptul (The Law) and Noua Revistă Română de Drepturile Omului (The New Journal of Human Rights).

The ABA/CEELI assessment of the judicial reform in Romania prior to 2002 concluded that no court transcripts were maintained. Judges usually summarized the testimony of a witness and the court clerks recorded the summary by hand or typing, after which the witness signed the summary. As a consequence the process was slow and often resulted in judicial case records that were not clear. The 2004 Organization Law introduced a change regarding the recording of court proceedings. Thus, the court proceedings were to be audio or video recorded or recorded in writing by the court clerks. The change, while intended to achieve a better maintenance of trial records, required time to be fully implemented, especially given the poor situation of the courts in Romania. In spring 2006, a study financed by the United States Trade and Development Agency (USTDA) was conducted in order to identify the equipment necessary for ensuring the recording of the judicial sessions at the Courts of Appeal. After the completion of the study (scheduled for the end of May 2006), the acquisition of the equipment was to take place (SCM 2006b).

In 2000, steps were taken towards the implementation of a PHARE project designed to set up a file management system that would improve the maintenance of trial records as well as the communication among courts. The pilot project testing the Electronic Court Register Informational Systems (ECRIS) was implemented at the HCCJ and later at nine other locations in Bucharest. Nonetheless, the program could not be run
in 2001 because the IT infrastructure of courts was deplorable. Three years later, in 2004, an evaluation of needs and available means was still lacking and the only statistic available was with regard to the number of computers in courts (a total of 3402 computers for 234 courts) (Freedom House 2005, 107). Given the poor situation of the Romanian judicial institutions, particularly with regard to information technology equipment, in 2005, the Ministry of Justice was allocated from the national budget EUR 22 million to buy IT equipment and to ensure that all prosecutors’ offices and eighty percent of the judicial courts would have the necessary IT by the end of 2006. A separate amount of EUR1.27 million was allocated to the NAPO for similar purposes (Ministry of Justice 2005a, 7 and 20). In 2006 a web site was created that gives access to all judicial courts in the country (http://portal.just.ro) and where the courts can post immediately their courts judgments. This measure was an important step forward – particularly if the courts post judgments in real time – in increasing the transparency of judicial activity and in unifying the judicial practice countrywide.

5. Freedom of Information

The most obvious example of political will is represented by the adoption of the Freedom of Information Act (FOIA) in 2001. The process of drafting and adopting this legislation was the result of an unusual collaboration between government, opposition parties (specifically, the National Liberal Party), and civil society organizations (Interview Anticorruption Expert 2, May 20 2007). This is the first such law adopted in the history of Romania that had an important impact by increasing transparency and legitimizing people’s access to public information. It is no surprise that FOIA is
considered to be a very important anticorruption tool especially for watchdog NGOs and newspapers which use it frequently to get access to information that used to be confidential (Freedom House 2005, 49).

The main impetus behind the adoption of FOIA in 2001 was the external pressure exercised by the EU and the North Atlantic Treaty Organization (NATO). When Romania was not included in the first wave of NATO enlargement in 1999 despite supporting the war in Yugoslavia, the absence of the legislation regarding the access to information and classified information was considered to be one of the reasons (Interview Anticorruption Expert 1, April 12 2007). In addition there was added pressure from the EU, which consistently requested the adoption of such legislation. Thus, in July 2001, the European Parliament (EP) recommended that the Romanian government adopt the Freedom of Information Act and open and support a social dialogue (European Parliament, Report 2001, 11). An incentive was offered in the form of a project financed by the EU for the implementation of FOIA in the candidate countries, a project that Romania wished to be part of (Legislative Debate, Chamber of Deputies 24 April 2001). As a result, a few months after the EP report, the Romanian Parliament adopted the first legislation regarding freedom of information in post-communist Romania. External pressure was combined with a change in domestic leadership following the 2000 elections, which again brought to power the Party of Social Democracy in Romania (PDSR) and its leader, Ion Iliescu, who ruled the country for the first six years after the 1898 Revolution. In 2000, both Iliescu and his party declared their commitment to establish the rule of law, fight corruption, and prepare the country for EU accession. They sought to demonstrate to both the EU and the Romanian electorate that they had changed.
and were truly committed to embracing and supporting democracy. Hence, the increasing external pressure on the new domestic leadership eager to show the EU that it was committed to meeting the Copenhagen political criteria led to the reversal of the previous policy of non-collaboration with actors outside the government and to the adoption in October 2001 of FOIA.


The Law no. 544/2001 (i.e., FOIA) stipulates the categories of information that are of public interest, the avenues to request such information, the timeline for receiving answers from the public institutions regarding the submitted FOIA requests, the categories of information that is excluded, and the penalties for refusal to respond to FOIA requests. Article 2 Paragraph (b) stipulates that information of public interest is “any information regarding or resulting from a public authority or a public institution’s activities, irrespective of the support, or the form, or the mode of expressing the information.” Moreover, the law stipulates the categories of information that public institution must provide “ex officio” (Article 5), such as legal regulations regarding the organization and functioning of the public institution; the structure, organization of departments, functioning schedule, and hearing schedule of the public institution; the contact information of the person responsible for the dissemination of public information; the financial sources and the budget; the periodical activity report; and the list of the documents of public interest. The latter provision was criticized by various NGOs because it allows each public institution to discretionarily decide what the list should
include and the result may be the exclusion from the list of information of public interest without a legitimate reason or justification.

As previously mentioned, the law clearly states the timeline for receiving a response to a FOIA request (Article 7). Thus, the public institutions are “bound to answer in writing” in ten days or, depending on the complexity of the information requested, thirty days, from the time the request was registered at the specific public institution. In case the information requested is too complex or difficult to compile in the thirty days period, the petitioner must be informed in ten days about that situation. If the institution refuses to answer favorably a FOIA request, it must inform the petitioner in five days from receiving the request and to justify its refusal.

An important and controversial part of the FOIA is represented by Article 12, which lists the category of information that is exempt from public disclosure. Hence, this category includes information regarding the national defense, public security and order, procedures in a penal or disciplinary investigation and judiciary procedures whose disclosure would jeopardize the investigation or the trial, and personal data. Additionally, the law stipulates that the information regarding Romania’s economic and political interest, the debates of the public authorities, and economic and financial activities that would jeopardize the principle of honest competition also constitutes confidential information. While it is understandable the legislators' intent to protect any information that would jeopardize national security and the good functioning of the market, the economic and political interests of Romania are of interest to the general public who is likely to be affected by how those interests are protected and sought. Furthermore, the debates of public authorities should be public, with few exceptions which are already
stipulated in the law (i.e., disciplinary and judiciary procedures), because they are funded with public monies and they should be made accountable to the public. As with regard to the provision regarding the economic and financial information, this stipulation is considered by critics to be non-constitutional since it constitutes a restriction beyond the limits allowed by the Constitution (APADOR-CH87 2002, 4).

Nonetheless, no changes to address these issues were made until 2006, when iterations to the FOIA law were introduced by the adoption of two other laws. Thus, according to the Law no. 371/2006, the definition of public institutions was expanded to include “any public authority or public institution that uses or manages public funds, […] and any company under the authority of a central or local government at which the Romanian state or, if necessary an administrative-territorial unit is the sole or majority holder” (Article 2, Letter a) making thus mandatory for these institutions to provide information of public interest. Furthermore, any information regarding the economic or financial activities of public institutions and which does not fall under the category of confidential information is subject to the FOIA law. The second important change was introduced by Law no. 380/2006 which stipulates that information regarding public procurement transactions is of public interest and must be provided to anyone interested in such information.

To increase the chances of successful implementation, the law has to clearly stipulate the sanctions that may incur if the rules are ignored or broken. Chapter III, Articles 21 and 22 of the FOIA Law stipulate such penalties for failing to comply with the law. Thus, an explicit or tacit refusal to carry out the provisions of the law would

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87 APADOR-CH is the acronym for the Association for Defense of Human Rights in Romania-the Helsinki Committee.
result in disciplinary sanctions for the public servants guilty of breaking the law. The petitioner has thirty days at his/her disposal to file a complaint against the public servant who refused to answer the FOIA request and an administrative investigation would be launched based on that complaint. The petitioner may opt for a different venue and file a complaint to the administrative section of the Court within thirty days after the period for receiving a response to the FOIA request has expired. If the Court decides in favor of the complainant, it can force the public institution to provide the requested information. If the Court finds in the favor of the public institution, the plaintiff can appeal the Court’s decision. The Court procedures in these cases are judged by emergency procedure and are exempt of stamp fee. Nonetheless, these provisions have two caveats. First, the documents that can fall under the administrative Court’s decision are limited by the provisions of the Law no. 29/1990 regarding the functioning of the administrative sections of the Courts which may limit the plaintiffs’ chances of filing a complaint if the Court decides that those documents fall under the category of exempt documents. Second, the penalties section of the FOIA does not include a penal sanction for those employees who intentionally destroy or hide documents that contain information of public interest. Such a provision might limit the temptation of some “loyal” employees to protect the secrets of the public institution at the expense of the public good (APADOR-CH 2002, 6). Although the FOIA Law was less than perfect and it left room for improvements, it represented an important step forward in fighting corruption by increasing the visibility of the activity in the judicial sector and creating a legal avenue for the public access to important information regarding the functioning and activity of judicial institutions.
5.2. The Judiciary Response to FOIA Requests

The effective implementation of FOIA began in 2002, but the data regarding the number of FOIA requests received by the central judicial institutions (i.e., Ministry of Justice, NAPO, and the SCM) are available beginning with 2003 and 2005. The information summarized in Table 7 shows the number of FOIA requests received at the three main judicial institutions, differentiated according to the number of requests answered favorably and requests rejected for various reasons such as nonexistent information or confidentiality.

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Justice</td>
<td>706</td>
<td>22</td>
<td>153</td>
<td>67</td>
<td>186</td>
<td>84</td>
<td>1159</td>
<td>55</td>
</tr>
<tr>
<td>NAPO</td>
<td>20</td>
<td>0</td>
<td>110</td>
<td>0</td>
<td>229</td>
<td>0</td>
<td>336</td>
<td>0</td>
</tr>
<tr>
<td>SCM</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>112</td>
<td>-</td>
<td>143</td>
<td>0</td>
</tr>
</tbody>
</table>


The data reveal an increase in the number of requests for access to information of public interest and of the number of requests answered favorably. This suggests at least two things. First, the public became increasingly aware of the right to access public
information and comfortable with employing this avenue. Second, judicial institutions became increasingly more at ease with favorably answering FOIA requests. A 2007 study conducted by the Pro-Democracy Association and Transparency International Romania and funded by the EU as part of the PHARE project “Transparent Governance”, found an increase in the response of central institutions to FOIA requests. That is, if in 2003 the rate of response was seventy percent, in 2006 the percentage increased to almost eighty percent. Among the central institutions monitored were the Ministry of Justice, the Superior Council of the Magistracy, and the High Court of Cassation and Justice. The first two institutions had a perfect score regarding the rate of response to FOIA requests at the beginning of 2007 when the study was conducted, while the HCCJ had a rate of response of almost ninety percent. Furthermore, the SCM had a perfect score with regard to the completeness of responses given to FOIA requests, while the Ministry of Justice and the HCCJ scored less than sixty percent (Pro-Democracy and TIRo 2007,44-49 and 90).

Additionally, I made several FOIA requests to the Ministry of Justice, NAPO, and the SCM between January 2007 and March 2009 and I received timely and favorable responses from all of them, although not all responses were complete. The data indicate that the judicial institutions have made progress in implementing the legal provision of the FOIA law. Moreover, the SCM, as the institution responsible for guaranteeing the independence of justice, sets a good example in ensuring the transparency and openness of judicial activity.
6. Whistleblower and Witness Protection

An important goal of the fight against corruption is to encourage and support the public to not engage in corrupt behavior and to join the anticorruption combat. In other words, the long-term success in fighting corruption requires citizens' active cooperation in exposing corrupt acts. In order to ensure that those who come forward with information regarding corrupt activities are not sanctioned for their honesty, legislation must ensure that they are legally shielded from any form of punishment and that, if necessary, their identities and safety are protected. Hence, it is important to adopt and implement legislation protecting whistleblowers and potential witnesses in difficult cases which may endanger their safety or life.

The *Law on Witness Protection* (Law no. 682/2002) was adopted two years prior to the legislation regarding whistleblowers also as part of Romania’s commitment to fulfill EU requirements. Although the law, which follows the American model, was adopted in 2002, its implementation was delayed until 2004 when the secondary legislation stipulating the regulations regarding its actual implementation was adopted. Both primary and secondary legislation regarding witness protection are comprehensive with regard to the conditions that must be met in order for someone to be considered a witness and the measures that need to be taken in order to ensure his/her and, if necessary, their families’ safety. The law also stipulates the creation of a National Office for Witness Protection (NOWP) under the direct subordination of the General Inspectorate of Romanian Police. NOWP is funded from the state budget under the chapter “Public Order and National Security” and NOWP activity falls under the category of “classified information.” Therefore, the NOWP communicates its progress directly to
the Government which, in turn, presents the NOWP annual activity reports to the Parliament in closed sessions. Hence, no data regarding the NOWP activity or allocated resources (financial or human resources) can be disclosed, a fact that was confirmed by the response I received to my FOIA request filed last year.

In Romania, the first Law on the Protection of Whistleblowers (Law no. 571) was adopted in December 2004 as part of the country’s plan to align Romanian legislation to the acquis. The law clearly stipulates the avenues available to whistleblowers to disclose the information they have about any corruption offense or any suspicion of corruption that may take place in their institution. Furthermore, the law protects whistleblowers from any sanction by, first, considering their disclosures as being done “in good faith until proven otherwise,” and by shielding them from any disciplinary action. If disclosing the whistleblowers’ identities may endanger their safety, the law requires them to be protected according to the Law on Witness Protection; that is, the whistleblowers’ identities must be kept secret (Article 12, Paragraph 1.a). Beginning with January 2005 and thirty days after the Law on the Protection of Whistleblowers entered into force, all public institutions were required to amend their Internal Rules and Regulations to include the new legal provisions that would encourage whistleblowers to come forward with information regarding illegal or corrupt behavior.

While the implementation of the Law on Witness Protection is “confidential information”, the situation should be different with regard to the Law on the Protection of Whistleblowers. Nonetheless, a study conducted by the Pro-Democracy Association in 2006 regarding the implementation of this law in public institutions found that out of thirty three institutions, including the Ministry of Justice and the Ministry of Health, only
two institutions, the Ministry of Agriculture and the Ministry of Environment, were able to present the new Internal Rules and Regulations reflecting the whistleblower provisions. The response given by the Ministry of Justice was that the new Internal Rules and Regulations were still in process of being amended. Moreover, except for this study, there is no information regarding the implementation of the Law on the Protection of Whistleblowers or its effectiveness, a finding supported also by the anticorruption experts interviewed in Romania in 2007.

7. Ethics Codes

An important means to deter corruption in the judiciary is through the existence and implementation of clear ethics codes. Romania was late in developing and implementing clear codes of conduct for magistrates. The first Code of Ethics of Magistrates was adopted in 2001, but it was not made public and instead was distributed selectively to certain magistrates (SoJust 2006, 20). According to the 2001 Code, any breaches of its rules would be subject to disciplinary sanctions. The same Code stipulated what constitutes corrupt behavior and the sanctions assigned to such offense. The first change to the 2001 Code was introduced in 2004 when the Law on the Statute of Magistrates (Law no. 303/2004) was adopted. A year later, the latter legislation was changed in order to increase the clarity of incompatibilities and sanctions becoming the Law on the Statute of Judges and Prosecutors (henceforth the Statute Law). The same year, the SCM adopted the new Code of Ethics of Magistrates (SCM Decision no. 144 from April 26, 2005) which was later changed into the Code of Ethics of Judges and Prosecutors (SCM Decision no. 328/2005 from August 24, 2005) due to the amendments
introduced by the Law no. 247/2005, Law on the Reform in the Property and Judicial Sectors and other Adjacent Measures (henceforth the Reform Law).

Article 3 of the new Code of Ethics stipulates that "[J]udges and prosecutors are bound to protect the independence of justice" and that they "must exercise their profession with objectivity and impartiality, acting only by law, without any attention to exterior pressure and influence of any kind". These canons indicate that the primary responsibility for ensuring the independence of the judiciary rests above all in the hands of the magistrates. Moreover, Article 7 specifies another important canon according to which "[J]udges and prosecutors have the duty to promote the supremacy of law, the rule of law and to defend the fundamental rights and liberties of citizens." The Code further establishes the responsibilities of magistrates in conducting their activities in order to ensure the dignity and honor bestowed upon them by their professional positions as well as the incompatibilities of their functions with other activities. Thus, Articles 21 and 22 stipulate that magistrates can also practice as university professors or instructors at the National Institute of the Magistracy and that any other position is incompatible with that of a magistrate. Furthermore, Article 11 specifies the conditions under which magistrates can offer judicial assistance to relatives and the situations in which they are prohibited from intervening in order to favorably influence the course of an investigation or a trial in which members of their families are involved. An important change introduced by the Reform Law and reflected in the new Code of Ethics is represented by the exclusion of ethics violations from the category of infractions that attract disciplinary actions. Hence, if prior to August 2005 the magistrates who violated the Code of Ethics were sanctioned for that, the changes introduced exclude those breaches from the category of conduct
violations that would trigger disciplinary sanctions. In addition, the provisions regarding corrupt behavior and sanctions were also excluded. The SCM claimed that the changes followed an opinion of the Council of Europe (Interview Judicial Expert, May 22 2007).

The new Code was published in three law journals and was introduced on the curriculum of the NIM in fall 2005. Additionally, the SCM organized in association with the Twinning Convention 2002 an awareness campaign for the magistrates regarding the new Code, a campaign that targeted magistrates at local courts countrywide. A total number of 1137 magistrates participated in the campaign, which lasted three weeks (one week in June and two weeks in September 2005). The awareness campaign was finalized with a seminar on the “Impact of the Deontological Code of Judges and Prosecutors” and which brought together the presidents of the Courts of Appeal, the general prosecutors of the Prosecutors’ Offices attached to those courts, two foreign experts (Peter Lampe and Christiane Berkani), INM instructors, and members of the SCM (SCM 2005, 2-4). To ensure that all magistrates have access to the new Code, the SCM requested that all courts and prosecutors’ offices give a copy of the Code to their magistrates and that a copy of the Code be posted in a visible place in the institution, a request that was not difficult to fully implement, according to the SCM Working Group responsible for monitoring the implementation of the Code of Ethics (SCM 2005a, 3). In May 2005, the Code was posted on its web page in both Romanian and English versions (SCM 2005b).

88 The three journals are: Palace of Justice (Palatul Justiției), Human Rights (Drepturile Omului), and Information Bulletin IRDO (Buletinul Informativ IRDO).
89 Peter Lampe (Denmark) and Christiane Berkani (France) are two judges that participated, along with other four foreign experts, to the campaign designed to promote the Ethics Code in the Magistracy. They were part of the Twinning Convention 2002 program, led by the pre-accession EU commissioner Dieter Schlafen. Lampe and Berkani are singled out because they participated to several seminars and shared their expertise with Romanian magistrates.
Hence, the Code of Ethics was designed to serve as a guide for how magistrates should behave in the exercise of their professions. The law regulating the disciplinary actions against magistrates is the *Law on the Statute of Judges and Prosecutors*, Law no. 303/2004, with the amendments introduced in 2005 (Law no. 247/2005) and 2006 (Law no. 356/2006). The updated law lists in Article 99 the activities that constitute disciplinary infractions and in Article 100 the sanctions that may be applied for such violations. The Working Group No. 6, "Magistrates’ Deontology and Responsibility", in charge of overseeing the implementation of the Code of Ethics, is also responsible for identifying any disciplinary violations and reporting it to the Disciplinary Commissions of the SCM. In 2005, only four magistrates (two judges and two prosecutors) were sanctioned and the sanctions applied were warnings (one judge and one prosecutor) and fifteen percent salary reduction for a period between one and three months (again, one judge and one prosecutor). In the following year, ten judges and three prosecutors were disciplined. In addition to the increase in the number of sanctions, there was also a change in the severity of sanctions applied, three judges being excluded from the magistracy (SCM, Response to FOIA Request 2007). Nonetheless, a paradoxical situation is worth mentioning, namely the fact that although the violations of the Code of Ethics are no longer to be considered disciplinary infractions, half of the total disciplinary sanctions applied in 2006 were for violations of that Code (SCM 2006a, 22). The justification presented by the SCM was that ethics violations are taken into consideration in the professional evaluations of the magistrates. Nonetheless, the justification does not explain the fact that those sanctions appear to be in clear violation of the law.

90 When it was established in May 4, 2005, this Working Group was No. 5 and called “The Deontological Code of Judges and Prosecutors”. The adoption of the new Code and the changes introduced by the Law no. 247/2005 led to the change of title.
The information collected from the interviews with judicial experts, NGO representatives and representatives of the magistrates' professional organizations paints a somewhat contradictory situation of how well the Code of Ethics is known and applied. Thus, according to one interviewee, the Code is not really known and there is little interest to focus on this issue. Moreover, the magistrates are in a "state of revolt" and they feel like being ethical is not that important given the difficulties they confront in their daily activities due to improper working conditions and heavy caseload. Furthermore, many magistrates feel that it is futile to focus on a Code of Ethics when they are being consistently accused of being corrupt (NGO Interviewee 4, March 16 2007). The opinion expressed by a judge differs with regard to several issues. First, she considers that all magistrates are familiar with the Code because it is part of their professional training. Second, the Code is clear, brief, and concise and is learned in the law school. Third, no magistrate would be able to practice without knowing the Code (Interview Magistrate Professional Organization, March 26 2007). Nonetheless, the latter opinion may be a little too optimistic and subjective, particularly in the light of different opinions and reports that indicate the poor emphasis put on teaching the law students the Code of Ethics (SoJust 2005). Nonetheless, clear efforts were made to disseminate the new Code and to stress its importance for the establishment of a professional and ethical judicial system.
8. Merit-Based Civil Service

8.1. Selection/Appointment Process

In order for the process of selection and/or appointment of magistrates to increase the independence of the judiciary, the process should be based on objective criteria such as passage of an exam, performance in law school, experience, professionalism, reputation in the legal community, and participation to other specialized training (ABA/CEELI 2002, 6). Following the adoption in 2004 of the three-law package of judicial reform, the SCM assumed full responsibility for the recruitment, career development, and sanctions of magistrates. Under this legislation, the Ministry of Justice can no longer appoint judges directly, promote magistrates to higher courts and prosecutors’ offices, promote magistrates into management position in the SCM, or decide the removal of magistrates, as it used to do on the basis of previous Law on the Organization of the Judiciary, Law no. 92/1992.

Since September 2004 when the new legislation began to be implemented, SCM has been the only institution that appoints graduates of National Institute of Magistracy (NIM) as assistant judges, and after they successfully finalize this stage of professional formation, SCM proposes them for tenure to be appointed by the President of Romania. Prosecutors of the basic court system are also appointed by the President on the recommendation of the SCM. The 2004 Organization Law stipulates that, in order to be eligible for appointment to the magistracy, a person must be a Romanian citizen and

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92 The final examination consists of a written and oral exam before a joint board of examiners made up of three members: one member of the NIM’s training staff and two judges or prosecutors appointed by SCM.
resident, hold a law degree, have no criminal record, have a good reputation, speak the Romanian language, and be physically and mentally able to hold office.

In addition to graduating from NIM, another avenue for entering the magistracy is available to those who have practiced law for five years. Thus, they have to pass a professional examination organized by NIM at the request of the SCM. The law also stipulates for a direct appointment method to the basic court system, a method that does not require attending the NIM or taking a qualification examination. Thus, Article 32 of the Statute Law specifies that university law professors, magistrates or assistant magistrates at the HCCJ who, prior to leaving those positions, worked for at least five years and had a good professional standing, can be appointed as magistrates without passing an examination. Between July 2000 and June 2001, 45 judges were appointed by SCM through the direct appointment method.

This method continues to be viewed with skepticism because it does not ensure for a transparent process of selecting the candidates. The Minister of Justice may recommend a single candidate instead of a list of candidates and, sometimes, the SCM receives the name of the candidates on the same day that the candidates are scheduled for an interview and it does not have time to check the professional background of the candidates. Additionally, the Minister of Justice participates in the candidates’ interviews, and although it does not have the right to vote on the nomination, his/her very presence may influence the SCM decisions (ABA/CEELI 2002, 7).

Despite these shortcomings and the criticisms brought by the EU and civil society organizations, the SCM has continued to use this form of appointment (see Table 8) motivating its decision by the high number of unfilled positions and the insufficient
number of candidates that participate to the NIM examinations. As these data indicate, after the amended Statute Law entered into force, the two main avenues for entering the magistracy were graduating from the NIM or passing an examination organized by the same NIM.

Table 8
Number of Magistrates Admitted in the Magistracy

<table>
<thead>
<tr>
<th>Avenue Employed</th>
<th>2005 Judges</th>
<th>2005 Prosecutors</th>
<th>2006 Judges</th>
<th>2006 Prosecutors</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIM Graduates</td>
<td>86</td>
<td>86</td>
<td>104</td>
<td>53</td>
</tr>
<tr>
<td>Exam</td>
<td>152</td>
<td>70</td>
<td>70</td>
<td>79</td>
</tr>
<tr>
<td>Direct Appointment</td>
<td>48</td>
<td>60</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>Total</td>
<td>286</td>
<td>216</td>
<td>199</td>
<td>182</td>
</tr>
</tbody>
</table>


Due to the insufficient number of magistrates available, the SCM continued to opt for the direct appointment measure in order to ensure an optimal activity at the judicial courts and prosecutor’s offices. One reason for the insufficient number of magistrates is represented by the low number of law school graduates who manage to pass the entry exam to the NIM. Thus, the Society for Justice reported in September 2006 (19) that for years “there have been only 120 candidates (from 3,000) passing the exam, although there have been 180 seats.” This situation has at least two potential explanations: first, that the law students are very poorly prepared and they cannot pass a thorough examination, and second, that the problem rests with the way the exam is organized, in which case the organizers should consider introducing certain changes that would
improve the situation. In any case, the examination should be based on objective criteria and should not lower the standard just to accommodate more poorly prepared law school graduates.

The 2004 Organization Law (Art. 48) specifies that the appointments for president and vice-president positions in courts are to be made exclusively based on an examination process organized by SCM, through the NIM. Nonetheless, an enforcement procedure for these legal dispositions was still lacking in August 2005 (TIRo 2005b). In accordance with the same Organization Law, the presidents for the specialized sections in tribunals were appointed by the presidents of the tribunals, which limited the former’s independence in relation to their direct superiors. The situation was considered to be a direct consequence of the lack of clear and objective criteria for candidates’ evaluation (TIRo 2005b, 32-33). Additionally, the Ministry of Justice had continued to exercise significant influence in the selection and appointment process of the General Prosecutor, the head Prosecutor of the NAPO, and the chief prosecutors within the Public Ministry. Table 9 summarizes the number of judges and prosecutors appointed to executive positions (i.e., presidents or vice-president of the judicial courts and prim-prosecutors or general prosecutors) either directly or through an examination, the latter avenue starting to be employed after August 2005 when the Law no. 247/2005 entered into force.

The same trend noticed in the case of the process of entering the magistracy is visible in the case of the recruitment of magistrates for executive positions. Thus, if in 2005, some magistrates were directly appointed to executive positions, in 2006, the only avenue for filling those positions was through an examination organized by the NIM.
This indicates progress in the process of recruitment by the employment of more objective criteria for evaluating the candidates.

Table 9

Recruitment of Magistrates for Executive Positions

<table>
<thead>
<tr>
<th>Year</th>
<th>2005 Judges</th>
<th>2005 Prosecutors</th>
<th>2006 Judges</th>
<th>2006 Prosecutors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Appointment</td>
<td>53</td>
<td>81</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Exam</td>
<td>35</td>
<td>65</td>
<td>141</td>
<td>70</td>
</tr>
<tr>
<td>Total</td>
<td>88</td>
<td>146</td>
<td>141</td>
<td>70</td>
</tr>
</tbody>
</table>


8.2. Objective Judicial Promotion Criteria

The existence and enforcement of objective criteria for the promotion of magistrates are also means necessary for increasing the transparency of the judicial activity. They also represent effective means for strengthening the independence of the judiciary from external and internal influences. According to the Law on the Statute of Judges and Prosecutors (no. 303/2004), the judicial advancement for magistrates is decided through an examination process, organized by the NIM at the request of the SCM. To be considered for advancement and eligible for participating at the examination, the magistrates must have received a “very well” on their last professional evaluation, have not been disciplined in the previous three years, and have served a certain minimum period in the lower courts: five years to be appointed to the tribunal, six years to be appointed to courts of appeal and the prosecutor offices adjacent to them, and eight years for the HCCJ (Statute Law, Art. 44 (1)). The promotion exam to executive positions
consists of oral and written tests that include both theoretical and practical issues and of
the development of a specialized study. However, at the beginning of 2005, the objective
criteria of performance and integrity according to which judges should be evaluated were
still lacking, as was a coherent evaluation system for prosecutors (Freedom House 2005).

In August 2005, SCM introduced a series of changes in the evaluation process of
magistrates. Prior to that date, the evaluations were made at the end of each year and
covered such matters as the number of cases processed by each judge, the rate of reversal,
and the quality of the opinion writing. The evaluations were prepared by the courts
presidents and were considered to be subjective and to allow them to use their powers
discretionarily in the absence of objective evaluation criteria. This was a reason of
concern especially when the same court presidents were also members of the SCM and
could decide in disciplinary hearings, as was the case of most members of the SCM at the
time. The SCM Decision no. 24/2005 specifies that the evaluations will be made every
three years by a committee established by SCM. The decision also introduced new
criteria of evaluation, such as participation in seminars, studies abroad, and a foreign
language. However, the procedures regarding the promotion exams (which became the
rule in 2005) were changed three times by March 2006.

The evolution of promotions to executive positions at courts and prosecutors’
offices through an examination is summarized in Table 10. The data provided by the
SCM indicate that, since the legal provisions stipulating the new criteria and avenue for
promotion were adopted in 2005, this was the only avenue employed. What is interesting
is that in 2005 more judges were promoted to executive positions than the number of
positions opened to be filled, a discrepancy which may be explained by either a misprint
in the SCM report or the last minute opening of six more positions which were filled with the candidates which passed an exam and were the top of the list below the passing line.

Table 10

Promotions to Executive Positions via Exams

<table>
<thead>
<tr>
<th>Year</th>
<th>Courts</th>
<th>Prosecutor's Offices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. Positions Opened</td>
<td>No. Positions Filled</td>
</tr>
<tr>
<td>2005</td>
<td>90</td>
<td>96&lt;sup&gt;93&lt;/sup&gt;</td>
</tr>
<tr>
<td>2006</td>
<td>278</td>
<td>159</td>
</tr>
<tr>
<td>Total</td>
<td>368</td>
<td>255</td>
</tr>
</tbody>
</table>


Regardless, the data show an increase in the number of positions opened for executive positions and the number of magistrates promoted through an exam. Moreover, the data indicate that more than sixty seven percent of executive positions for prosecutors remained opened at the end of 2006. Two explanations for the significant number of positions remained unoccupied at the end of 2006 may be the degree of difficulty of the exam and the level of preparation of the candidates. One of the new promotion criteria to executive positions consists in the preparation and presentation of a management project, which magistrates claim to be too difficult and something that they were never thought how to do (NGO Interviewee 4, March 16 2007). Despite the difficulties in developing the best means to ensure objective criteria for magistrates’ promotion, the employment of an exam is a sign of progress and it is a better option than a promotion based on the subjective evaluation of the hierarchical superiors.

<sup>93</sup> This is the number presented in the SCM Report.
8.3. Continuous Professional Training

According to the 2004 Statute Law and the subsequent iterations, the National Institute of Magistracy (NIM) is responsible for ensuring the initial professional training of the future judges and prosecutors (i.e., law school graduates) and it is an important part of the continuous professional training program. The NIM's activity is directly coordinated by the SCM, which approves the organization of entry exams in the magistracy and promotion exams as well as the curriculum for the professional training programs. The first program of continuous training for magistrates was approved by the SCM in 2005 and it was developed in response to the new challenges imposed by the changes in the legislation, the process of accession to the EU, and the Judicial Reform Strategy (SRJ). By the end of 2005, the NIM organized 87 seminars that addressed a variety of topics, including the changes of the penal law, the EU laws and practices, human rights, ethics and deontology, intellectual property, and juvenile law. The seminars were designed to train 15 to 25 magistrates per seminar the latter being organized as two or four day seminars (NIM, Program for Continuous Training 2005). Hence, in 2005, an average number of 1740 magistrates participated in those seminars.

Due to the budgetary increase in 2006, the NIM was able to almost double the number of seminars offered organizing 157 seminars. Thus, 2551 judges and 793 prosecutors participated in the program of continuous professional training organized by the NIM in 2006. Additionally, the topics covered by the seminars were also more diverse including training in fighting corruption, human trafficking, organized crime, money laundering, financial crimes, and foreign languages (SCM 2006, 204-206). These data indicate an increasing concern for ensuring a continuous training for magistrates, a
concern that is translated into higher resources allocated for these programs and higher number of seminars covering more important judicial topics, although there is no evidence to assess the effectiveness or the real impact of those seminars.

9. The Impact of Anticorruption Strategies

This chapter assessed the implementation of institutional strategies designed to reform the judicial system and fight corruption within this sector. The analysis has shown that in order to combat corruption, the Romanian Government opted for a multi-pronged approach as suggested by anticorruption experts and scholars. Given the significance of this sector for the rule of law, democratic consolidation, and EU accession, it is not very surprising to discover the significant effort made to reform and clean up the judiciary. As hypothesized, the increase in the external pressure to reform the judiciary and fight corruption led to an increase in the demonstrated political will, which was manifested in the adoption of institutional strategies that addressed the problem of corruption from multiple angles. The analysis has demonstrated that the results achieved in reforming and curbing corruption in the judiciary have been mixed and while some progress has been made, there still remain important weaknesses.

There was progress in the establishment of judicial oversight and anticorruption institutions with significant impact also for the enforcement of anticorruption legislation. The adoption of the 2004 judicial reform package resulted in one of the most important changes in this sector since the fall of communism, namely, the de facto independence of the SCM, the guarantor of judicial independence and the agency solely responsible for the magistrates’ careers. The increased political commitment to reform and fight
corruption in the judiciary manifested in the last two years prior to the EU accession through an increase in the financial and human resources allocated for the functioning of the SCM and NAPO. Moreover, the creation of NAPO represented an important step in the fight against corruption which, besides the symbolic message sent to the Romanian public and the EU that there was political will to curb corruption, led to a focus on medium and high level corruption. The latter was particularly important to tackle in order to show the public that the law is impartial and no one is above it and, of course, because it was consistently requested by the EU. The adoption in 2003 of the legislation regarding the publication of declarations of assets and income and the conflict of interest for dignitaries and other public officials was another point of progress in the fight against corruption, especially when coupled with FOIA.

The adoption of the legal provisions guaranteeing the public’s access to information represented an important step forward, particularly for a populace marked by decades of secrecy. The creation of new avenues for the public to check the activity of public institutions and how they manage their finances has contributed to the institutional strategies designed to increase the transparency of judicial procedures and the functioning of judicial institutions. The creation of bureaus and departments responsible for informing the public and mass media about the activities of judicial institutions, along with the creation of web pages, the drafting of guides with judicial information for the public, and the organization of “Open Doors’ Day” events contributed to an unprecedented openness and transparency of the judiciary, reflected also in the increasing number of favorable answers given to the FOIA requests.
Another important part of combating corruption was to restore to public’s trust in the judicial system and the adoption and dissemination of the Code of Ethics was part of that strategy. The Code of Ethics was designed to offer magistrates a guideline for professional behavior and the SCM along with the Ministry of Justice developed a series of seminars to ensure the dissemination of the Code and to raise awareness about its existence and content. The introduction of new rules regarding magistrates’ careers represented a first step towards the establishment of a system that rewards quality and merit and where the old rules of corruption are no longer prevalent. Additionally, the SCM began implementing a series of seminars through the NIM designed to ensure the continuous professional training of magistrates in already familiar areas as well as in new ones, such as the EU legislation, the fight against corruption, and the fight against international organized crimes.

Nonetheless, there still remain important deficiencies to address in the judiciary which require a continuous effort from policy-makers, magistrates and the public if the judicial reform and the fight against corruption are to be successful. Thus, the enforcement of anticorruption legislation in cases of high corruption remains to be demonstrated since no high official has to date been successfully prosecuted for corruption offenses. While NAPO made several attempts to bring “big fishes” before the court, it failed due to either insufficient evidence or the MP’s lack of support in investigating one of their own. Furthermore, the continuation of the dual mandates situation of the SCM members negatively impacts their work at the SCM and the courts or prosecutor’s offices where they hold positions, the functioning of their institutions, and the image of the SCM in society. The limitation represented by the avenue of attack in
cases of negative responses to FOIA requests (i.e., refusal to provide information) is another important deficiency. In a society where the judicial institutions are regarded with distrust by most people, the use of the judicial process to receive an answer from public institutions reluctant to comply with the FOIA legal provisions makes the access to public information a cumbersome and expensive procedure that only some could afford.

While the adoption of new rules regarding the admission into Magistracy and promotion represents important progress their application has had mixed results which has underscored the existence of serious problems. Thus, the number of those directly appointed to magistrates’ positions continues to remain high despite the fact that this avenue is to be used rarely and only to supplement the number of positions left available after the organization of exams to fill them. Furthermore, the number of promotions via examination remains low despite the important number of positions opened for career advancement. These problems indicate that, even though the rules regarding the magistrates’ careers have been changed several times since their adoption (i.e., since 2005), there is still left room for improvement in both the quality of the rules, the design of the exams, and the quality of candidates/magistrates. The impact of the legislation designed to encourage a change in the institutional structure of corruption by protecting those who whistle to blow on illegal or suspicious activities is another problem. On paper, the legislation looks perfect and it conforms to the international standards, but in practice it cannot be assessed and none of the interviewees was able to provide any information regarding its implementation or effectiveness. Hence, it is evident that the implementation of this legislation is deficient, non-transparent, and ineffective.
The analysis of the institutional strategies targeting the judiciary revealed that for the most part they were adopted and implemented in a short period of time and that the most progress was made in the last two years prior to Romania’s accession to the EU. Due to their late adoption and implementation, it is difficult to assess their effectiveness and to definitively conclude that they achieved the desired goals. On the other hand, there is sufficient evidence to show that progress has been made and that it would be difficult to reverse the process of reform at this point.

Although the analysis of the institutional strategies shows that Romania has made progress in reforming the judiciary and combating corruption within this sector, the effectiveness of institutional strategies should also be felt by the public. Thus, the public’s perception and experience with corruption in the judiciary should decrease as a result of the implementation of varied anticorruption strategies. As mentioned in the previous chapter, the public perceives corruption to be a very serious problem in the judiciary placing this sector among the most corrupt sectors in the country. But perceptions may be inflated and while they are important in assessing the level of corruption in a country, they may offer a distorted image of reality due to the influence exerted by the media, friends, and political figures. A more accurate estimate of corruption would be to measure the actual experiences with corruption, although a cautionary note is in order in this case too, namely that corruption is an illegal activity and people may be reluctant to admit of taking or giving bribe. Nonetheless, if a particular sector is corrupt and people perceive those working in that sector as being corrupt, they should logically also report many experiences with corruption when interacting with those public officials. Hence, if corruption continues to be perceived as a
widespread problem, the actual experiences with corruption should indicate a similar situation.

Unfortunately, while perceptions of corruption were measured almost every year in Romania, the actual experiences with corruption were not. Hence, the *Barometers of Public Opinion*, commissioned by the Open Society Foundation Romania, provide comparable data for only two years or four data points (i.e., fall 2003, spring and fall 2004, and spring 2005), as illustrated in Figure 21. Despite the very short span, the comparison is still important because it indicates a potentially significant discrepancy between perceptions and actual experiences with corruption.

**Figure 21**


The question about the level of perception of corruption was measured on a frequency scale and in order to make it comparable to the question assessing the actual experiences with corruption, only the percent of those who answered that “very many” and “almost all” magistrates are corrupt were added and graphed. Ninety five percent confidence intervals were calculated around the data points in order to determine if there are significant differences over time.

As Figure 21 shows, the two slopes are significantly different and while they do appear to move parallel to each other, the level of experiences with corruption is consistently lower than the level of perception. While the percent of individuals interacting with the courts over the course of a year may be smaller than in other sectors, the low number of answers confirming the existence of corruption in judicial courts suggests that corruption is a smaller problem than indicated by the level of perceptions. Furthermore, the slight decline in the actual experiences with corruption after 2003 indicate that institutional strategies work but are less visible by the public, particularly if there is no direct interaction with the judicial system.

While these findings are encouraging, the very fact that corruption continues to be perceived as being such a significant issue is problematic because it affects the trust people have in the judiciary and, implicitly, in the rule of law. Moreover, it may also indicate that anticorruption strategies do not work as well as expected if their impact is not perceived by the general public. On the other hand, it may be the case, as suggested by several interviewees, that the perception of high corruption in the judiciary is

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94 The answers to the question “How widespread do you think corruption is among magistrates?” was measured on a four point scale: 1 = “Almost None”, 2 = “Very few”, 3 = “Very many”, 4 = “Almost all”. The questions assessing the experiences with corruption, “In order to be treated fairly in courts did you have to offer additional money, gifts, favors?”, was measured on a binary scale: 1 = “No” and 2 = “Yes”.

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artificially sustained by those who have vested interests in maintaining a "weak third power in state", namely politicians. Magistrates blame the ministers of justice (particularly Macovei, who launched an anticorruption campaign in the judiciary in 2006) and President Băsescu for creating a negative image of magistrates and the judicial system. For those working in the judiciary, corruption is a political tool to gain votes and avoid taking care of important problems; that is, it is easier to accuse magistrates of being corrupt than to ensure that they have proper conditions to work and are decently paid for their work. Cases when judges were accused of being corrupt in open court also do not help to improve the image of the judiciary or to make the magistrates more honest (NGO Interviewee 4, March 16 2007 and Interview Magistrate Professional Organization, March 26 2007). On the contrary, "the over emphasis on corruption affects the morale of judges, it makes them angry, and it does not make the corrupt to give up the bad habits" (Interview Judicial Expert, May 22 2007).

Although there is clear evidence that demonstrates progress in reforming the judiciary and combating corruption, the visibility of those results is less obvious. The short time span for implementing many important institutional strategies explains in part the continuous perception of corruption as being very problematic in this sector. A longer time is necessary in order for the strategies to produce results and for their effectiveness to become noticeable by the general public. Perhaps, a change of focus of anticorruption rhetoric from the judiciary to other problematic sectors (such as health care) may help improve the image of the current "poster boy" for corruption.
CHAPTER VI

COMBATING CORRUPTION IN THE CUSTOMS SECTOR

"The stigma of corruption in customs was artificially created from a small minority of corrupt customs officials and now it is referred to as generalized!"  

1. Introduction

Corruption in customs sector represents a particular problem due to the important role this sector plays for a nation's economy and the safety of its citizens. A corrupt customs sector negatively impacts the trade community and the budget revenue with serious fiscal and economic consequences. Furthermore, corruption in this sector favors illegal trafficking of toxic goods or drugs, with potential serious repercussions for public health, or even the illegal trafficking of humans. Consequently, a corrupt customs sector alters the image of the country and the government both at the national and international level. Since joining the EU meant that Romania would become the former's eastern border, reforming and cleaning up of the customs sector prior to January 1, 2007 became one of the top priorities for the Romanian government.

This chapter assesses the institutional anticorruption strategies adopted and implemented by the Romanian government in the customs sector in the decade prior to the EU accession. The first section presents a brief recent history of the customs sectors

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95 Interview Constantin Bărbiulescu, Vice-President of the National Customs Authority, May 24, 2007.

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and the organizational structure of the Romanian customs system. The following sections analyze the institutional strategies adopted and implemented in this sector. The chapter concludes with an evaluation of these institutional strategies on reforming and curbing corruption in customs.

2. The Organizational Structure of the Customs Sector

2.1. Brief History of the Romanian Customs System

The modern institution of Romanian Customs was established in 1859, a year that marks the creation of the national Romanian state. That year, new legislation regulating the functioning and structure of Romanian customs sector was adopted along with an increased effort to build a modern infrastructure necessary for the functioning of the customs institutions. The modernization and its positive effects were undermined first in 1938, when the constitutional monarchy was replaced by the king Carol II’s personal dictatorship, and then again in 1945, when the communists took control of the government. The first measures undertaken by the communist regime aimed at the absolute control of the customs services, which was achieved by the replacement of “bourgeois” customs employees with those loyal to the Romanian Communist Party (RCP) and the adoption of new legislation. The communist legislation intended not only to ensure the absolute control over the country’s borders, but also to integrate Romania within the COMECON (Council for Mutual Economic Assistance).96 To ensure the absolute enforcement of the new legislation, the communist government assigned

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96 COMECON was the economic organization of communist states from 1949 until 1991 and included, in addition to the countries with a full membership status (i.e., Soviet Union and the communist countries of the CEE), communist countries from outside the region, such as Vietnam, Mongolia, Cuba, and China.
Securitate, the Romanian Secret Police, the role of keeping under close surveillance the functioning of customs sector. The infiltration of Securitate officers in the customs sector ensure the full control of the communist regime in this sector and succeeded in isolating the country from the outside world, including the communist one. The customs sector underwent also a restructuring of its institutions by the creation, in 1973, of the General Department of Customs (GDC), the institution responsible for the unitary functioning and effectiveness of customs services in Romania. In the following years, a number of Regional Departments of Customs were established under the authority of the GDC, a structure that had been largely maintained after the fall of the communist regime in 1989 (Ciupala n.d.).

2.2. The Structure of the Customs Sector

After 1990, the General Department of Customs (GDC) continued its activity as an institution subordinated to the Ministry of Finance and responsible for the unitary functioning and effectiveness of customs services at the national level. At the regional level, the GDC exercises its authority through ten Regional Departments of Customs, forty seven Internal Customs Offices and sixty three Border Customs Offices (Center for Judicial Resources 2004). The activity and functioning of the GDC was stipulated in the Government Decision no. 498/1994 and the Government Decision no. 147/1996, the latter being changed in 1998 by the Government Decision no. 939. All these legislation were designed to reform the customs administration and to prepare it for the alignment with the EU legislation.

97 The ten Regional Directorates of Customs are located in Arad, Brasov, Bucharest, Cluj, Constanta, Craiova, Galati, Iasi, Oradea and Timisoara.
In 2003, in an effort to increase the efficiency of the Ministry of Finance to collect taxes and revenues, the GDC was transferred under the direct supervision of a newly established department, namely the National Control Authority. The latter, established within the Ministry of Finance to ensure a unitary control and more efficient management of the fiscal system, was dismantled in spring 2004 due to unsuccessful attempts of achieving its goals being replaced, by the National Agency for Fiscal Administration (NAFA). At the same time, the GDC became the National Customs Authority (NCA), whose organizational structure is captured in Figure 22.

Figure 22
Organizational Structure of the National Customs Authority (Simplified)

President of the NCA

Vice-president of the NCA

Department of European Customs Integration and International Relations

Internal Control Division

Public Internal Audit Division

Regional Departments for Excises and Customs Operations

District Departments for Excises and Customs Operations

Internal Customs Offices

Border Customs Offices

The transformation of the GDC into the NCA was mostly symbolic, the structure and functioning of the customs institutions remaining practically unchanged (Interview C. Barbulescu, May 24, 2007). Thus, the NCA, established by the Government Ordinance no. 366/2004, is responsible for implementing the government’s customs policy at the national level, for representing the Romanian state in the international arena, and for ensuring the proper and effective management of customs institution, including managing financial resources and customs personnel.

3. Institutional Strategies

The customs administrations, although different in their organizational structure from country to country, have similar objectives: to control the goods that cross state borders (imports, exports, and transit goods), to collect duties and taxies, to implement trade policies, to combat illegal crossing of goods and people, and to protect the public (Hors 2001). In order to achieve these objectives, customs authorities perform a series of technical operations, which can be divided in two broad categories: cargo processing and enforcement (Gill 2001). Cargo processing includes such operations as manifest and customs declaration processing; classification, valuation, and assessment of goods; payments of customs duty; transit cargo processing; and export processing. The enforcement refers to all operations performed by customs authorities to monitor and detect non-compliance, fraud and contraband (Gill 2001, 134). Generally, the cargo processing operations offer customs officers the opportunities to exercise more discretion.

98 The Government Decision no. 366/2004 was amended in 2005 (Government Decision no. 165) and again in 2009 (Government Decision no. 110).
in the implementation of customs rules and procedures creating, thus, more opportunities for corruption.

Nonetheless, the most common types of corruption encountered in customs suggest that corrupt behavior is not limited to the cargo processing aspect of customs activities. These types of corruption, which can occur isolated or in combination, have been categorized as a) *routine corruption*, when private operators pay bribes in order to obtain the normal completion of customs operations or to hasten that process; b) *fraudulent corruption*, when private operators bribe customs officers to let them pass the goods without paying any taxes or to undervalue the goods in order to pay less taxes; and c) *criminal corruption*, when private operators bribe customs officers to allow an absolutely illegal, lucrative operation (e.g. drug trafficking, human trafficking, etc) (Hors 2001, 15). While these forms of corruption revolve around bribe-taking or bribe-giving, other forms of corruption such as nepotism, favoritism, clientelism, or misappropriation of public funds may also occur in the customs sector. To effectively address all types of corruption and to ensure the long-term effects of those anticorruption strategies, the fight against corruption needs to be comprehensive and multi-pronged. This chapter analyzes the following institutional strategies: 1) the enforcement of legislation, 2) the creation and effectiveness of oversight institutions and anticorruption agencies, 3) the increase in transparency, 4) the adoption and implementation of the Freedom of Information Act (FOIA), 5) the adoption and implementation of ethics codes, and 6) the existence and implementation of merit-based civil service. Due to the lack of data regarding the adoption, implementation, and effectiveness of whistleblower and witness protection, this
strategy is no longer included in the discussion of institutional strategies in this and subsequent empirical chapters.

3.1. The Legislative Foundation

Reforming the customs sector and combating corruption required, in addition to the general anticorruption legislation, the adoption and implementation of legislation addressing the very functioning of customs institutions and the transposition of the Chapter 25 of the EU Acquis. Perhaps the most important legislative step was represented by the adoption of the new Customs Code (Law no. 141) on July 24, 1997, which was also the first step taken towards aligning Romanian legislation to the common EU customs legislation (Ciupala n.d.). Three years later, in November 2001, the Parliament also adopted the secondary legislation (Government Decisions no. 1114) regarding the rules for implementing the 1997 Customs Code, completing thus the first part of aligning the Romanian customs legislation to the EU requirements. The 1997 Customs Code was abrogated in 2006 by the adoption of a new version of the Customs Code (Law no. 86), which ensured the complete transposition of the Acquis and the correction of any differences that existed between the Romanian and EU legislation in this sector. Due to the significance and urgency of finalizing the process of aligning the Romanian legislation with the EU common legislation before January 2007, the 2006 Customs Code was adopted with almost complete unanimity (only seven MPs voted against it and six abstained from a total of 188) and no substantive debate. The Customs Code was complemented by a series of other legislation regulating the functioning of this sector and
combating corruption, such as legislation regarding the increase of transparency, access to information, and customs personnel, all of them discussed later in this chapter.

To specifically tackle corruption in the customs sector, the *Anti-Corruption Strategy of the National Customs Authority 2005-2007* (ASNCA 2005-7) and the *Action Plan Against Corruption* for 2005 and 2006 were developed and approved in response to the Freedom House 2005 Evaluation Report of the anticorruption strategies adopted and implemented by the Romanian Government in the period 2001-2004. The ASNCA 2005-7, approved in March 30, 2005 by Government Decision no. 231, was designed to “indicate the concern of the customs administration to fulfill its political, economic and social duties, with maximum integrity and professionalism” (National Customs Authority 2005, 2). Furthermore, the ASNCA 2005-7 was developed on the following principles: 1) the rule of law, 2) responsibility, 3) prevention, cooperation and coherence, 4) transparency and social dialogue, and 5) public-private partnership. As these principles indicate, the ASNCA 2005-7 was envisaged as a multi-pronged approach to fight corruption, a fact reflected in the three main chapters that comprised the section on Priority Action Directions. That is, the attack on corruption in customs included strategies on prevention and transparency, consolidation of internal investigation capacity (specifically the Internal Verification Division99), and cooperation within the customs sector and with other state institutions responsible for fighting corruption (such as the Border Police and the General inspectorate of Romanian Police). The *Action Plans Against Corruption* for 2005 and 2006, which accompanied the ASNCA, included the specific measures with the associated deadlines, resources, the institutions responsible for

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99 The Internal Verification Division and the Internal Control and Audit Division mentioned in Chapter III are one and the same, only the title used by the EC in its Regular Reports is different.
their implementation, and the indicators for evaluating the results. The Internal Verification Division was assigned the responsibility of monitoring the implementation and the effectiveness of the ASNCA 2005-7.

Regarding the enforcement of legislation and sanctions, there is no data available regarding the number of customs officers indicted and/or convicted for corruption offences in the period studied here, except for 30 customs officers arrested by the NAPO in September 2006. That elaborate operation was the result of the cooperation between NCA, the Ministry of Administration and Interior, and the NAPO and it was noted by the national media and the EC in its final pre-accession Regular Report. Other allegations of corruption in customs sector are presented in the mass media, but the official data obtained from NAPO and Ministry of Justice, upon filing FOIA requests, does not distinguish the offenses of corruption by sector or by professional category.

3.2. Oversight Institutions and Anticorruption Agencies: The Internal Verification Division

In addition to the NAPO, the institution responsible for investigating and indicting medium and high level corruption in all sectors, the Internal Verification Division (IVD) was established in 2001 to monitor the proper implementation of customs legislation and detect any violations of custom rules. Moreover, beginning with 2005, the IVD was assigned sole responsibility for monitoring the implementation of the ASNCA 2005-7, which included the prevention, discovery and sanctioning of corruption offenses among customs personnel.

The Internal Verification Division, created in 2001 as an “independent and impartial division, directly subordinated to the Vice-President of the National Agency of
Fiscal Administration” (National Customs Authority 2005, 7), represented a step forward in the fight against corruption in customs sector. Until 2005, when territorial divisions of the IVD were created, the central IVD was the only institution responsible for the monitoring, combating, and discovery of any violation of customs legislation, including corrupt activities in the customs sector. Upon the discovery of any irregularities, the IVD would inform the Disciplinary Committee and propose sanctions for such violations (Interview S. Puică, May 24, 2007). In 2005, in an effort to demonstrate an increased political will to combat corruption, the responsibilities of IVD were expanded to include the prevention of corruption; the monitoring of customs officials; the discovery of any violations of the ethics code or customs statute which could lead to corruption; and the collaboration with other institutions responsible for combating corruption, such as the border police, national police, and the financial guard. According to the Director of the IVD, Ștefan Puică, the effectiveness of IVD has improved since the creation of the territorial divisions “by increasing the risk of being caught if violating the customs legislation and rules or if engaging in corrupt activities” (Interview S. Puică, May 24, 2007). The re-structuring of IVD in 2005 made it easier to conduct unexpected inspections increasing, thus, the chances of detecting any irregularities. Moreover, the creation of territorial divisions contributed to an improvement in the communication between the central and local customs divisions with positive consequences for the effectiveness of customs activity.

The capacity of IVD is directly impacted by the resources, human and financial, allocated for its functioning. However, this type of information is not available to the public and the only data available regarding the personnel assigned to the IVD was
obtained during the personal interview with the Director of IVD, S. Puică, in May 24, 2007. According to him, the IVD and its territorial divisions suffer from a more general problem specific to the customs sector, namely, the insufficient personnel. Since no specific number was given, it is impossible to determine the exact number of people assigned to conduct the control and verification work within the customs sector.

A similar problem exists with regard to the financial resources allocated for the functioning of IVD. The information regarding the financial resources allocated to the NCA is public information and, although it does not shed direct light on the resources apportioned to the IVD, it provides important information about the Romanian Government's commitment to reform and combat corruption in the customs sector. The budgetary information was obtained as a result of a FOIA request, filed in March 9, 2009, and it covers the entire decade under study here. To show the exact evolution of budgetary resources allocated to the customs sector since 1997 two issues were considered, namely, inflation and discounting. Accounting for inflation implies adjusting the costs from each year (i.e., the budgets), expressed in “nominal” terms, to the price level of a single year (in this case, the first year of the analysis, 1997), after which they are expressed in “real” terms. The consumer price index (CPI), which reflects the price changes due to inflation, is used to calculate the “real” values of costs (Levin and McEwan 2001, 88). For example, to calculate the real value for 1998, the CPI\textsuperscript{100} for 1997 (i.e., real 1997 ROL) is divided by the CPI for 1998, which is then multiplied by the nominal cost of 1998. The real values of each year, expressed in ROL, are then adjusted for “their time value, a procedure that is referred to as “discounting”” (Levin and

\textsuperscript{100} The CPIs were obtained from the Romanian National Institute of Statistics, available at http://www.insse.ro/cms/rw/pages/ipc.en.do (accessed June 15, 2009). See Appendix E for a presentation of CPIs and the adjusted budgets for inflation and discounting.
Discounting, often confused with adjusting for inflation, is not only a different procedure, but it must be considered even when there is no inflation at all. To calculate the discounted value (or the “present” value) for the 1997-2006 budgets, I used the formula provided by Levine and McEwan (2001, 92) and the mean value of the monthly discount rates provided by the National Bank of Romania from February 2002 until December 2006, the only discount rates available and which are presented in Appendix D.

The calculated discounted budgets were then converted to U.S. dollars by using the 1997 currency exchange rate provided by the National Bank of Romania, namely 7167.94 ROL to $1. Furthermore, to show the statistically significant changes in the amounts of financial resources allocated over time, I calculated the confidence intervals around the discounted budgets, expressed in real 1997 dollars. The confidence intervals (CIs) placed around the budgetary values become larger over time, which is explained by the formula for calculating the discounting budgetary values. That is, when calculating the lower and upper ninety five percent CIs, the only value that changes is the discount rate, which decreases or increases depending on the CI calculated. Hence, the lower ninety five percent CI would have a higher value because the denominator is smaller, while the upper bound of the ninety five percent CI will have a higher value. Figure 23 presents the evolution of the budgetary funds allotted to the customs sector in the decade prior to the country’s accession to the EU.

\[ PV = \frac{C}{(1+r)^t} \]

101 The formula is: \( PV = \frac{C}{(1+r)^t} \), where \( PV \) is the “present” value, called here the “discounted value”; \( C \) is the cost or budget; \( r \) is the discount rate; and \( t \) is the year in which the cost outlay will be made. For more information, see Levine and McEwan, Cost-Effectiveness Analysis, 2001, 92.
As shown in Figure 23, beginning with 1998, there was an important increase in the budgetary funds allocated for the reform of the customs sector, but the highest point was reached in 2001 the year that the IVD was created. The statistical significant increase in the budgetary funds in 2001 is explained by several factors. First, the victory of the Social Democratic Party and his leader, Ion Iliescu, was regarded with concern in Brussels due to the poor performance the SDP had under the previous six years of Iliescu’s presidency (1990-1996). Consequently, the newly elected government was determined to show the EU that it was committed to develop and implement important reforms that would restructure the customs sector and combat corruption. Allocating
significantly higher financial resources was one important means of demonstrating their political will. Second, in Romania, as in other countries in CEE, the budget is divided in several separate sections, such as the "current budget", "budget for development and modernization", and "appended budget" (Allen and Tommasi 2001). In 2001, there was a slight increase in the budgetary funds assigned for development and modernization and an increase in the extra-budgetary funds, in addition to the allocation, for the first time, of non-refundable external credits (see Appendix E). The sum of all these separate budgets explains the difference in the budgetary funds allocated to the customs sector in 2001, this being the only year when funds from all four different types of budgetary sources were brought together. The statistically significant decrease in 2002 and then again in 2005 can be explained by the reduction of the special funds allocated for modernization and development and the absence of any other extra-budgetary or external credits for the customs sector. Another explanation is represented by the changes produced by the inflation rate and time, both affecting the real value of the money allocated over time, even though the nominal values in ROL appeared to follow an ascendant trend (see Appendix F).

Hence, it can be inferred that the financial resources allocated for the development and functioning of the IVD followed a similar descending pattern as the funds allocated to the NCA. The decision to establish territorial divisions in 2005 was followed by a slight budgetary increase in 2006, although it is difficult to say how much it was assigned for this purpose. An increase in the effectiveness of IVD, reflected by the number of controls conducted and sanctions proposed for various violations of customs legislation, including corruption offenses among customs personnel, would imply that
there was an improvement in the resources, human and financial, allocated to the IVD. In fact, the very creation of territorial divisions implies an increase in the number of personnel assigned for these operations. Thus, if in 2005, the IVD performed a total of 90 inspections, 48 of them unannounced, in 2006 the IVD performed a total of 158 inspections, 123 of them being unannounced. Moreover, in 2006, the IVD also conducted 43 investigations of customs violations and misconduct. The increase in the number of inspections performed was accompanied by an increase in the number of sanctions proposed for various offenses discovered during those inspections or as a result of the investigations of misconduct among customs personnel, as presented in Table 11.

Table 11
The Evolution of Sanctions Proposed by IVD

<table>
<thead>
<tr>
<th>Year</th>
<th>Written Reprimand</th>
<th>Inform Disciplinary Committee</th>
<th>Inform NAPO or the Prosecutor's Office</th>
<th>Temporary Transfer</th>
<th>Total Proposed Sanctions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>29</td>
<td>48</td>
<td>--</td>
<td>10</td>
<td>87</td>
</tr>
<tr>
<td>2005</td>
<td>54</td>
<td>144</td>
<td>30</td>
<td>69</td>
<td>297</td>
</tr>
<tr>
<td>2006</td>
<td>67</td>
<td>100</td>
<td>14</td>
<td>54</td>
<td>235</td>
</tr>
</tbody>
</table>

Source: National Customs Authority, Internal Document.

The data indicate that the restructuring of the IVD by establishing territorial divisions had a positive effect on the activity of inspection, detection of misconduct and corruption offenses, and even in the sanctioning of those offenses. If prior to 2005, there was no cooperation between customs and prosecutor’s offices, the situation changed and

102 The Document was given to me by the Director of IVD, Mr. Ștefan Puică, during the interview conducted on May 24, 2007.
the IVD became receptive to investigate allegations of corruption presented by mass media and/or individual complaints. Nonetheless, the small number of cases referred to the NAPO or other local prosecutor’s offices suggests that there is still a long way to go until corruption is no longer an issue in this sector. A problem in the cooperation between IVD and penal institutions is considered to be the latter’s reluctance to collaborate with customs institutions which are perceived as being completely corrupt. Nonetheless, steps towards improving the working relationship between these two types of institutions have been taken since 2005 and a protocol between NAPO and NCA is underway (Interview S. Puică, May 24, 2007).

Hence, it is safe to conclude that the creation of the territorial divisions has positively impacted the overall effectiveness of the IVD, a fact reflected by the increasing number of inspections and investigations, as well as by the activity of detecting and sanctioning breaches of the code of ethics, including corruption, by the customs officers. According to the 2006 report on the *Measures Taken by the National Customs Administration to Prevent and Reduce Corruption among Customs Personnel*, if in 2004 there was a generalized perception of corruption in the customs sector, two years later that perception had completely disappeared, although some isolated cases of corruption continued to tarnish the image of the customs institution (Autoritatea Nationala a Vamilor 2006a, 6). However, the two year period that shows an improvement in the activity of IVD is too short to allow such a definitive conclusion, although it indicates a positive direction in the fight against corruption.
3.3. Transparency

An important aspect of the fight against corruption is the reduction of the discretionary power of public servants. Increasing the transparency of the decision-making process and of the implementation and enforcement of legislation, rules, and/or procedures is one main strategy designed to achieve that goal. Transparency in customs sector includes not only the publication of the legislation, rules, and regulations specific to this sector, but also open access to the information regarding all customs procedures. Having that information allows individuals and firms to be prepared when entering the customs offices (or points of taxation) and to adequately respond to any attempts of harassment or intimidation made by the customs staff with the intent to gain unlawful benefits. The existence of clear and transparent rules and regulations would thus decrease the opportunities for corruption.

Attempts to increase transparency in customs sector were made beginning with 2000 when the Development Strategy of Customs Administration for 2000-2005 was introduced. The restructuring and modernization of customs sector were also included in the National Anticorruption Strategy for 2001-2004 (NASC I) and the Action Plan Against Corruption that accompanied the NASC I. Thus, the first measures designed to increase the transparency of customs procedures included the creation of public and media relations divisions; the establishment of a hot line for the general public to report any misconduct or corrupt activity; and the creation of a pilot pay-office station where individuals and firms could pay all the taxes associated with the customs procedures (Guvernul Romaniei 2002, 48-49).
Another important step towards increasing transparency was represented by the development and implementation of the Romanian Integrated Tariff (TARIR) and the computerization of the customs system which would allow a more efficient activity. The adoption, in 2005, of the Law no. 159 regarding the TARIR established the opportunity for all clients and customs staff to access online the information regarding their customs obligations and rights. The main impact of TARIR was to ensure the uniform implementation of customs regulations and the reduction of opportunities for customs staff to “harass” the clients (individuals or firms) during the processing of customs operations (Autoritatea Nationala a Vamilor 2006a, 3). Hence, TARIR is considered to be an instrument that “ensures the transparency of customs procedures and an effective tool for preventing and combating corruption” (Interview C. Barbulescu, May 24, 2007).

Additionally, the creation of a functioning IT infrastructure allows the public to access more easily the necessary information, increasing thus the effectiveness of customs officers and clients’ activities. Thus, in 2005 and 2006, the National Computerized Transit System (NCTS) was implemented at 91 customs offices and, by the end of 2006, it was completed also the implementation of the Automatic System Customs Declarations (ASYCUDA). The impact of the computerized system of processing customs operations was enhanced by the adoption in 2005 of the NCA Decision no. 460 regarding the Norms for Simplified Customs Procedures and its subsequent amendments. The adoption of these new norms allowed the clients to benefit from the customs procedures employed by the EU countries and to process the customs declarations without a direct contact with customs officers. By the end of 2006, 31 percent of the total customs declarations were being processed in the absence of a direct
contact between the clients and customs officers and 1,167 firms were authorized to use
the simplified customs procedures (Autoritatea Nationala a Vamilor 2006b, 3). Furthermore, after 2005, the activity of issuing customs authorizations was decentralized
allowing the territorial customs offices to issue the necessary customs authorizations,
speeding thus the customs procedures and reducing the opportunities for corruption at the
central customs authority (Interview S. Puică, May 24, 2007).

In addition to these measures, the development of the NCA website was another
step towards transparency. The website was also part of the reforming process that the
customs sector was undergoing and a new means of communicating to the public the
information regarding the customs legislation, procedures, the organizational structure,
the customs personnel, and other information of public interest. The adoption of FOIA in
2001 positively impacted the communication between customs authorities and the public,
as it will be shown in the next section.

The adoption of simplified customs procedures, the computerization of the
customs sector and the implementation of ASYCUDA, the adoption and implementation
of TARIR are all important measures designed to increase the transparency of activity in
the customs sector. According to the two interviewees from the NCA (C. Barbulescu and
S. Puică, May 24, 2007), these measures changed the public’s perception of corruption
being generalized in the customs sector to corruption being an isolated incident. Their
claim was based mainly on the studies conducted by the Center for Institutional Analysis
and Development (CIAD 2006) among customs staff and representatives of companies103
in 2006. The studies showed that 73 percent of the representatives of companies are

103 The sample of companies was selected from the total number of companies that are conducting activities
involving customs procedures.
“content” and “very content” with the activity of customs officers and 45 percent of them believe that the customs officers are performing their duties “correctly”. Moreover, 69 percent of the representatives of firms consider that the effectiveness of customs activity is “more” and “much more” efficient than in 2004. When asked how often they made unofficial payments to the customs officers, 54 percent of them answered “never” and only 10 percent said “often” and “always”. Hence, the decrease of those saying that there is “much” and “very much” corruption in customs from 70 to 29 percent appears to justify the NCA officials’ claim that corruption in customs is no longer a generalized problem. However, the optimism regarding the reduction of corruption in the customs sector should be considered with a little bit of caution given the fact that to several questions about corruption or unofficial payments to customs officers more than 50 percent of the respondents chose the answer “Do not know/Do not answer.” Due to the sensitive nature of the questions, it is understandable the reluctance of many respondents to answer truthfully, but their refusal to answer corruption questions does not necessarily mean that they considered it to be less problematic.

The responses of customs officers to similar questions about corruption in their sector revealed, as expected, a similar image as the one presented by the NCA officials. Specifically, less than seven percent of the customs officers interviewed said that the customs activities create opportunities for corruption, although 35 percent of them admitted that some customs procedures create opportunities for unofficial payments (CIAD 2006a). The answers to one question revealed the existence of a discrepancy between the customs personnel and the leaders of their central institution, the latter claiming that by the implementation of TARIR it was “almost completely eliminated the
opportunity for a customs officer to arbitrarily apply the law in the customs sector” (Interview C. Bărbulescu, May 24, 2007). That is, 69 percent of customs officers said that they have “much” and “very much” discretion in interpreting the customs regulations and procedures, which suggests that the changes made on paper are still yet to reach those who are applying them on the ground. That response was interpreted as a result of “ignorance and old mentality” that still exists among customs officers and of the high level of complexity of customs regulations (Interview S. Puică, May 24, 2007). Nonetheless, the high percentage of customs officers who perceive themselves as possessing a high degree of discretionary powers in the implementation of customs procedures remains a concern, despite the positive steps taken to increase transparency in this sector.

3.4. Freedom of Information

The measures designed to increase transparency in the customs sector were accompanied by the implementation of FOIA. Beginning with 2002, every public institution was required to comply with FOIA stipulations and to answer all public requests for public information, even if it would not be a favorable response. Chapter Five presented the legislation and its limitations and therefore this section will focus specifically on the enforcement of FOIA in the customs sector. The data was obtained from the NCA in response to a FOIA request filed on March 9, 2009 and it covers the period from 2003 until 2006. According to the NCA, there is no clear evidence of FOIA requests received and resolved during 2002 because the Public Information Division, responsible for ensuring and monitoring the implementation of FOIA, was created only in
November 2002. Nonetheless, the data available for the subsequent four years, summarized in Table 12, is a good indicator of how the access to public information is ensured in the customs sector.

Table 12
The Evolution of FOIA Requests Received by Customs Institutions

<table>
<thead>
<tr>
<th>Year</th>
<th>Answered Favorably</th>
<th>Rejected</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>601</td>
<td>8</td>
<td>874</td>
</tr>
<tr>
<td>2004</td>
<td>2342</td>
<td>28</td>
<td>2370</td>
</tr>
<tr>
<td>2005</td>
<td>5131</td>
<td>164</td>
<td>5420</td>
</tr>
<tr>
<td>2006</td>
<td>6825</td>
<td>12</td>
<td>6852</td>
</tr>
</tbody>
</table>

Source: National Customs Authority, Response to FOIA Request (March 3, 2009)

The data clearly show an increase in the number of FOIA requests received and answered favorably, particularly beginning with 2005 a year that coincides with a change in the country’s leadership and the adoption of the Anti-Corruption Strategy for the National Customs Authority 2005-2007. The increasing pressure exercised by the approaching EU accession date also played an important role by increasing the pressure to demonstrate a real commitment to combat corruption. Granting the public access to information is a strategy that not only further enhances the transparency of customs activity, but it also shows a commitment to communicate with the public.

In addition to the unprecedented high number of FOIA requests received and answered favorably, 2006 was also the first year when the negative responses of the customs institutions to FOIA requests were challenged. Thus, a total of 16 administrative

\[104\] The remaining number of FOIA requests were redirected to other public institutions because the information solicited was specific to those other institutions.
complaints were filed against the decisions of the customs institution to reject the request for public information and in nine cases, the plaintiffs won. Although small, the number of administrative complaints indicates that the public is not only familiar with the avenues for disputing a FOIA decision, but that it is willing to actually use those avenues to obtain the information desired. Nonetheless, the ultimate avenue for contesting an unfavorable FOIA decision, the court of law, was never employed and it suggests that people continue to be reluctant to employ the judicial avenue. There are at least two explanations for their reluctance: the complexity and high costs associated with a court trial (financial cost, time, energy) or the lack of trust in the courts to favorably solve their requests. Nonetheless, the data shows progress in the implementation of FOIA and, implicitly, in combating corruption by granting the public access to information from the customs sector, information that used to be confidential prior to the adoption of FOIA.

3.5. Ethics Code for the Customs Personnel

The success in fighting corruption depends also on the conduct of those who are directly responsible for implementing and enforcing the customs legislation and regulations. The adoption of clear codes of conduct are an important strategy to prevent and combat corruption. The first Code of Ethics for customs personnel was adopted in 2002 (NCA Decision nr. 44) and it was amended a couple of times in the subsequent years. The Code, a novelty in the customs sector, stipulates the professional behavior of a customs officer, the appropriate demeanor in relations to other parties (such as representatives of other institutions, clients, and mass media), and the sanctions for violating any of these rules. Additionally, the Code specifies what forbidden behavior is
(including influence peddling, favoritism, nepotism, and the use of their official position to gain unlawful benefits) and it stipulates that the cases of ethics violations and the sanctions adopted will be publicized throughout the customs sector, without disclosing the identity of the individuals sanctioned.

The last parts of the Code are devoted to the rules of disseminating it among the customs personnel and making it available to the public, as well as the institution responsible for monitoring the implementation of those rules, namely, the Internal Verification Division. The IVD was assigned the responsibility to detect any breaches of code of conduct, along with the Disciplinary Committee, the directors of the Regional Customs Divisions, and the presidents of local customs offices (Article 33). According to the Article 38, the Code must be made public by posting it in a visible place in all customs offices and institutions. Furthermore, Articles 22-25 specify that the public is to be given, upon request, the free form for filing a complaint against a customs officer, form included in the appendix to the Code. The complaints, collected in a special box placed in a visible place in all customs institutions, are sent for investigation to the NCA headquarters in Bucharest.

Prior to the creation of the Internal Verification Division in 2001, the Disciplinary Committee was the sole organization responsible for investigating any allegation of misconduct and to appropriately sanction the guilty parties. The establishment of the IVD and its territorial units transferred part of the responsibilities for investigating allegations of misconduct from the Disciplinary Committee. Nonetheless, the latter was still authorized to conduct its own investigations and it has continued to be the sole division responsible for sanctioning customs officers for violations of the Code of Ethics. The
IVD has the authority to investigate cases of ethical misconduct and propose sanctions, which are then considered by the Disciplinary Committee.

The organization and functioning of the Disciplinary Committees in public institutions is regulated according to the Government Decision no. 1.210/2003. The adoption of clear rules pertaining to the establishment of the Disciplinary Committees followed the adoption of the Law regarding the Statute of Civil Servants (Law no. 188/1999), which specifies the activities that represent disciplinary offenses, the sanctions that could be imposed for those offenses, and the person responsible for enforcing the sanctions proposed by the disciplinary committees, namely the president of the public institution. Thus, according to the Government Decision no.1.210/2003, every public institution with more than 12 employees must establish a disciplinary committee. Each disciplinary committee is composed of four members, two nominated by the president or director of the public institution and two by the civil servants’ union (Articles 4 and 5), to ensure the creation of a balanced and equitable committee. Each member has a three year mandate with the possibility of renewing it once (Article 8). The Government Decision no.1.210/2003 further details the conditions that a public servant must fulfill in order to be nominated as a member of the Disciplinary Committee, the incompatibilities with this position, the procedures of investigating and reaching a decision, as well as the responsibilities that the president of the Disciplinary Committee has regarding the recording and reporting of their work. Since the customs officers are considered to be public servants, the Disciplinary Committee is organized and functions according to these rules. The graphic evolution of the disciplinary sanctions applied in the customs sector from 1997 until 2006 is captured in Figure 24.

105 This Decision abrogated the previous Government Decision no. 1.083/2001.
As the figure shows, the number of sanctions adopted and enforced varied quite significantly and three distinct trends can be noticed. From 1997 until 2000, there is a consistent increase in the number of sanctions, followed by a short decrease in 2001 and increase again in 2002. The second visible trend begins in 2002 and it continues a descend line until 2004, when the lowest number of disciplinary sanctions in the customs sector was reached. Nonetheless, in 2005 there is again an increase in the number of cases sanctioned, a change that continues an ascendant tendency in 2006. The evolution of the number of disciplinary sanctions does not seem to have a unique explanation. The first trend may be explained by the beginning of the reform in the customs sector, reform that started with the adoption of the 1997 Code of Customs and the secondary legislation.
The second descendant trend implies a slowdown in the efforts to discover and/or investigate misconduct among customs personnel. The alternative explanation, that there was less misconduct in the customs sector, is less believable given that customs sector was still considered at the time as being one of the most corrupt sectors in the country and that the EC began, around the same time, to mention corruption as a major problem in this sector in its *Regular Reports*. The reversal in 2005 is explained by the Romanian authorities' response to the EU criticism, specifically to the EU request for concrete results in curbing corruption and for the implementation of measures necessary to establish an ethical and professional customs service. A look at the types of sanctions adopted, summarized in Table 13, offers a different view of the evolution of disciplinary sanctions over time.

The data show that two types of disciplinary sanctions have been consistently employed over time, namely, written reprimand and salary reduction for period varying from 1 to 3 or 6 months. The former measure of disciplinary sanctioning was used the most in 2006, while the temporary reduction of salary was the preferred measure in 2002 and, it should be noted, it is a more severe penalty than a written reprimand. The termination of contracts of those found guilty of serious violations of the customs legislation (i.e., corruption), a sanction used consistently throughout the period was also the severest form of sanctioning representing the end of the career as a public servant in the customs sector. The other forms of sanctions, such as warning, demotion and relegation from executive position, ceased to be employed in the last three years of the period studied here. There is no official explanation for why they were no longer employed, but perhaps the warning and temporary demotions failed to produce the
expected results, that is, to educate the customs officers with regard to the importance of complying with the rules of the Code of Ethics and of upholding the customs legislation.

Table 13

The Evolution of Disciplinary Sanctions in Customs Sector per Type of Sanction and Year

<table>
<thead>
<tr>
<th>Type of Sanction/Year</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written reprimand</td>
<td>21</td>
<td>20</td>
<td>34</td>
<td>39</td>
<td>27</td>
<td>4</td>
<td>11</td>
<td>38</td>
<td>69</td>
<td>128</td>
</tr>
<tr>
<td>Warning</td>
<td>28</td>
<td>21</td>
<td>47</td>
<td>51</td>
<td>33</td>
<td>9</td>
<td>28</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Salary reduction(^{106})</td>
<td>-</td>
<td>37</td>
<td>39</td>
<td>55</td>
<td>39</td>
<td>110</td>
<td>42</td>
<td>11</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Demotion</td>
<td>21(^{107})</td>
<td>3</td>
<td>24</td>
<td>18</td>
<td>26</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Relegation from executive position</td>
<td>-</td>
<td>13</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Contract termination</td>
<td>-</td>
<td>2</td>
<td>12</td>
<td>3</td>
<td>4</td>
<td>32</td>
<td>2</td>
<td>3</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>70</td>
<td>96</td>
<td>157</td>
<td>168</td>
<td>129</td>
<td>157</td>
<td>84</td>
<td>52</td>
<td>89</td>
<td>152</td>
</tr>
</tbody>
</table>

Source: National Customs Authority, Response to FOIA Request (March 9, 2009)

Hence, the data reveal important fluctuations in the commitment to prevent and combat misconduct, including corrupt behavior, among the customs personnel. Although the first impulse is to claim that the decrease in the number of disciplinary sanctions may have been caused by the decrease in cases of misconduct or corruption in customs, the increase in the last two years prior to the country’s accession to the EU contradicts that statement. A significant decrease in corrupt and/or unprofessional conduct among customs personnel, if due to a real change in the customs sector, should have lasted more than two years and not be followed by such an important increase. Nonetheless, the

\(^{106}\) The salary reduction was between 5 and 20 percent for a period varying from 1 to 6 months.
\(^{107}\) In 1997, 14 of the total demotions were temporary, for a period varying from 1 to 3 months.
increasing number of disciplinary sanctions applied after 2004 indicate a growing commitment to detect and punish any violations of the Code of Ethics and the customs legislation, including corruption.

3.6. Merit-Based Civil Service

3.6.1. The Statute of the Customs Personnel

The rules regarding the activity of personnel in the customs sector, including the criteria for selection and professional advancement, were reviewed in 1998 when the Government issued the Ordinance no. 16 regarding the Statute of the Customs Personnel, herein the 1998 Statute. The 1998 Statute specifies the responsibilities, obligations, and rights of the customs personnel; the prerequisites for entering the customs sector; the rules for promotion; the system for evaluating the activity of customs staff; the rules regarding the organization of continuous professional training; and the remuneration criteria according to the degree of the job complexity and responsibility. The Government Ordinance no. 16/1998 passed the Parliament with a unanimous vote (Law no. 74/2002) and several amendments, which refined and clarified some stipulations regarding the professional career of the customs personnel including advancement criteria, disciplinary offenses and sanctions, and remuneration.

According to the 1998 Statute, the prerequisites for candidates to positions in the customs sector included Romanian citizenship; no criminal record; no active role in the political arena; and a specific educational background in finances, accountability and/or customs. All candidates that fulfill the job prerequisites are than required to pass an entrance exam. Title V of the 1998 Statute specifies the documentation necessary for
applying for the job position, the composition of the examination commissions, and the options available for challenging the exam results. Additionally, the 1998 Statute stipulates the rules for promotion to a higher position, which are all to be made via an examination process and based on the customs officer’s job performance and seniority (Article 40). The latter requirement, seniority, limits the pace with which a customs employee can advance in his/her career. Nonetheless, an exception to the seniority rule could be made if the employee has “exceptionally high levels of education and expertise in customs affairs” (Article 41, paragraph 2). Career promotions are generally made via an examination although a second avenue exists for the high level positions in the headquarters of the NCA and the Regional Departments for Excises and Customs Operations. In those cases, the Minister of Finance, the director of the NCA or the directors of the Regional Departments can directly appoint the people considered to be best qualified for those positions.

These rules of selecting the customs personnel and career advancement were modified in 2004 as a result of the legislative changes introduced by the adoption of the Anticorruption Package (law no. 161/2003), the adoption of the Code of Ethics for the customs sector, and the EU requirement to align the Romanian customs legislation with the EU acquis and to combat more aggressively corruption in this sector. The 2004 Statute, proposed by the Government through the Emergency Ordinance no. 10/2004, was approved by the Parliament with minor changes later that year becoming the Law no. 243/2004. Some of the changes introduced in 2004 involve promotions, which are all to be made through an examination; job incompatibilities, as stipulated by the Anticorruption Package legislation; criteria for entering the customs sector, which must
comply with labor legislation and the legislation regarding the Statute of Civil Servants (law no. 188/1999); and the customs employees obligation to continuously improve their training through participation to seminars or conferences.

Despite the clear legislative provisions regarding the promotions criteria to be used in the customs sector, all promotions between 2001 and 2005 were contingent on the opening of positions that would allow others to advance. Since job openings were the result of retirement or death, that period was marked by very few promotions and an increasing dissatisfaction among customs employees who could not advance despite fulfilling all the legal provisions required for promotions (Interview C. Barbulescu, May 24, 2007). In 2005, the Parliament approved the Government Emergency Ordinance no. 92/2004 regarding the pay scale and other rights of civil servants which ensured a better vertical mobility of customs employees. Thus, by the end of 2005, 431 executive positions out of a total of 532 were occupied via an examination and, by December 2006, other 83 positions (out of which 51 executive positions) were filled via the same avenue. The NCA Activity Report for 2005-2006 specifies that these changes were the result of the increasing external (i.e., EU) and domestic pressure to combat corruption in the customs sector (Autoritatea Nationala a Vamilor 2006b, 5-6). The acknowledgement of adopting anticorruption strategies due to pressures outside of the customs sector is in itself a positive thing, but the actual implementation of those strategies demonstrates a commitment to address this problem in a more effective manner.
3.6.2. Continuing Professional Training

As mentioned, the 2004 *Statute of the Customs Personnel* stipulates the customs employees' obligation to continuously enhance their knowledge through the participation in seminars and trainings organized within their sector. The institution responsible for organizing and conducting training seminars in the customs sector is the School of Public Finances and Customs (SPFC), established in October 2000. The SPFC was the product of a partnership between the Romanian and Dutch Ministries of Finances and it was designed to create a permanent infrastructure for the formation of public servants working under the authority of the Ministry of Finance. The mission of the SPFC is limited to improving the professional skills and knowledge of the public servants in the Ministry of Finance (including the customs personnel) and not to offer them an initial professional training (Ministerul Finantelor Publice 2009). In the subsequent years after the establishment of the SPFC in Bucharest, three other regional centers were created in Râmnicul Vâlcea, Focșani, and Oradea.

The data obtained from the NCA upon filing a FOIA request on March 3, 2009 summarizes the evolution of the training seminars organized in the customs sector beginning with 2002 and the number of customs employees who attended those seminars.\(^{108}\) As shown in Table 14, there was a continuous increase in the number of professional training seminars organized in the customs sector and a significant boost in the number of participants. Thus, if the number of seminars more than doubled from 2002 to 2006, the number of customs employees who participated in those seminars increased

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\(^{108}\) The response received from the NCA regarding the data from 1997 until 2001 was that the data was stored on paper and discarded after being kept two years in the archives of the institution. Hence, there is no exact record regarding the number of trainings and/or participants prior to 2002.
five times, reaching 2000 employees by the end of 2006, which represents more than half the total number of customs staff.109

Table 14

The Evolution of Training Seminars in the Customs Sector

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Seminars</th>
<th>Number of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>18</td>
<td>400</td>
</tr>
<tr>
<td>2003</td>
<td>16</td>
<td>490</td>
</tr>
<tr>
<td>2004</td>
<td>20</td>
<td>560</td>
</tr>
<tr>
<td>2005</td>
<td>36</td>
<td>1077</td>
</tr>
<tr>
<td>2006</td>
<td>45</td>
<td>2000</td>
</tr>
</tbody>
</table>

Source: National Customs Authority, Response to FOIA Request (March 3, 2009)

The seminars covered a variety of topics, including tariff quotas, customs declarations, intellectual property rights, EU integration, simplified customs procedures, rules for classifying goods and calculating their customs value, and ethics and professional deontology. The diversity of topics addressed during the trainings suggests that the NCA was actively preparing for the EU accession and that the establishment of an ethical customs service was one of the pre-accession goals. While the quality of those seminars cannot be evaluated, the significant increase in the number of trainings and participants shows a positive change in the political will to reform and combat corruption in the customs sector, particularly in the two years prior to accession. The EU has consistently criticized Romania for failure to ensure a proper training to its customs employees, but in 2004, the issue of corruption in customs was singled out as a major problem. The data indicates a prompt response from the Romanian authorities with regard to the issue of continuous professional training, a change that was noted by the EC.

109 Although the official number of positions allocated to the customs sector is 4586, in May 2007, there were estimated to be about 3700-3800 positions occupied, a situation that was estimated to be better than in the previous years (Interview C. Barbulescu, May 24, 2007).
in its 2005 and 2006 Regular Reports. Nonetheless, the SPFC ensures the training of customs employees after they entered the sector and it does not participate in their initial formation, an issue for which Romania was consistently criticized by the EU. While the organization of continuous professional trainings contributes to the professionalization of the customs personnel, this still constitutes an “on-the-job” training. The problem represented by the knowledge deficiencies of the newly hired customs employees is recognized also by the high officials in the NCA. Thus, a customs employee needs, on average, about four years to gain enough expertise and knowledge that would make him/her a good employee. To learn in detail how the customs system works and become truly efficient, a new employee needs between three and five years (Interview C. Bărbulescu, May 24, 2007). Hence, despite the progress made in providing an effective “on-the-job” training, the issue of hiring well prepared employees continues to remain a problem.

4. The Impact of Anticorruption Strategies

The institutional strategies designed to reform and combat corruption in the customs sector have been the subject of this chapter. The analysis of these institutional strategies revealed that important efforts were made to restructure, modernize, and align the Romanian customs sector with the EU standards in this area. Given the important role that the Romanian customs would play in the EU by becoming the latter’s eastern border after accession, it is understandable the pressure exercised on the Romanian authorities to reform this sector and to create an honest and professional customs service. Hence,
combating corruption has become a major concern for the EU and a main goal for the NCA particularly in the last couple of years prior to accession.

Progress was made with regard to the adoption of new customs legislation, of special importance being the Customs Codes of 1997 and 2006 and their secondary legislation and the *Anti-Corruption Strategy of the National Customs Authority 2005-2007* (ASNCA 2005-7) and the *Action Plan Against Corruption* for 2005 and 2006. While the former legislation was designed to reform the customs sector by adopting new rules and regulations, the latter addressed specifically the problem of corruption. Moreover, the ASNCA 2005-7 and the two *Action Plans* revealed a multi-pronged approach to tackle corruption, an approach that focuses on prevention, detection, and punishment. As such, the ASNCA 2005-7 included measures to increase transparency, to promote an ethical conduct in the customs sector, to create a system based on professionalism and merit, and to discover and sanction any violations of the code of ethics, of the professional statute, and any corruption activities.

An important step forward was represented by the establishment of the Internal Verification Division (IVD) in 2001, although its activity has significantly improved after the creation of territorial divisions in 2005. The restructuring of the IVD affected more than just its functional structure and it resulted in an enhanced authority, the organization becoming the sole unit responsible for monitoring the implementation of the ASNCA 2005-7, the effectiveness of anticorruption strategies, the implementation of the Code of Ethics, the investigation of any allegations of misconduct or corruption, and the proposal of sanctions for breaches of customs legislation, ethics, and/or corruption. These measures were complemented by the adoption of measures designed to enhance the
transparency of customs activity. The adoption of TARIR and the implementation of NCTS and ASYCUDA were major steps towards the creation of a modern, effective, and transparent customs sector. The computerization of the customs sector along with the creation of the NCA website gave the clients and the general public access to essential information regarding the customs procedures, customs legislation, organization structure of the NCA, and other information of public interest. Additionally, the creation of the hot line for the public to report any corrupt activities in the customs sector attempted to include the public in the fight against corruption and to show that the NCA acknowledges that corruption is a problem in this sector and it makes efforts to combat it. The adoption of FOIA further increased the communication between customs institutions and public by giving the latter the legal right to obtain customs documents which constitute information of public interest such as activity reports, allocated budgets, activity of various departments and/or divisions (e.g., IVD), or any other types of information considered to be of public interest. The analysis showed that the NCA became increasingly responsive to FOIA requests and that the public also manifest more interest regarding the customs sector activity.

The creation of a professional and ethical customs service requires a reform of customs personnel and the creation of condition conducive to honest conduct. To address these issues, legislative changes were introduced in 2005 to ensure a better vertical mobility of customs employees who fulfill the qualification and seniority requirements for promotion. Furthermore, in response to increasing external (i.e., EU) and domestic criticisms, the exam became the sole avenue for entering the customs sector and/or for
promoting to a higher position. Thus, in 2005 and 2006, all open positions that were filled in the customs sector were done via an examination process.

Despite this progress, the customs sector still has problems that require attention and effort to be solved. Thus, although the information regarding the customs procedures and documents necessary is published on the NCA website, a significant percent of the customs personnel (69 percent) continued to believe in 2006 that they have significant discretion in interpreting the customs legislation and procedures. The complexity of the customs legislation, which is a reality, cannot be used as an excuse to abuse the public position, especially when it is done to gain unlawful benefits. Furthermore, the persistence of such a belief is indicative of other problems such as the deficient knowledge of customs legislation and procedures, the lack of familiarity with the Code of Ethics and, implicitly, with what constitutes ethical and professional conduct. The continuous reliance on "on-the-job" training of customs employees affects the effectiveness of customs institutions because of the required time to properly train the new employees. Furthermore, it is unclear how well informed customs employees are with regard to the Code of Ethics. While the legislative provisions stipulate that the Code should be posted in each institution and it is published on the NCA website, no available data exists regarding the number of employees actually informed about the rules included in the Code.

Overall, the analysis revealed that while various institutional strategies were adopted since 1997, the most anticorruption efforts were made in the two years prior to the EU accession. These two years show an improvement in the administrative capacity of the customs system to function as revealed by the 33.2 percent increase in the revenues
levied to the state budget from the import goods (Autoritatea Nationala a Vamilor 2006, 12). The positive impact of institutional strategies is indicated also by the results of the Business Environment and Enterprise Productivity surveys (BEEPS) conducted in Romania in 2002 and 2005 (see Figure 25).

Figure 25

Frequency of Unofficial Payments/Gifts Made by Firms


The comparison of results reveals not only a decrease in the practice of unofficial payments/gifts when dealing with customs, but also a decrease of their frequency when dealing with public officials in general (e.g., taxes, licenses, regulations, services). A cautionary note is, however, in order due to the higher number of respondents that chose the answer “Don’t know” in 2005 than in 2002. That is, in 2005 twice as many
respondents (20.7%) as in 2002 (10.2%) said they “Don’t know” how often their firms have to make unofficial payments/gifts when dealing with customs, whereas the percentage of respondents that chose the “Don’t know” answer to the questions regarding the frequency of unofficial payments/gifts made to get things done was almost four times higher in 2005 (15%) compared to 2002 (3.9%). Nonetheless, even if one takes into consideration the number of respondents who chose a safe answer (i.e., Don’t know) from any kind of reprisal, the change in 2005 is indicative of a positive change in the fight against corruption in customs.

Additionally, in 2006, the World Customs Organization placed Romania as eighth in Europe with regard to the amount of confiscated goods and ninth with regard to the amount of counterfeited goods confiscated that year (Autoritatea Nationala a Vamilor 2006b, 15). Nonetheless, the NCA officials’ claim that corruption is just an isolated occurrence in the customs sector remains to be substantiated with more monitoring reports and survey results. The arrests in September 2006, after the CIAD surveys were completed, of 30 customs employees suggest that corruptions is more than just an isolated case, although less than a systemic problem.
CHAPTER VII

PUBLIC PROCUREMENT: FIGHTING CORRUPTION IN A NEWLY DESIGNED SECTOR

"You can get much farther with a kind word and a gun than you can with a kind word alone!" (Al Capone)

1. Introduction

The public procurement sector, a “meeting point of the public and private sector and their respective interests” (Bertok 2005, 89), represents on average between 15 and 30 percent of a country’s Gross Domestic Product (GDP) (Transparency International 2006a). The public procurement sector is also one of the sectors in which the temptations and opportunities for corruption are greater than in other public sectors. A corrupt public procurement market has significant consequences not only for the country’s GDP, which may be significantly reduced, but also for the general public. Specifically, the poor are more likely to be negatively affected by corrupt public procurement agreements because such agreements reduce the funding available for social services and distort public choices in favor of the powerful and wealthy (Soreide 2002). Therefore, combating corruption in public procurement and implementing strategies that ensure a transparent and effective functioning of the public procurement market should constitute a priority for all governments. In the context of European accession, public procurement was recognized as an important sector that should be aligned with the EU regulations in that
area. Nonetheless, curbing corruption in this newly designed sector in post-communist Romania became a priority very late in the accession process.

In this chapter, the institutional strategies designed to reform and combat corruption in the Romanian public procurement sector are evaluated. The first section briefly describes the functioning of the public procurement processes, the opportunities for corruption, and the consequences of corrupt public procurement agreements. The second section presents the public procurement sector in Romania, followed by the sections that analyze the institutional strategies adopted and implemented in this sector. The chapter concludes with an evaluation of the institutional strategies on reforming and curbing corruption in the Romanian public procurement sector.

2. Public Procurement Market—General Overview

2.1. The Components of a Public Procurement Process

Public procurement is defined as “all contracts between a government (government department, publicly owned corporation and other types of agencies) and companies (public or private) or individuals” (Transparency International 2006a, 14). The term “procurement” refers to the acquisition of a variety of goods or services ranging from pencils, bed sheets for hospitals, gasoline for government cars, equipment for schools or hospitals, light or heavy equipments for various government departments to construction, advisory or any other services (Transparency International 2006a, 13). While opportunities for corruption may appear in all procurement activities, the public procurement sector is more problematic due to the nature of funds used for the acquisition of goods and/or services and the public interests that need to be protected.
As the definition implies, public procurement processes tend to be complex and in some cases, very complex due to the nature of goods or services that need to be acquired. For example, the acquisition of off-the-shelf products (i.e., standard products that are sold in open markets) is likely to be less intricate than the acquisition of complex, special purpose projects (e.g., dams or port facilities) or the purchase of goods that require specialized research and development (e.g., newly designed military aircraft) (Rose-Ackerman 1999). The degree of complexity will also influence the opportunities for corruption that may appear throughout the public procurement process. Regardless of their particular complexities, all public procurement processes entail similar stages and the focus here is on the public procurement processes in general.

The first stage of the public procurement process is the identification of needs, which entails the assessment of the goods or services that the public institution must acquire. Once the needs assessment is finalized, the second phase consists of the actual design of the tender, during which the criteria for evaluating the bidders and the choice of contract specifications are established. The tender represents the third phase, when the companies interested in winning the public contract submit their bids and the procurement evaluation commission assesses the bids. Once the tender is completed, the procurement commission makes a decision and chooses the winner, which represents the fourth phase, namely the contract award phase. The fifth phase is the negotiations and final agreement phase, during which the public entity and the contracting party (i.e., the party that won the tender) discuss the final details of the contract before signing it. The next important phase of any public procurement process, the sixth phase, is represented by the actual execution or delivery of the contract, i.e., contract implementation phase.
Once the contract has been implemented, the *evaluation and control* phase completes the public procurement process. Figure 26 summarizes the seven phases of the public procurement process.

**Figure 26**

The Phases of Public Procurement Processes

<table>
<thead>
<tr>
<th>Phase</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IDENTIFICATION OF NEEDS</td>
</tr>
<tr>
<td>2</td>
<td>TENDER DESIGN</td>
</tr>
<tr>
<td>3</td>
<td>THE TENDER</td>
</tr>
<tr>
<td>4</td>
<td>CONTRACT AWARD</td>
</tr>
<tr>
<td>5</td>
<td>NEGOTIATIONS &amp; FINAL AGREEMENT</td>
</tr>
<tr>
<td>6</td>
<td>CONTRACT IMPLEMENTATION</td>
</tr>
<tr>
<td>7</td>
<td>EVALUATION AND CONTROL</td>
</tr>
</tbody>
</table>

Due to the complexity of the public procurement processes, it is not surprising that opportunities for corruption thrive in public procurement markets. Some phases of the procurement process tend to create more openings for corruption than other phases, as it will be shown next. Additionally, some public procurement processes involve significant amounts of money, which only further increases the temptations for engaging in corrupt activity to secure the contract.
2.2. Opportunities for Corruption during Public Procurement Processes

In 1995, the *Zimbabwe Quarterly Report* disclosed the collusion agreement between senior ministers in Posts and Telecommunications and a Swedish telecommunications company that was trying to win the tender, an agreement that circumvented the local tender board procedures and involved kickbacks estimated at about $7.1 million. In 2006, an investigation in Kenya found that the government lost about $1.5 million through irregular drug procurement by the Ministry of Health (Rose-Ackerman 1999, 28-29). However, corruption is not specific to developing countries, developed countries also face serious challenges from corrupt public procurement agreements. For example, in Italy, the costs of several major public construction projects fell significantly after the anticorruption campaign, "mani pulite," was launched in early 1992. For example, by 1995, the construction cost of the Milan subway, a rail link, and a new airport terminal fell by well over half, amounting in savings of more than $2 billion (Rose-Ackerman 1999, 29). As a result of the anticorruption campaign, the overall successful bids in public tenders were estimated by 40 to 50 percent lower five years after the *mani pulite* campaign was launched, indicative of the significant amount of public money engulfed by corruption (della Porta and Vannucci 1997, 524). These examples show that corruption in public procurement is a very costly problem for governments, regardless of their level of economic development and even the degree of democratization or democratic stability.

Corruption may occur throughout the public procurement process, although the early and late phases of the process are considered to be particularly exposed to high risk of corruption (Transparency International 2006a, Sacerdoti 2005). Corruption enters the
public procurement process when the needs are modified, falsified, under or overestimated, or just plain unnecessary. In these instances, demands for various purchases are created to favor a particular company, although they would be of little value to the society, or the procurement investment would be economically and/or environmentally damaging (Transparency International 2006a). During the tender design phase when the contract/project specifications are established, the temptations and opportunities for corruption are even higher. Thus, contract specifications can be grossly underestimated to ensure a rapid acceptance of the project or additional specifications are proposed at a later stage when it is too late to change the original project. Emergency procurement projects are especially prone to corruption because the products or services are presented as being essential and it becomes easy to inflate the costs and speed to bidding process, favoring a certain company in the process (Sacerdoti 2005). Additionally, the specifications can be specifically tailored to favor a particular contractor. For example, “an African country reportedly once set its telephone specifications to require equipment that could survive in a frigid climate. Only one telephone manufacturer from Scandinavia could satisfy this obviously worthless specification” (Rose-Ackerman 1999, 64).

The opportunities for corruption continue to present themselves in the next phases of the tender and contract awarding. A particular type of corruption is represented by collusive agreements, that is, anti-competitive behavior that occurs when business agree amongst themselves the prices they will set and who will win which contracts. Collusive agreements may take place also between public procurement officials and bidders. Giorgio Sacerdoti (2005, 155) reports such an example of collusion and corruption when the favored company was called to the bidding appointment an hour earlier than the other
three bidders. When the bidding time came, a bomb scare was received and the other bidders missed the bidding appointment. As a result, the favored company was declared the winner and awarded the contract. A later investigation revealed that the bomb scare was a hoax and the meeting between the procurement commission and the favored company took place exactly where the bomb was reported to be. Also at these stages of the procurement process, some bidders may acquire inside information which would give them an advantage in the bidding process allowing them to omit certain “unimportant” specifications or to make the lowest bid. The public procurement officials may use subjective criteria for selecting the contract or fail to make public the grounds for selecting the winner of the tender. Additionally, the publicity of the tender may be very reduced to ensure that only a particular company would submit a bid. Claims of urgency may also be (ab)used in order to justify the short notice for the tender period (Bueb and Ehlermann-Cache 2005). Thus, Sacerdoti (2005, 156) gives the example of a company that reportedly bought all 25,000 copies of a local newspaper in which the tender was advertised.

Resourceful corrupt public officials and contractors also find ways to make private profits during the contract implementation phase. Thus, goods can be diverted to public officials for their private use or for re-sale; the goods or services provided can be of a lesser quality than stipulated in the initial contract, the difference being paid to the public officials who facilitated the contract or simply kept by the contractor; or the majority of the contract activities can be concentrated in the first stages of the execution, a process known as front-loading, either because the contractor does not intend to complete the project or because it hopes to increase the price of the initial contract

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(Sacerdoti 2005, 156). During the project execution phase, opportunities for corruption may appear due to sub-contracting, which is usually less closely monitored and is often used to introduce or conceal fraud (Bueb and Ehlermann-Cache 2005, 167). Although the contract is completed, corruption may appear in the form of falsified final certificates or corrupt auditors who allow the acceptance of products or services that are below the standards specified in the original contract. The difficulty in detecting corruption in the public procurement sector is due in part to the fact that the consequences are not always visible to the general public and those directly involved in the corrupt agreements are interested in keeping their agreement hidden from the public scrutiny. But corrupt agreements in public procurement have important consequences, as it will be shown next.

2.3. Consequences of Corrupt Public Procurement Agreements

While the beneficiaries of corrupt public procurement agreements are only a handful, the implications of their actions are likely to be felt by the general population. Hence, corruption in public procurement leads to inflated prices and products and services of lower quality. For example, a contractor who won a public contract due to a bribe will have to recover the money spent on the bribe and the simple avenue for that is to decrease the quality of the products or services provided. While at a first glance that may not appear to be too serious a problem, the construction of a building that is not earthquake-proof or roads that are not solid enough to support the traffic may have grave social consequences (Soreide 2002). Additionally, corruption in public procurement distorts the allocation of public funds with big construction projects (e.g. big dams) being preferred to health and education projects (Mauro 1997). Furthermore, corruption in
public procurement will increase poverty and inequality in society by redirecting the attention from serious social problems.

The consequences of corruption in public procurement markets puts an additional burden on governments, which have to allocate more money for investments (services or products) that are unnecessary or of a lower quality and for the maintenance of products of lower quality. Corrupt public procurement agreements distort also the competition on this market by making it more difficult for small or new businesses to enter the market and/or to win public contracts. Other effects of corruption in this sector include a neglect of innovation, potential adverse environmental impacts, an erosion of ethics, and, very importantly, a deterioration of trust in government and other public institutions (Transparency International 2006a). Hence, the ripple-effects of corruption negatively impact a considerable number of people in society, even if the immediate visible consequences of corrupt public procurement agreements may appear less significant. Nonetheless, corruption in public procurement can be combated and important efforts have been made to develop the most likely to succeed anticorruption and public procurement reform strategies.

3. The Romanian Public Procurement Sector

3.1. Brief Outline of the Public Procurement Legislative Changes

The regulation of the Romanian public procurement market has a relatively short history that begins after the communist regime was overthrown in December 1989. In 1991 and 1992, the Romanian Government adopted several Government Decisions to regulate public procurement. These decisions were later complemented by a series of
Government Ordinances and laws, such as Government Ordinance no. 12/1993 approved by Law no. 83/1994 and implemented beginning in 14 October 1994. Over the next few years, the legislation was further amended and, in 1998, a new public procurement bill was drafted with the assistance of the World Bank and the European Commission. However, the new procurement bill was never enacted and a year later, the government issued a new Ordinance (no. 118/1999) in August and amended it through an Emergency Ordinance (no. 202/1999) in December (Wiehen 2000, 4-5). Thus, for the first decade after the regime change, the Romanian public procurement sector had undergone continuous legislative changes with the legislation sometimes being amended several times a year. The frequent changes in legislation made it more difficult for the public procurement market to work effectively and it is likely that at least some of the amendments were designed to protect some vested interests. It is important to note that throughout the 1990s, there was no central public procurement authority and no central database for the public procurement activities. The situation changed slightly in 1999 when the new Ordinance assigned the Ministry of Public Finance (MPF) the responsibility to implement the public procurement policy.

The twenty first century brought with it new changes in the Romanian public procurement sector, changes that were now targeting EU integration. Hence, new legislation was adopted to align domestic public procurement regulations with the European regulations and to ensure the complete transposition of the acquis until the end of 2006. A partial adoption of the EU public procurement regulations was made in 2001 through the Emergency Government Ordinance no. 60, approved by the Law no. 212 in 2002. This law was again amended in August 2004 (Government Ordinance no. 75
approved by Law no. 492/2004) only to be abrogated by the Government Emergency Ordinance no. 34/2006. The latter transposed entirely the EU Directives no. 17 and no. 18/2004\(^{110}\) regarding the regulation of public procurement and ensured the timely completion of the *acquis* transposition into the Romanian legislation.

3.2. The Organization of the Romanian Public Procurement Sector

There are differences among countries regarding the choice of a central procurement authority that would oversee the entire activity on the public procurement market or a delegated procurement authority, in which case the contracting authorities have the responsibility to manage their own public procurement processes (e.g. Hungary). Still, some countries (e.g. Slovakia) choose to combine the two solutions in which case the responsibility for the public procurement activities is shared between the central and delegated procurement authorities. No alternative seem to be clearly better than the other, although the central procurement authority may offer some advantages particularly in countries that are establishing the public procurement system (Wiehen 2000). Romania opted for the central public procurement authority, which would potentially have offered some advantages if the authority was benefiting from sufficient well-trained personnel and the budgetary funding necessary to ensure its proper functioning. However, the first central procurement authority, the Public Procurement Directorate (PPD) was established in 2000 within the Ministry of Public Finance. The institution was replaced in November 2005 by the National Authority for Regulating and Monitoring Public Procurement

\(^{110}\) The two Directives are: 1) Directive no. 17/2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and 2) Directive no. 18/2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.
(NARMPP), which is now the central public procurement authority in the country. The organizational structure of the NARMPP is presented in Figure 27, below.

Figure 27
The Organizational Structure of NARMP (2006)


As was the case with other public procurement legislation, NARMPP was established by a Government Emergency Ordinance (no. 74/2005) which was later approved by the Parliament with some minor changes (i.e., Law no. 111/2006). The NARMPP was created as a public institution subordinated to the government and under the direct coordination of the Prime Minister. As its predecessor, the new central procurement authority is responsible for developing, promoting, and implementing the
public procurement policy. More specifically, the institution is responsible for drafting procurement legislation that complies with the EU regulations in this area; supporting policy development; monitoring and evaluating the awarding of public contracts; providing professional advice to contracting authorities; and ensuring the training of personnel involved in public procurement activities with a focus on the correct implementation of the specific legislation.

4. Institutional Strategies

Corruption in public procurement has very serious implications for the general public due to the redirection of public funds to unnecessary or unimportant purchases that would deprive the population from important goods (e.g., aspirin) or services (water supply). Moreover, corruption in public procurement negatively impacts the economy and undermines competition among businesses by making it more difficult for small companies to enter the market unless they agree to participate in corrupt arrangements. Despite the fact that public procurement is a new sector in Romania, corruption infiltrated it from the early stages of its creation. In a comparative study of public procurement in Bulgaria, Czech Republic, Slovakia and Romania, Ase Grodeland (2005) found that in all four countries informal networks and informal contacts are commonly used in public procurement. Furthermore, these informal contacts are employed not only to obtain information about tender procedures and requirements but also to influence the outcome of the tender, to discourage competitors from participating in the tender procedure, to ensure that competitors are disqualified on formal grounds from the competition, or to
facilitate payments to ensure that certain interests are being favored during the tender (Grodeland, 2005, p. 62).

Although these findings appear to be common to all four former communist countries, Romania is set apart by the refusal rate for interviews (about 40%), which was significantly higher compared to the other three countries included in the study. Additionally, the Romanian respondents refused to answer more questions than their counterparts in the study for fear of exposing themselves, despite the interviewers’ assurance that their identities would be protected by confidentiality (Grodeland 2005, 63). The findings about the Romanians’ reluctance to talk about corruption in public procurement are similar to my own experience in the field. The disinclination to talk about corruption in this sector was manifested by representatives of contractors and public officials alike. In fact, the most unpleasant experience was the attempt to obtain an interview with a public official from the NARMPP who, although initially agreed to an interview, refused afterwards to take my calls and after three weeks of attempts to contact her, I decided to approach a different representative from that institution. The persistence of an atmosphere of fear of reprisal if one discusses corrupt practices in public procurement also explains the virtual absence of whistleblowers in this sector and, thus, the lack of data regarding the implementation of this institutional strategy.

Nonetheless, increasingly more efforts have been made by various international organization such as World Bank, EU, UN, and OECD\textsuperscript{111} to develop new procurement regulations and to assist transition countries in their efforts of reforming and combating

\textsuperscript{111} An exception from this international effort is the World Trade Organization, which decided in February 2003 to exclude the issue of corruption from their debates on the role of transparency in procurement reforms claiming that “corruption is a moral issue” and, thus, outside the scope of the organization (Soreide 2005, 55).
corruption in public procurement. This chapter focuses on the following institutional strategies: 1) the enforcement of legislation, 2) the creation and effectiveness of oversight institutions and anticorruption agencies, 3) the increase in transparency, 4) the implementation of the Freedom of Information Act (FOIA), 5) the adoption and implementation of ethics codes, and 6) the existence and implementation of merit-based civil service.

4.1. The Legislative Foundation

Building new institutions responsible for the coordination and proper functioning of a new public sector begins with the development of the legislative base. In the case of the Romanian public procurement sector, the legislative foundation underwent frequent and significant changes in the first sixteen years after the regime change. To a certain degree, some changes are to be expected given the novelty and complexity of the public procurement sector. Nonetheless, there is the expectation that the legislation becomes more comprehensible and clear so not to require repeated alterations. This section analyzes the newest procurement legislation (i.e., since 2000) and the changes it introduced in the public procurement sector.

When Romania began the accession negotiations with the EU in February 2000, the public procurement sector was in need of serious and significant regulation, the situation being described as “catastrophic” by one of the interviewees (Interview Anticorruption Expert 1, April 12, 2007). The seriousness of the public procurement market was such that it required the adoption of a special legislation regulating the abusive clauses in public contracts (Law no. 193/2000). The adoption of this legislation
was considered to be indicative of the negative conditions existing in public procurement and the frequent abuses that were taking place in this market (Interview PP Expert 1, April 17, 2007). In the light of the new commitments assumed by the Romanian Government before the EU and given the significance of the public procurement sector for the common European economy, new changes in the public procurement sector followed shortly. However, as it was the case in the other two sectors, the external pressure played an important role in the changes implemented since 2000.

Although new procurement legislation was completed in late 1999, its adoption was consistently postponed by the Romanian authorities. Finally, in April 2001, just a couple of days prior to the visit of the Commissioner for Enlargement, Gunter Verheugen, the Romanian Government adopted the Government Emergency Ordinance (GEO) no. 60 (Interview PP Expert 1, April 17, 2007). A year later, the Parliament adopted, with a unanimous vote, Law no. 212 on Approval of GEO no. 60/2001, henceforth 2002 Public Procurement Legislation or 2002 PPL. The 2002 PPL covered all public authorities and institutions at all levels of government and was largely based on the text of the EC Directives regulating the public procurement on the common market (SIGMA 2003). According to the 2002 PPL, the open and restricted procedures were the basic procurement procedures for awarding public procurement contracts (Article 10). The law allowed also the use of a negotiated procedures in clearly defined circumstances, such as when following an open or restricted procedure no suitable tenders were submitted; when the services sought to be acquired cannot be described in terms of reference with sufficient precision to allow the award of the contract by a basic

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112 The adoption of GEO no. 60/2001 just days prior to Verheugen’s visit was also emphasized by the Anticorruption Expert 1.
procedure; or when the contracting authority purchases goods that are to be manufactured or works to be made exclusively for scientific research purposes (Article 11). Additionally, the request for tender procedure could only be used under the €40,000 threshold for goods and services and under the €100,000 threshold for works (Article 13). The contracting authority was free to make direct purchases when the value of the goods, services, or works to be acquired did not exceed the €2,000 threshold\(^\text{113}\) (Article 8, paragraph 6).

The 2002 PPL also introduced more precise definitions of coverage exemptions; precise definitions for selection and award criteria; minimum time limits for submission of tenders; mandatory request for tender and performance securities; clear rules on value estimations and technical standards; and the obligation to maintain written documentations and records. Every contracting authority that organized a tender was obliged to organize a tender commission and to specify the tasks and responsibilities for managing the procurement contracts within the authority. The commission was to consist of a minimum of three people with professional experience and relevant background in the field of procurement (Article 51). The decisions of the commission were used by the contracting authority to award and conclude the contract. Additionally, the 2002 PPL specified the common advertising rules. More specifically, every contracting authority was required to publish the tender announcements, tender award notices and indicative notices\(^\text{114}\) that were equal or higher than the €750,000 threshold in the Official Gazette of Romania, Part VI, Public Procurement. Nonetheless, SIGMA found that in the course of 2004, the difference between the number of tender award notices published in the Official

\(^{113}\) All threshold values are calculated without VAT.
\(^{114}\) The indicative notices include all public procurement contracts envisaged to be concluded by the end of the budgetary year.
Gazette and that of contract award notices was about 2000, whereas the number of both notices should be more or less equal (SIGMA 2005). The findings, while far from ideal, represented an improvement from 2002 when in a similar assessment report SIGMA found a discrepancy of about 4000 notices concluding that the "the legal obligation to publish award notices is commonly neglected" (SIGMA 2003, 2).

Other important changes introduced by the 2002 PPL regarded the process of reviewing complaints against the tender procedure. Thus, any individual or legal person could submit a written claim to the contracting authority, which had ten days to make a decision regarding the claim. Throughout this time, the contracting authority had the right to suspend the tender and inform the Ministry of Public Finance and, in cases of contracting works, also the Ministry of Public Works, Transportation and Housing of the filed claim (Article 92). The Ministry of Public Finance was responsible for issuing a response within seven days from receiving the complaint, although in practice the Ministry of Public Finance would issue its opinion within two-week periods and sometimes even in one or two months (SIGMA 2005). Importantly, this method of appeal was available only up to the date on which the contract was signed, restricting thus the opportunities for contesting the irregularities or illegalities of public procurement procedures after that phase. However, the law specified that all decisions issued by the Ministry of Public Finance could be contested in court, the only institution authorized to award damages (2002 PPL, Section 3).

The changes introduced by the 2002 PPL transposed into the Romanian legislation most of the EU procurement regulations, although it maintained the system of granting domestic preference in the awarding of public procurement contracts. In addition
to the removal of those preferences that contravene to the European procurement procedures, the transposition of the 2004 EU Directives into the national legislation became a priority in 2005. Hence, the last two years prior to accession saw a series of important changes both in the legislation and institutional organization of the public procurement system.

The first important step towards a complete alignment of the national procurement legislation with the EU 2004 Directives was the adoption of the Reform Strategy of the Public Procurement System 2005-2007 and the Action Plan for the Implementation of the Reform Strategy by the Government Decision no. 901, on August 4th, 2005. The Reform Strategy was specifically developed to address the problems identified by the EC in the Regular Reports and to ensure the full compatibility between the national and European procurement regulations. More specifically, it attempted to solve such problems as legislative overlaps; absence of a central entity responsible for managing and monitoring the activity on the public procurement market, ad-hoc derogations from the public procurement rules in big public contracts, lack of an efficient system for solving complaints; the absence of a system for collecting data about the actual functioning of the procurement market; and an ineffective system of ex ante audit of public procurement procedures. Hence, the Reform Strategy had three main goals: 1) to complete the legislative foundation; 2) to strengthen the institutional capacity for implementing the legislation; and 3) to create a monitoring system that evaluates the implementation of the Reform Strategy.

The first major goal of the Reform Strategy was formally attained in April 2006 when the Government Emergency Ordinance no. 34 (GEO no.34) was approved. This
marked the complete transposition of the EU Directives into the Romanian legislation and a step forward in reforming and combating corruption in the public procurement sector. Some of the most important changes introduced by the GEO no. 34/2006 include clear methods for calculating the estimated value of a procurement contract (Section 2); rules for elaborating the tender documentation (Section 3); detailed procedures for awarding the contracts (Chapter III); special rules for transparency (Section 6); more precise provision regarding the conflict of interest (Section 8); and the new means of solving legal disputes (Chapter IX). The new national procurement legislation closely mirrors the EU Directives, for the most part translating word by word the EU Directives (Interview C. Vulcu, NARMPP, May 18, 2007). Thus, the EU emphasis on the importance of pre-evaluation stage of public contracts, the likelihood of foreseeing any possible increase or decrease in the value of the products to be acquired, and the types of products that can be procured is reflected in the national legislation. Furthermore, in contrast to the 2002 PPL, the new legislation stresses the obligation of all contracting authorities to disclose all the criteria (i.e., qualitative, technical, and performance factors of the tender), regulations and any other necessary information to ensure a fair participation to the procurement process for all bidders.

Another novelty introduced by the GEO no. 34/2006 is the environmental standard referred to as “eco-label” (Article 37). The contracting authority may include environmental characteristics in the technical specifications of the contract, which requires bidders to produce appropriate evidence that shows the products or services are eco-labeled. Nonetheless, the law also specifies that a contracting authority does not have the right to reject a technical proposal for the sole reason that the products or services

\footnote{The sections on transparency and complaints solving procedures are discussed later in the chapter.}
lack the eco-label as long as the tenderer demonstrates that the products/services are compliant with the requested technical specifications (Article 37, paragraph 3).

The new procurement legislation describes in detail the specific procedures for awarding procurement contracts. In addition to the procedures stipulated in the 2002 PPL (i.e., open procedure, restricted procedure, negotiation with a single source, and request for tender), GEO no. 34/2006 introduces negotiation procedure with prior publication of a contract notice, negotiation procedure without publication of a contract notice, and competitive dialogue. The law stipulates in detail the conditions under which each type of procedure can be organized and the obligations of the contracting authorities from the beginning until the concluding of the procurement contract. A change was also introduced regarding the minimum thresholds required for organizing a request for tender procedure. Thus, the contracting authority has the right to use this procedure only when the estimated value of the public procurement contract (without VAT) is equal or less than the equivalent in ROL of €75,000 for goods and services and €500,000 for works (Article 124). The threshold for direct purchases of goods, services, or works was also increased to the equivalent in ROL of €10,000 (Article 19). Due to the changes that would follow Romania's accession to the EU, the rules for publicity of public procurement contracts were also changed. Thus, beginning with January 1st, 2007, the publication of indicative notices, tender announcement notices, and tender awarding notices must be made not only in the *Official Gazette*, Part VI, Public Procurement but also in the Electronic System of Public Procurement (ESPP)\(^{116}\) and in the Official Journal of the European Union.

\(^{116}\) The ESPP is discussed in the Transparency section.
The public procurement legislation adopted in 2006 was designed to show the EU that there was the political will to reform this sector and to combat corruption in the public procurement market. If in fall 2005, the EC assigned the Romanian public procurement sector a red flag indicative of serious shortcomings, in the May 2006 Regular Report, the EC concluded that Romania made significant improvements in reforming the public procurement system. Hence, the color of the flag assigned for this sector was changed to green,\textsuperscript{117} the public procurement sector being no longer viewed as a threat to Romania's timely integration (Interview C. Vulcu, NARMPP, May 18, 2007). While GEO no. 34/2006 formally satisfied the EU because it \textit{ad litteram} transposed the EU Directives into the national legislation, the actual implementation of the new provisions began on July 23, 2006. Consequently, the final evaluation made by the EC in October was two months after the legislation entered into force, too short a period to assess its impact. According to the representative of NARMPP, Codrin Vulcu, the new procurement legislation is textbook-clear and anyone, regardless of the level of knowledge about public procurement activities, would be able to organize or participate in a public procurement procedure (Interview C. Vulcu, NARMPP, May 18, 2007).

Despite the higher level of clarity of the GEO no. 34/2006 compared to previous laws, the public procurement legislation continues to be extremely complex because it includes also secondary and tertiary legislation necessary for the unitary implementation of the procurement procedures. In addition to the significant length of the procurement legislation (estimated to about 900 printed pages), the continuous amendments make it more difficult for practitioners to learn the new procurement regulations and effectively

\textsuperscript{117} The colors used by the EC to evaluate the state of a specific sector varied from red to yellow to green, with red being the lowest score and green the highest score, resembling the traffic lights.
apply them in practice (Interview PP Expert 2, April 24, 2007). Moreover, some of the language continues to leave room for interpretation and potential abuse, particularly by the contracting authority. For example, the technical documentation can include certain criteria that would favor a particular tender, although the law prohibits it. One of the interviewees admitted to include such criteria in an acquisition contract for the company he was working for. The company was seeking to modernize the IT network and it drafted a technical documentation that could be satisfied only by Hewlett Packard. According to the interviewee, the documentation was “at the legal limits” and the IBM’s complaint against the Tender Commission’s decision was unsuccessful (Interview PP Expert 1, April 17, 2007). Such manipulations of the public procurement regulations are not uncommon and continue to be employed even after the new legislation. According to one interviewee, he always has his firm’s interest at heart when manipulating the procurement regulations, but there are others who do it for their own benefit (Interview PP Expert 1, April 17, 2007). In fact, GEO no. 34/2006 is considered to be one of the least enforced areas of legislation in Romania due to its novelty, complexity, and lack of sanctions for non-compliance (Interview PP Expert 1, April 17, 2007 and Interview PP Expert 2, April 24, 2007).

Nonetheless, the adoption of the GEO no. 34/2006 appear to have ended the use of ad-hoc derogations from public procurement procedures by the exercise of Government Decisions, as used to be the case. For example, in 1997, the government decided to stop the preparations for the international public procurement procedures designed to purchase modern equipment for the Iron Gate Hydropower Plant (Portile de Fier) and to directly give the contract to the Swiss firm Sulzer Hydro. The decision
directly favored the Swiss firm and violated public procurement procedures. Additionally, the contract allowed for price changes and, over the years, the value of the contract increased several times leading to losses estimated in the hundreds of millions of Euros (Interview PP Expert 1, April 17, 2007). Once again, the pressure to apply the procurement regulations in all cases specified by law came from the EU. According to the NARMPP representative, C. Vulcu, the EU can be considered “the gun” in Al Capone’s quote\(^\text{118}\) (Interview C. Vulcu, NARMPP, May 18, 2007). Although the Romanian authorities were aware of the major problems in the public procurement sector, the lack of political will associated with vested interests and significant amounts of money involved in public procurement contracts led to a consistent postponement of the reform process. The adoption of the new procurement legislation in 2006 signaled an important change in the political will to reform public procurement sector and combat corruption.

4.2. Oversight Institutions and Anticorruption Agencies

In addition to the National Anticorruption Prosecutor’s Office (NAPO), there are four other institutions responsible for monitoring the activity on the public procurement market. Three of these institutions were created in the two years prior to Romania’s accession to the EU and in response to the external pressure for reform and reduction of corruption in this sector. These institutions are the National Authority for Regulating and Monitoring Public Procurement (NARMPP), the Unit for Coordination and Verification of Public Procurement (UCVPP), and the National Council for Resolving Complaints

\(^{118}\) See the motto at the beginning of this Chapter.
The fourth institution responsible for auditing the public procurement procedures conducted by the contracting authorities is the Court of Accounts.

4.2.1. **National Authority for Regulating and Monitoring Public Procurement**

One of the criticisms made by the EC in the *Regular Reports* was the lack of a central institution capable of effectively monitoring the activity of public procurement at the national level. Prior to November 2005, when the NARMPP was established based on the Government Emergency Ordinance no. 74/2005, the responsibility for monitoring the public procurement sector was divided between the Public Procurement Directorate (PPD) within the Ministry of Public Finance and the Ministry of Public Works, Transportation and Housing. At the maximum capacity, PPD was functioning with 17 employees, which was a significant improvement from 2002 when it was comprised of only 9 employees (SIGMA 2005). The process of monitoring and data collection was based on quarterly reports that the contracting authorities were required to submit to the PPD. However, "the reports were not submitted and no one bothered to compile the information received from the few reports that were submitted" (Interview PP Expert 2, April 3, 2007). In the three years of activity, the PPD was also responsible for reviewing the complaints made against the public procurement procedures. Thus, the PPD received 427 complaints in 2002, 532 complaints in 2003, and 698 complaints in 2004. The exact number of complaints solved in favor of the protesting tenderer is not known, although about half of them are estimated to be solved favorably for the protesting tenderer (SIGMA 2005).
The creation of NARMPP was designed to concentrate the monitoring activity within a single entity and to ensure a better assessment of the public procurement market. Leaving aside the other complex tasks that the new institution was responsible for (see subsection 3.2.), the effective monitoring of about 12000 contracting authorities would require significant manpower and money (Interview C. Vulcu, NARMPP, May 18, 2007). The political will to demonstrate to the EU that reform was possible and Romania deserved to become a member was reflected in the short period of time (four months) in which the NARMPP became operational. The budgets allocated for 2005 and 2006 were considered very generous and more than the institution was capable of spending (Interview C. Vulcu, NARMPP, May 18, 2007). Thus, in 2005 the financial resources allocated were in the amount of 8,695,984,417 ROL ($1,213,178) and increased in 2006 to 25,568,238,552 ROL ($3,567,027).\footnote{All values were adjusted for inflation and discounting and are expressed in real 1997 USD, the first year of the research study. A detailed explanation of the adjusting calculations is presented in Chapter VI.} In terms of personnel allocated, the original design included a total of 127 positions, including the executive personnel (i.e., president, vice-president, secretary general). The institution began functioning with a total of 20 people, but the number of filled positions increased in 2006 to 81 (including the executive positions) (ANRMAP 2006).

Although the financial resources appear to have been generous enough to ensure a proper functioning of the new central procurement institution, the shortage of personnel definitely made things more complicated. The main reason for the difficulty in filling all the positions assigned to NARMPP, according to the institution's own representative, was the low salary. Thus, the salary of a junior public servant working at the NARMPP is around €100, which is much lower than the salary in the private sector. The situation then
becomes the following: the new graduate gets a low paid job at a public institution, acquires knowledge and experience in the public procurement sector, which enables him/her to get a better paid job in the private sector (Interview C. Vulcu, NARMPP, May 18, 2007). Furthermore, since there is only a limited number of public procurement experts in the country, the expertise gained working for the NARMPP gives them an important advantage.

The monitoring activity of public procurement procedures began effectively in 2006 and throughout the year the NARMPP conducted 44 inspections, all of them in response to complaints made by individuals, institutions, or the mass media. Pursuant to those inspections, NARMPP proposed various measures designed to remedy the irregularities discovered during the monitoring process. Additionally, the NARMPP inspectors verified 23 indicative notices, 47 tender announcements, and the contract documentation in 50 public procurement procedures (ANRMAP 2006). These ex ante controls of notices and contract documentations sought to determine their conformity with the public procurement legislation and to make the appropriate recommendations to correct the identified problems. The responsibility for conducting ex ante investigations of public procurement procedures was transferred on April 12, 2006 to the newly established Unit for Coordination and Verification of Public Procurement (UCVPP) within the Ministry of Public Finance. Hence, the NARMPP responsibility was reduced to post hoc controls of public procurement procedures and the monitoring of the implementation of the UCVPP recommendations by the contracting authorities.

The adoption of GEO no. 34/2006 led to the establishment of another institution responsible for solving complaints in the public procurement sector, namely the National
Council for Resolving Complaints (NCRC). In the second half of 2006, after GEO no. 34/2006 entered into force, NARMPP was also responsible for monitoring the implementation of 39 decisions reached by the NCRC in response to complaints made by tenderers. Additionally, pursuant to the changes introduced by the Law no. 111/2006 on Approval of the Government Emergency Ordinance no. 74/2005 regarding the establishment of NARMPP, the institution had to develop the new Regulations Regarding the Awarding of Public Procurement Contracts to include the responsibility of surveillance of public procurement procedures. The surveillance responsibility refers to the inspection of the contract award procedures, the identification of any deviation from the legal provisions, and the enforcement of sanctions for any identified contravention (ANRMAP 2006).

Taking into consideration the young age of NARMPP, the record of its activity indicates a determination to reform public procurement and to create an environment free of corruption. However, the 14 months activity is insufficient to determine the actual impact of NARMPP on the activity in the public procurement sector. Additionally, the size of the institution (81 individuals) is disproportionate to the size of the public procurement market and the number of contracting authorities (approx. 12000) functioning on the market. The absence of local divisions makes the activity of the central NARMPP even more complex and it potentially reduces its effectiveness since any territorial inspection requires experts, time, and money. The shortage of public procurement experts affects also the quality of inspections and recommendations that the NARMPP can make. It was estimated that in the entire institution there are about four to five public procurement experts, that is, people that posses the knowledge and
understanding of the public procurement procedures. The rest of the personnel is inexperienced and has a very limited knowledge of public procurement activities, but they compensate for the lack of expertise by an attitude of superiority, which has led some experts in public procurement to claim that NARMPP exercises “an unnatural dictatorship in the public procurement sector” (Interview PP Expert 1, April 17, 2007). Nonetheless, the future of the NARMPP depends on the quality of its personnel and the political support it receives, political support that needs to be manifested both financially and by supporting the independence of the institution. Although the Romanian government demonstrated the existence of a real political commitment to improve the public procurement sector prior to the accession, the situation has slightly changed after January 1st, 2007. As such, the 2007 initial budget was half than that allocated for 2006 and the number of personnel was reduced from 127 to 90, although “the most difficult part comes after the EU integration when we have to be completely operational and with an efficient monitoring system” (Interview C. Vulcu, NARMPP, May 18, 2007).

4.2.2. Unit for Coordination and Verification of Public Procurement

To assist the NARMPP in the process of monitoring the public procurement procedures, the Government passed Decision no. 942/2006 to create the Unit for Coordination and Verification of Public Procurement (UCVPP) within the Ministry of Public Finance. The responsibilities of the UCVPP include the ex ante supervision of public procedures from the moment the tender announcement is published until the procurement contract is signed. More specifically, the UCVPP observers verify if the tender documentation and contract awarding procedures are in compliance with public
procurement legislation. Throughout the inspections, the observers write *intermediary notes* that specify the problems identified and solutions proposed for their correction. The *intermediary notes* are not binding and the contracting authority can choose to correct the problems or continue the procurement procedure as initially designed. At the end of inspection, the UCVPP observers must draft the *advisory notice* if the identified incompatibilities with the public procurement legislation were not solved based on the solutions proposed in the *intermediary notes*. The *advisory notice* summarizes all the problems recognized during the inspection and the *intermediary notes* submitted to the contracting authority during the inspection. The *advisory notice* must be sent to the contracting authority no later than 3 days after the contract awarding procedure was completed and to NARMPP, the central monitoring institution in the public procurement sector.

In contrast to NARMPP, the structure of the UCVPP includes, in addition to the central unit, territorial branches designed to increase the effectiveness of *ex ante* inspections of public procurement procedures. These inspections are intended to assist the contracting authorities in the interpretation and application of public procurement legislation. Hence, the UCVPP observers often serve as consultants for the contracting authorities. Although the transfer of authority regarding the *ex ante* inspections took place in April 2006, the central unit started functioning at partial capacity only in December that year (Interview Cornelia Nagy, Director UCVPP, May 25, 2007). At the time of the interview with the UCVPP Director, the central unit had 50 employees with another 100 employees at the territorial units. The 150 employees is still a small number of observers capable of conducting inspections of the approximately 12000 contracting
authorities functioning in the public procurement market. Therefore, the selection of which contracting authorities to be verified is based on a risk analysis. More specifically, a coefficient is calculated based on the score, on a scale from one to three, of the main risk factors of a public procurement procedure (i.e., estimated value of the contract; size and type of contracting authority; funding source—state budget, private, EU; the type of public procurement acquisition—services, goods, works; and the history and experience of the contracting authority). A score equal or higher than 2.5 is considered to be high risk; a score between 1.5 and 2.5 is of a medium risk; and a score below 1.5 corresponds to a low risk. The contracting authorities with a high risk coefficient score are given priority on the list of inspections to be conducted (Interview C. Nagy, Director UCVPP, May 25, 2007). However, the UCVPP began actually conducting the verifications of public procurement procedures only after January 1st, 2007, that is, after Romania’s accession to the EU was completed.

Although the impact of UCVPP activity remains to be seen, it is interesting to note that although an institution with fewer responsibilities than NARMPP, it has a higher number of employees with higher remuneration. The 75 percent bonus to their regular salary is meant to reduce, if not eliminate, corruption temptations. While the UCVPP employees are satisfied with their salaries, the NARMPP employees are highly dissatisfied with the situation (Interview C. Vulcu, NARMPP, May 18, 2007). The high salaries of UCVPP observers have the potential of attracting and retaining better-qualified people. Nonetheless, the limited number of well trained individuals in public procurement led to a similar situation as in the case of NARMPP where the new employees have very little or no knowledge about public procurement procedures.
Consequently, the new employees must be trained on such issues as public procurement legislation and procedures, as well as on what it means to be a public servant (Interview C. Nagy, Director UCVPP, May 25, 2007). The lack of experience regarding public procurement procedures is likely to affect the quality of inspections conducted by the UCVPP inspectors. Additionally, in the public procurement market there is the perception of overlapping responsibilities of UCVPP and NARMPP with the potential of generating conflicting decisions (Interview PP Expert 1, April 17, 2007). An important question that is yet to be addressed is what will happen if UCVPPP and NARMPP reach conflicting conclusions pursuant to their investigations (which may happen in cases of big public procurement contracts) of the same contracting authority? (Interview PP Expert 2, April 3, 2007). So far, such situations have not appeared yet perhaps due to the short period of activity of both institutions, although the authorities should consider such scenarios.

4.2.3. National Council for Resolving Complaints

Part of the reform package initiated in 2005 was also the creation of a better system for reviewing and solving complaints against tender procedures. The previous system of filing complaints limited the period in which a complaint could be filed (i.e., up to the date the contract was signed) and allowed the contracting authority to decide the merits of the complaint and, subsequently, if to suspend the procurement procedures or not. The latter provision gave significant latitude to the contracting authority to claim that the complaint was not justify or that the tender fell under the “exceptional” conditions specified by the law. Furthermore, under the old legislation, the contracting authority was
required to notify the Ministry of Public Finance only in cases when a legal action was initiated by the contestant. In a market dominated by informal rules, often the plaintiff would withdraw the complaint or reach an agreement with the contracting authority which could involve the promise of a future contract or the threat of being excluded from any future contracts (Interview PP Expert 1, April 17, 2007).

To address these shortcomings, the National Council for Resolving Complaints (NCRC) was established by the GEO no. 34/2006 and it was initially attached, although not subordinated, to the NARMPP. Starting from January 1st, 2007 the NCRC became financially independent from NARMPP and started functioning in a new location. The organizational structure of NCRC includes 37 employees, 16 employees representing technical and administrative staff, and it is led by a president elected for a three-year mandate with the possibility of one renewal. At least half of the 21 members of the NCRC must have legal expertise and all of them are required to have a minimum of two years experience in public procurement (Articles 258 & 260). To reduce the corruptibility of the members, their salary is 40 percent higher than the salary of other public servants. The law also specifies the incompatibilities with the position of member of the NCRC and the creation of a Disciplinary Committee responsible for adjudicating any ethical violations committed by the NCRC employees (Article 265).

Upon receiving a complaint, the NCRC must decide the legality of the public procurement procedures within 10 days or, in exceptional circumstances, within 20 days. The NCRC has the right to request from the contracting authority all the documentation regarding the specific public procurement procedure that is being contested. If the contracting authority fails to produce the requested documentation within five days, the
NCRC can penalize the head of the contracting authority with a fine representing 20 percent of the minimum wage for each day the documentation is late. The NCRC decisions, which are reached in a panel of three members, are binding and all contracts completed against the NCRC decisions are declared void (Article 280). According to GEO no. 34/2006, if a plaintiff is dissatisfied with the administrative decision can contest it in court. However, this last resort is rarely used for various reasons. One such reason is the long time required to obtain a solution from the Court, which can take up to two years (Interview C. Vulcu, NARMPP, May 18, 2007), although the law specifies that “the complaint formulated against the decision of the Council [NCRC] shall be judged in emergency procedure and with priority” (Article 283, paragraph 3). Other reasons include fear of reprisal, embarrassment, or the promise of a future contract. For example, one contractor participated in a public procurement tender for road construction and in the final phase there were only two offers left, his included. His offer was for 150 billion ROL, while that of his competitor was 300 billion ROL. Although his offer was clearly more advantageous, he lost the tender. When he threatened with contesting the awarding procedure, he was told: “Sit the hell still or next year you will not get any money for your road constructions!” (Interview PP Expert 1, April 17, 2007). Out of a total of 338 decisions made by the NCRC in 2006, 28 were contested in Court but only five of them were admitted by the Court.

The 338 decisions made by the NCRC in the few months of activity in the fall of 2006 indicate a promising start of this institution. However, the NCRC is criticized for “the lack of expertise necessary to satisfactorily review the complaints and for failing to take responsibility for the decisions passed; that is, the decisions are drafted in a standard
format" (Interview PP Expert 1, April 17, 2007). The NCRC decisions "lack the justification necessary, although the amendment GEO no. 34 requires the justification of all decisions to be made in writing and published on the website of the NCRC" (Interview PP Expert 2, April 3, 2007). Additionally, "there is no record regarding the actual implementation of the NCRC decisions or of any case where the non-compliance with the NCRC decision was penalized" (Interview PP Expert 1, April 17, 2007). All these weaknesses in the functioning of the NCRC may potentially undermine the authority of the institution, if ignored. On the other hand, the institution has the potential of becoming an important element in combating corruption in the public procurement sector, especially if supported by the other two institutions with responsibilities for regulating and monitoring activities in the public procurement market, i.e., NARMPP and UCVPP.

4.2.4. The Court of Accounts

In addition to the newly created institutions, the control of public procurement acquisitions of goods, services, or works falls under the jurisdiction of the Court of Accounts (CA). The latter institution has a long history that dates back to 1864 although its name and attributions have changed over time. The current CA was established by the 1991 Romanian Constitution replacing the Supreme Court of Financial Control that existed during the communist regime. According to the Constitution, the Law no. 94/1992 and its subsequent amendments, the CA is the ultimate institution of \textit{ex post} financial control of the management of public money. The institution functions near the Parliament to which it reports directly the findings of the financial controls executed. The
CA responsibilities include also the elaboration of an Annual Activity Report that is published in the *Official Gazette*, to ensure the transparency of the control processes (Article 3, paragraph 2). The CA is independent in its activity, decides its own financial control schedule and proposes its own budget. The latter requires the Parliament’s approval and it is an indicator of the political support for the functioning of the CA. Figure 28 presents the evolution of the budgets allocated over the ten-year period.

Figure 28

The Evolution of Budgetary Funds Allocated to the Court of Accounts
(Real 1997 Dollars\(^{120}\))

![Graph showing the evolution of budgetary funds allocated to the Court of Accounts.](image)


\(^{120}\) All values were adjusted for inflation and discounting and are expressed in real 1997 USD, the first year of the research study. See Chapter VI for a detailed explanation of the adjusting calculations.
With the exception of the year 2005, the budget of the institution has been consistently adjusted to match the increasing responsibilities of the court. Once started, the CA financial controls cannot be stopped, unless the Parliament makes a direct request for their termination. The Parliament is also the sole institution that can request the CA to conduct a specific financial control. No other public institution has the authority to either make such a request or to stop a control initiated by the CA (Article 2). The CA discharges its authority through the central and territorial units, the latter being situated in the capital of each county (judeţ) and in Bucharest.

The law on the organization and functioning of the CA does not include any specific provisions regarding the role of the institution in the prevention, discovery or sanctioning of corruption. Nonetheless, if any illegalities are discovered during the financial controls, the CA informs the Prosecutor’s Office and suspends the controls (Article 31, paragraph 4). Through its jurisdictional powers, the CA can determine the payment of financial damages for the losses caused to the state budget by the mismanagement of public money (Article 40). The CA decisions, executed by the Ministry of Public Finance, are binding and can be reversed only by the Jurisdictional Council of the CA, the plenum of the CA (i.e., five financial judges), or the High Court of Cassation and Justice. Consequently, the CA plays a limited role in preventing or detecting corruption, the potential for an ex post financial controls being an insufficient deterrent for corruption, since “it is practically impossible for the Court of Accounts to cover all credit ordinators [accountants] each year” (SIGMA 2005a).

121 The Romanian territorial-administrative units are counties (judeţe) and they are administered by the Office of the Prefect, located in the capital-city of each county. There are 41 counties and the municipality of Bucharest, which is given an equal rank with a county.
In monitoring public procurement activities, the most common problems identified by the CA include the substitution of open or restricted procedures with the selection of offers or acquisition from a single source; failure to invite domestic contractors to the tender; drafting of technical documentations in favor of a specific contractor; failure to publicize the tender; drafting and signing of final contracts that differ from the initial procurement contract; the inclusion of special clauses that allow for additional price changes besides those allowed by the procurement legislation; and the fragmentation of the public procurement acquisition in smaller contracts that fall below the required threshold for organizing a public tender. In some cases, the CA controllers discovered the inclusion in documents of fictitious operations, different prices for services and/or goods than those accepted in the procurement contract, incomplete services, and the advancement of unjustified payments (Curtea de Conturi 1998). In 2002, for example, the CA investigated 1571 public institutions and, in 144 cases, it discovered more or less severe infringements of procurement regulations (SIGMA 2005, 5). Generally, the CA controls focus on the legality of procedures and less on the efficiency of procedures, although some attempts to evaluate the efficiency of procedures are sometimes made.

Although the mere exposure of such irregularities and damages to the state budget is an insufficient measure to combat corruption, it can potentially lead to penal investigations and to the restoration of public trust in public institutions. The CA financial controls can also serve as important tools to increase the transparency of complex public procurement procedures that resulted in significant losses of public money. For example, between 2003 and 2005, the CA examined the procurement by
public institutions and public economic entities of over evaluated goods and services. Thus, an investigation regarding the building procurement by two institutions under the subordination of the Labor Ministry (i.e., National House for Pensions and Other Social Assurance Rights (NHPSAR) and the National Agency for Labor Force Occupancy (NALFO)) found that the values paid for the buildings was much higher than the value of the entire unit of which the buildings were part, a unit that was privatized by the state in early 2000. Additionally, the buildings required renovations for which significant amounts of money were allocated, indicating that the members of the Tender Commission failed to identify the best offers, to document the real values of transaction, and negotiate the best offers. Consequently, the NHPSAR paid $3.94 million for two buildings that were previously part of a privatized unit, while the privatization value of the entire unit was $1.57 million (i.e., 2.5 times smaller). Following the procurement acquisition, other $1.93 million were allocated for the renovation of one of the buildings, which made it non-functional for more than two years after the purchase. The NALFO acquired a building for the amount of $312,812 only four months after the initial owner of the building made an offer of $242,021 billion. In the four months, the building changed not only its value but also its owner twice (Petec 2006).

In the case of SNP Petrom SA, the CA financial investigation revealed significant problems regarding the acquisition of gas stations in the period 1999 and 2002. Some of the major problems included fictitious offers for public procurement procedures; failure to organize public procurement procedures although all the legal conditions were met; failure to register the acquisition of certain goods; acquisition of over-priced gas stations from private individuals instead of economic entities, although the initial contract
specified that the payments should be made to the economic entity; the acquisition of ineffective gas stations (e.g., non-operational, below the SNP Petrom SA standards of quality, required significant investments for renovation); the use of assessment reports that over-estimated the value of the gas stations; the drafting and registering of assessment reports after the completion of the procurement procedure; and the formal organization of two tenders with the same two bidders, although with more expensive offers in the second round. All these irregularities produced significant losses of public money. For example, for the acquisition of two gas stations (B. Văcărescu and C. Brâncopeanu) were issued three assessment reports at three different values. Two of the reports were issued by the same evaluators, although one was done at the request of the SNP Petrom SA and the other at the request of the SC Midas Invest (the seller). The latter assessment report was used in the contract negotiation phase, which resulted in an additional $904,232 paid by the SNP Petrom SA to the SC Midas Invest (Curtea de Conturi 2003). In 2004, the Năstase Government approved the privatization of SNP Petrom SA, which was concluded weeks after the national elections and prior to the transfer of power to the new government. As a result of the privatization process, the Austrian group OMV acquired a 51 percent stake in SNP Petrom SA, becoming the largest oil and gas group in Central Europe. According to the Romanian economic and financial weekly Capital (June 20, 2006), the consultants who prepared the company for privatization had significantly under-evaluated its price resulting in the SNP Petrom share to be sold at half the price it was actually worth. Hence, while it appears that the government attempted to solve some of the problems caused by the mismanagement of

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122 The assessment reports are completed by special evaluators who are hired by the contracting authority in order to determine the real value of the services, goods or works that it intends to purchase.
public money by SNP Petrom SA, the privatization led to additional financial losses and a continuous increase in gas prices.

These examples are illustrative of the magnitude of financial losses to the state budget that may result during public procurement processes. They also reveal the limitations of the role played by CA in preventing and discovering corruption in the public procurement sector. Although the institution has significantly more authority than any other control institution created in the public procurement sector, the sheer number of public institutions that fall under the control jurisdiction of the CA is too high to ensure a more prominent role in combating corruption.

4.3. Transparency

Transparency is an essential element in promoting good governance and fighting corruption. Public procurement is one of the sectors where the lack of transparency is particularly damaging for the economy, the business environment, and for the general public by promoting corrupt activities and discouraging the development of a healthy business environment. Therefore, transparency is considered to be "a central characteristic of a sound and efficient public procurement system" (Soreide 2002, 25) and it always ranks high on the list of priorities regarding the reform of this sector. In public procurement, transparency refers to "well-defined regulations and procedures open to public scrutiny, clear standardized tender documents, bidding and tender documents containing complete information, and equal opportunity for all in the bidding process" (Soreide 2002, 25). Transparency in public procurement involves the right and ability of all interested participants in the procurement process to access the procurement
legislation and procedures, as well as all the information regarding specific procurement transactions (Bertok 2005). Nonetheless, absolute transparency in public procurement is not possible given the nature of certain information (i.e., competition and business secrets) that may be exchanged during the procurement process. Consequently, transparency in public procurement must balance the need for openness and access to information with the need to ensure the protection of confidential information. Finding the right balance and ensuring that the provisions regarding the protection of confidential information are not abused is not an easy task, but neither is it an impossible task.

4.3.1. Legislative Provisions

The principle of transparency has always been stipulated in the Romanian public procurement legislation. While the 2002 PPL specified "the right" of the contracting authority to ensure maximum transparency by making public the notice for participation in other information media besides the Official Gazette (Article 17, paragraph 3), the GEO no. 34/2006 stipulates "the obligation" of the contracting authority to ensure transparency of procurement procedures. The change is significant because it makes it mandatory for all contracting authorities to ensure transparency of all procurement procedures and at all phases of a procurement procedure. Furthermore, the GEO no. 34/2006 includes a separate section on "Special Rules for Transparency Applicable to the Public Procurement of Publicity Services" (Section 6). Thus, the contracting authority has the obligation to publish the contract notice and the award notice for all media publicity contracts that have an annual value higher than €2,000. Additionally, the contracting authority must ensure public access to the information regarding the final
beneficiaries of the publicity funds, the allocation criteria of the funds, the sums allocated to each final beneficiary, and the completion deadlines of the contractual provisions. An evaluation report regarding the impact of purchasing publicity services is also required to be made public no later than 120 days after the completion of the publicity contract.

The mandatory publication of tender announcements, tender award notices and indicative notices are also legislative provisions designed to ensure the transparency of public procurement procedures. The enforcement of these provisions, especially with regard to the publication of tender award notices, is a different matter. As it was shown by the evaluation reports conducted by SIGMA in 2003 and 2005, there is still an important discrepancy between the number of tender announcements and tender award notices, with the latter number being usually much lower. The lack of sanctions for failing to publicize the tender award notices, the cancelling of tender procedures, the simple omission, or the need to protect an illegal procurement procedure are all explanations for the lower number of tender award notices published (Interview C. Vulcu, NARMPP, May 18, 2007 and Interview PP Expert 1, April 17, 2007).

An important change is embodied in the Article 215 of the GEO no. 34/2006, which stipulates that “The public procurement dossier has the character of public information.” The access to the information included in the dossier is enabled by the FOIA rules and restrictions can be applied only in cases of classified or secret information. NARMPP is the institution responsible for monitoring the restrictions to access to information and to sanction the contracting authorities responsible for such law violations. The sanctions are in the form of fines varying between $3,560 (100,000,000 ROL) and $12,450 (350,000,000 ROL). However, as the NARMPP representative C.
Vulcu admitted, if a procurement contract involves millions of dollars, a small fine is not a very effective deterrent.

4.3.2. Electronic Procurement

The use of electronic procurement to increase transparency has been increasingly promoted by various international organizations, such as the World Bank, UN, and EU in the last decade. Electronic procurement refers to the procurement of works, goods, and services through the use of Information and Communication Technology (ICT), particularly the Internet. The conducting of procurement transactions in the virtual space has multiple benefits: increase in transparency; improved access to information and service; reduction of the cost of information and transactions; increased efficiency of public procurement activities; significant savings of the public money; encouragement of small and medium enterprises to employ technology; and, very importantly, reduction of corruption and/or collusion agreements by decreasing the risk of data manipulation or misuse (Bertok 2005, World Bank 2005). The benefits of electronic procurement are illustrated by the following examples. The introduction of the Government electronic Procurement System in South Korea allowed the government to save about $2.7 billion of all public procurement as compared to $26 million investment. Furthermore, between 1998 and 2002, the total government procurement volume increased about 30 percent, although the staff of the Public Procurement Service was reduced from 1,058 to 935. During the first two years of electronic procurement use (COMPRASNET), the Federal Government of Brazil is estimated to have saved up to $1.5 million. Additionally, the on-
line procurement is completed in less than 15 working days, while the normal procurement process takes more than two months (World Bank 2005, 21).

In 2002, as part of a country-wide strategy of using ICT to increase transparency, the Ministry of Communication and Information Technology (MCIT) and the General Inspectorate for Communication and Information Technology (GICIT) implemented the electronic government procurement (e-GP) system, e-Licitatie. The main objectives of Romania's e-Licitatie are reflected in the legislation that defines the legal framework for the functioning of on-line procurement transactions. Thus, according to the Government Ordinance no. 20/2002 and subsequent amendments,\textsuperscript{123} public procurement by electronic bidding seeks to promote free and open competition, efficient use of public funds, transparency of public procurement, equal and non-discriminatory treatment, confidentiality of commercial secrets and protection of intellectual property (Article 2).

The conducting of public procurement procedures by electronic means was made mandatory for about 1,000 contracting authorities, mostly ministries and subordinate institutions, as specified in the Government Decision no. 182/2002 and the subsequent 11 amendments. Until the changes introduced by the GEO no. 34/2006, e-Licitatie was not open to any other interested contracting authorities besides those listed in the Government Decision no. 182/2002. The latter defined also the products that could be procured through e-Licitatie, which included about 80 product categories with thousand of products. The complete alignment of Romanian procurement legislation with the EU

\textsuperscript{123} The Government Ordinance no. 20/2002 was approved with changes by the Law no. 468/July 2002; the initial legislation was subsequently changed by the Government Ordinance no. 23/January 2003 and the Law no. 246/June 2003 approving it; the Government Ordinance no. 73/August 2003 and the Law no. 535/December 2003; and the GEO no. 34/2006 and the subsequent amendments to it.
Directives led to the development of an extended version of *e-Licitatie*, which became fully operational after January 1\textsuperscript{st}, 2007.

*e-Licitatie* was designed by the GICIT and developed by a Romanian software company using Microsoft ASP technology that allows corrections imposed by changes in the economic environment (Ailioaie and Kertesz 2003). The 100 percent web-based system gives equal access to all interested participants and it allows them to conduct their activities in a safe environment (i.e., encrypted communication, digital certificates, secure facilities protected by biometrics, smart cards, and video surveillance) (World Bank 2005). The costs of setting up *e-Licitatie* were estimated at about €100,000, while the costs for the development of the new version are estimated at about €3.5 million. The operational costs are covered by the money raised from the registration and transaction fees that must be paid directly to the operator (i.e., GICIT). Thus, contracting authorities had to pay a transaction fee of 0.25-0.5 percent of the contract value, while tenderers had to pay an annual registration fee of €15 and a participation fee of €0.25 per electronic reverse auction (World Bank 2005, 13).\textsuperscript{124} The requirement to pay registration and transaction fees were a lesser concern for tenderers because they usually included those expenses into the price offers. However, the obligation of tenderers to use *e-Licitatie* to conduct procurement procedures with public institutions has resulted not only in greater transparency, fairer competition, less paperwork, and less opportunities for corruption, but also in smaller profit margins (in some cases to about 10 percent). The reduced prices obtained as a result of electronic reverse auctions, usually welcomed by the buyers (i.e.,

\textsuperscript{124} Electronic reverse auction is an auction where “several tenderers compete for the business to supply products or services and successively bid the prices down” (Wagner and Schwab 2004).
contracting authority), has led to dissatisfaction among some tenderers who continue to favor the maintenance of the old offline system (World Bank 2005).

Dissatisfaction with the legal obligation of procuring products through e-Licitatie was found also among contracting authorities. The two main reasons for their discontent were the annual total amount of transaction fees that must be paid to the GICIT and the length of the on-line procurement procedures (25 to 30 days), which in emergency cases (e.g., medication) was considered too long. In the case of a hospital interviewed by the World Bank in 2004, the total annual transaction fees paid to GICIT amounted to €10,000 (World Bank 2005, 10). The implementation of the extended version of e-Licitatie in 2006 removed the registration fee for tenderers and introduced a flat fee of maximum $7.00 for participation in the procurement procedures, with 20 participations per month being free of charge. The contracting authority has to pay a flat fee for each procurement procedure between a minimum of $1.5 and a maximum of $30 (Marcu 2008). From March 2002 until March 2005 about 3,300 suppliers participated in 388,000 electronic reverse auction transactions with direct price savings of about €150 million. According to the GICIT, the price savings is the direct result of the increase in transparency and increase in competition specific to the electronic procurement procedures (World Bank 2005, 13). The open access to e-Licitatie of all contracting authorities after the adoption of GEO no. 34/2006 and the introduction of the new version of e-Licitatie led to a significant increase in the number of procurement procedures and participants. Thus, at the end of 2007 9,500 suppliers and 9,300 contracting authorities were registered in e-Licitatie. The number of electronic procurement procedures from March 2005 until the end of 2007 was 262,000. The total value of electronic procurement procedures since the
implementation of e-Licitatie in March 2002 was estimated at about €1 billion or $1.5 billion (Marcu 2008).

The introduction of e-Licitatie was designed to show the EU that Romania is a serious candidate determined to implement comprehensive strategies that would modernize the public procurement system. The complete transposition of EU Directive in the national legislation along with the software changes made in 2006 were meant to dismiss the concerns of some conservative European parliamentarians regarding Romania's capacity to successfully fight corruption. Nonetheless, the success of the e-Licitatie depends also on the access to internet of all contracting authorities and suppliers and on the skills of those conducting the procurement procedures (i.e., tenderers and contracting authorities). In October 2008, the financial newspaper Ziarul Financiar reported that in January 2007 only 58 percent of enterprises with more than 10 employees had access to the internet, Romania being last among the other EU members with regard to internet connectivity. The use of e-Licitatie, while important for increasing transparency and reducing the opportunities for corruption by limiting the direct contact between public officials and tenderers, it is not enough to curb corruption. Although an important step towards increasing transparency, competition, and efficiency of public procurement procedures, electronic procurement must be used in association with other anticorruption strategies to be effective in combating corruption.

4.4. Freedom of Information

The adoption of FOIA in 2001 legitimized the right to access information of public interest, including information regarding the public procurement procedures.
However, prior to 2006, the public procurement dossier was not considered part of the category of public information with the exception of the notices that were required to be publicized in the *Official Gazette*. The 2002 PPL emphasized the need for confidentiality by giving the contracting authorities *the right* to publicize the public procurement information. Additionally, the absence of a central entity responsible for monitoring the activities on the public procurement market made it more difficult for the public to identify the information regarding public procurement transactions.

The special rules for ensuring transparency introduced by the GEO no. 34/2006 changed the character of public procurement information by classifying the procurement dossier as public information. Subsequently, FOIA was amended in fall 2006 to include the changes introduced by the new procurement legislation. The adoption of the Law no. 380 in October 5, 2006 made it mandatory for all contracting authorities to provide the entire public procurement dossier to all parties interested. Additionally, the NARMPP includes in the list of information of public interest that it manages 1) the complaints forwarded by the contracting authorities to NARMPP; 2) the summary notes regarding the conclusion of the controls of the award of tender procedures; 3) the reports on the public procurement contract awarded by contracting authorities; 4) the decisions issued by NCRC and transmitted to NARMPP to monitor the compliance with the NCRC decisions; and 5) the advisory notices issued by the UCVPP regarding the irregularities in the application of the procurement legislation. However, the response received from the NARMPP to my FOIA request for the copies of such documents for 2006 said that the first three categories of documents are available only in printed format and can be
consulted exclusively at the NARMPP headquarters.\textsuperscript{125} Regarding the last two categories of information, they should be requested directly from the other two institutions, although the NARMPP manages them and lists them as part of their public information. Overall, in 2006, the NARMPP received a total of 11 FOIA requests and all were answered favorably although there is no information regarding the completeness of responses (ANRMAP 2006).

The only other institution responsible for monitoring public procurement activities and which provides information regarding the FOIA requests received and answered is the Court of Accounts. Information in this case is also incomplete. Thus, there is no information regarding the number of FOIA requests processed prior to 2005 and a study conducted by the Pro-Democracy Association from December 2002 until December 2003 revealed that none of their eight FOIA requests were answered by the Court of Accounts (Asociatia Pro-Democratia 2004). In the last two years prior to Romania’s accession to the EU, the record of the CA improved not only with regard to the number of FOIA requests answered favorably, but also with regard to the publication of the records on this issue. Hence, in 2005 the CA received 189 FOIA request and answered favorably 139 (i.e., 69 percent), while in 2006 it received a total of 112 requests and answered favorably 74 of them (i.e., 66 percent). According to the \textit{Evaluation Report on the Implementation of the Law no. 544/2001 by the Court of Accounts}, 36 FOIA requests were rejected in 2006 because they asked for either confidential or nonexistent information.

\textsuperscript{125} The list of these documents on the list of information of public interest was made after I concluded my field work in Bucharest.
The changes introduced in 2006 have the potential to significantly improve the access of public to information regarding public procurement procedures, improving thus the transparency of activities involving public money. The CA record indicates that the institution has become increasingly more responsive to requests for public information, although some responses are incomplete. Thus, a study conducted in 2007 found that although the CA had 100 percent responsiveness to FOIA requests, in half of cases the responses were incomplete (Asociatia Pro-Democratia & TI-Ro 2007). Nonetheless, the upgrading of e-Licitatie to include the public procurement activities of all contracting authorities has also the potential to make the public access to public procurement information easier. That depends though on the adoption of the World Bank recommendation to make the bidding documents publicly accessible for free without having to register or be a certified user (World Bank 2005).

4.5. An Ethics Code for Public Procurement?

The public procurement sector like any other public sector should have an established code of ethics to guide the behavior of those interacting in the public procurement market. The complexity of public procurement procedures and, especially, the participation of private entities/actors to the public procurement procedures makes it more difficult for the development of a code of ethics that all participants would abide by. Nonetheless, many countries have adopted a code of ethics for the participants in public procurement. For example, all members of the Purchasing Management Association of Canada (PMAC) and its affiliated Institutes and Corporation are obliged to abide by the Professional Code of Ethics. The PMAC’s Code of Ethics stipulates the values (i.e.,
honesty, professionalism, responsible management, serving the public interest, and conformity with the laws), the norms of ethical behavior among which the “value for money” principle is central, the rules of conduct, and the enforcement procedures (PMAC 2009). The Australian Government has also developed a set of ethical norms for those conducting public procurement activities. Although less comprehensive than the Canadian one, the Australian norms of ethics in government procurement have value for money as the core principle and emphasize the avoidance of any conflict of interest, theft or corruption (Commonwealth of Australia 2005). In the U.S., the Williamson County Procurement Code of Ethics specifically states that it is the obligation not only of public officials but also of those who do business with the county to abide by these rules (Williamson County 2007).

Romania has not yet adopted a Code of Ethics for Public Procurement, although a proposal was advanced in 2003 as part of the PHARE program for public procurement sector. The proposal included three sections: core principles and values, rules of conduct, and enforcement mechanism. The document was inspired by the Canadian Professional Code of Ethics, the American Williamson County Procurement Code of Ethics, and the Code of Ethics used by all the employees of the Piedmont Technical College in Italy (zu Eulenburg and Nemec 2003). However, the proposal was forgotten over the years and “the authorities avoid talking about something like this” (Interview PP Expert 1, April 17, 2007). Consequently, the representatives of contracting authorities must abide by the rules of conduct set forth in the Code of Ethics for Public Servants approved by the Law no. 7/2004. The tenderers in public procurement procedures should abide by the rules of conduct of their business, whenever there is such a code.
4.6. **Merit-Based Civil Service**

A major problem in the Romanian public procurement sector is represented by the lack of definition of the public procurement profession. Most of those working in this sector do not have the appropriate knowledge and training required for conducting sometimes very complicated public procurement transactions. Consequently, intensive and extensive trainings are required to prepare the public officials responsible for the public procurement activities of their institutions and the representative of firms that are doing business with public institutions. Furthermore, trainings must be organized also for the employees of institutions responsible for monitoring the legality of public procurement procedures, such as UCVPP and NARMPP.

Prior to the creation of NARMPP, the institution responsible for organizing the training seminars was the Public Procurement Directorate (PPD). The information regarding the number of seminars and participants is summarized in Table 15, although the data for 2005 is missing. The highest number of seminars and public officials trained in public procurement legislation and procedures took place in 2003, the year that the PHARE Program RO.0006.05.01 was implemented in Romania. The reform measures introduced in 2006 transferred the responsibility for organizing training seminars to the newly created NARMPP. The institution does not provide any information regarding the number of participants to those seminars, but it is estimated that each seminar is attended by 80 to 100 participants, which would give a conservatively calculated total of 540 participants in 2006. In addition to the large number of participants and the short duration of the training (1-2 days), the low impact of the seminars was attributed to the quality of presentations that tend to mechanically summarize extracts from legislation and to the
inexperience of trainers (Interview PP Expert 1, April 17, 2007 and Interview PP Expert 2, April 3, 2007).

Table 15

The Evolution of Training Seminars in Public Procurement

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Seminars</th>
<th>Number of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001*</td>
<td>8</td>
<td>200</td>
</tr>
<tr>
<td>2002*</td>
<td>30</td>
<td>900 (+72 PHARE)</td>
</tr>
<tr>
<td>2003*</td>
<td>23 (+72 PHARE)</td>
<td>700 (+1400 PHARE)</td>
</tr>
<tr>
<td>2004*</td>
<td>40</td>
<td>1000</td>
</tr>
<tr>
<td>2006**</td>
<td>7</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Source: * SIGMA, Romanian Public Procurement System Assessment (June 2005)
**NARMPP, Raport Anual de Activitate (2006)

The training seminars offered by NARMPP are supplemented by the seminars offered by private public procurement experts through the NGOs or professional organizations to which they are affiliated. According to the public procurement experts interviewed, their seminars are smaller in size (maximum 15-20 participants) and longer in duration (minimum three days). That gives them an opportunity the address the procurement procedures in more depth and to simulate public procurement acquisitions.

An interesting situation was created by the reduction of external funding (particularly from the EU) for domestic NGOs, which led to a strong competition among them for financial resources. Since “anticorruption is very hip, many NGOs have expanded their mission to include the fight against corruption among their activities...but the result is tension and conflicts among NGOs” (Anticorruption Expert 1, April 12, 2007). The search for new financial sources led to a re-definition of some NGOs, including TI Romania (TI-Ro), which began organizing a variety of training programs including in the public procurement sector. Although financially the solution is justified and it can be
claimed that TI-Ro is better prepared to train people on how to ethically conduct their public activities, there is a serious downside to consider. That is, the TI-Ro experts conduct seminars where they tell the participants how they should apply public procurement regulations, which potentially weakens the organization’s power to criticize those individuals for the way they apply the legislation, especially if they followed the TI-Ro experts’ advice. There have been reported cases when TI-Ro criticized some of the participants who attended its own seminars, which resulted in a media battle between the organization and the contracting authority or tenderer criticized (Interview PP Expert 2, April 3, 2007). The alteration of TI-Ro’s mission from a watchdog to a training institution has come at a price, altering the organization’s image of impartiality and even credibility.

Officials in the public procurement institutions responsible for regulating and monitoring the activity in this sector are regulated by the general rules applied to all public servants as established by the Law no. 188/1999 (Law on the Statute of Civil Servants) and subsequent amendments. That is, the selection process consists of an examination that must be publicized 30 days in advance and validated by an examination commission. The principle underpinning career promotions and advancement is seniority and all promotions are required to be made based on the results of an examination organized by the public institution with the approval of the National Agency of Civil Servants (Article 65). The law allows for a rapid promotion in special cases where the public official completed a special professional training and obtained the degree of public manager (Article 70). However, all central institutions in public procurement sector are new and still in the process of completing their organizational structure. As a result, it is
too early to discuss the career advancement of those public servants, although a salary adjustment for NARMPP employees may be suitable given their responsibility, not to mention the discontent produced by the higher salaries of the UCVPP and NCRC employees.

5. The Impact of Anticorruption Strategies

Most of the important changes in the public procurement sector took place in the two years prior to the country’s accession to the EU. The increasing external pressure exercised by the EU to reform the public procurement sector, to combat corruption and to align public procurement legislation and regulations with the European Directives 2004 was the primary stimulus. As hypothesized, the lower level of external pressure exercised by the EU during the first eight years analyzed resulted in a postponement of reform in the public procurement sector. Additionally, the newness of this sector in Romania coupled with the complexities of the public procurement procedures and the resistance to strategies that would disrupt particularistic interests explains the delay in reforming public procurement. The EU decision to include Romania in the CEE enlargement process in 2000 led to more vigorous efforts to adopt and implement institutional strategies.

The alignment of the Romanian procurement legislation with the European procedures regulating the common market began in early 2000 and continued throughout the remaining accession process. The 2002 PPL largely aligned national legislation with the EU and represented important progress from the previous public procurement legislation by adopting clearer definitions of coverage exemptions and for selection of
award criteria, more precise rules on value estimations and technical standards, minimum time limits for submission of tenders, the mandatory maintenance of written records, and better mechanisms for resolving complaints about the tender procedures. The incomplete transposition of EU procurement procedures coupled with the adoption of new EU Directives in 2004 and the approaching deadline for accession made it more pressing for the Romanian government to demonstrate its political commitment to reform and clean up its public procurement sector. The change in leadership brought by the 2004 national elections introduced a new impetus in the fight against corruption, momentum that materialized in the adoption of a Reform Strategy and Action Plan for reforming the public procurement sector applicable for 2005-2007; the adoption of a new public procurement legislation that completely transposed the EU Directives (i.e., GEO no. 34/2006); and the establishment of new institutions responsible for regulating, monitoring, and solving complaints in the public procurement sector (i.e., NARMPP, UCVPP, and CNSC). The institutional strategies adopted since 2005 led to a significant increase in transparency of public procurement procedures by classifying the entire public procurement dossier as information of public interest and by amending FOIA to legally create the avenues for accessing the procurement dossiers by those interested. Importantly, the efforts to increase transparency and efficiency in the public procurement sector by the introduction of the e-Licitatie in 2002 intensified in 2006 by the development of an extended version of e-Licitatie that allows the participation of a larger number of contracting authorities and tenderers and the transaction of significantly more procurement procedures by electronic means.
Nonetheless, there are still problems that need to be addressed in order to make the public procurement sector more efficient, transparent, and, implicitly, to reduce the opportunities for corruption. Although the GEO no. 34/2006 adopted *ad litteram* the 2004 EU Directives and, thus, satisfied the external requirements in this area, the legislation is not always clear, the language leaves room for multiple interpretations, and, a year after its adoption, it was considered to be one of the least respected laws in the public procurement sector. Furthermore, the shortage of public procurement specialists impacts the activity and effectiveness of the newly created central institutions responsible for monitoring and regulating the activity on the public procurement market. The inexperience of the NARMPP, UCVPP, and even NCRC employees generates dissatisfaction among the participants in public procurement processes. The efforts to train new people made particularly by the NARMPP, while laudatory, have been assessed as having a low effect due to the huge number of participants and short duration of training, which explains the nickname given by outsiders to those seminars, i.e., "mass conferences" (Interview PP Expert 2, April 3, 2007). Additionally, the appearance of overlapping responsibilities between NARMPP and UCVPP with the potential of generating conflicting decisions generates anxiety among public procurement participants. Although the NCRC represents an improvement in the area of reviewing and resolving complaints against the public procurement processes, the formal drafting of issued decisions without proper justifications generates discontent among those directly affected by the decisions. The long duration required to resolve a contestation in Court, despite the legal provisions that such complaints should be given priority, further discourages the use of this avenue for resolving complaints. The tendency then continues
to be the practice of resolving complaints informally, a situation which is only likely to create more opportunities for corruption. Although the absence of a Code of Ethics for public procurement was not an obstacle to accession, the adoption of such a code that all participants to public procurement procedures would abide by was considered important enough by the EU to assist Romania in drafting such a proposal. In the absence of the external pressure to adopt such a Code of Ethics, the proposal was forgotten and continues to be omitted from any public debate, although it could standardize good practices on the public procurement market.

Although progress has been made in reforming and combating corruption in the Romanian public procurement, the newness of most substantial measures makes it difficult to assess their effectiveness. Nonetheless, the comparison of results from the Business Environment and Enterprise Productivity Surveys (BEEPS) conducted in Romania in 2002 and 2005 indicates a positive change in how firms perceive corruption (Figure 29). Specifically, the percentage of firms identifying corruption as a major constraint was 5.86 percent lower in 2005 compared to 2002. Moreover, the percentage of firms indicating that they were expected to make gifts in order to secure government contracts was 9.51 percent lower in 2005 than in 2002. The decrease of corruption was reflected also in respondents' response regarding the value of the contract that was paid to secure a government contract. Thus, if in 2002 1.57 percent of the contract value was assigned for the unofficial/informal payment (i.e., gift), in 2005 the value of the gift as percentage of the contract value decreased to 0.35. These results indicate that the institutional strategies have had a positive impact, which was noted by the firms functioning on the public procurement market.
However, once again, the external pressure exercised by the EU has played a significant role in creating and supporting the political will necessary for adopting and implementing difficult institutional strategies. The evolution of reforms and anticorruption strategies in this sector is even more illustrative of the impact of external pressure and its absence. That is, when EU pressure increased and was accompanied by threats to postpone accession, there was a mobilization of political will and efforts were made to produce the required change. In the absence of external pressure, the prevalence was given to protecting particularistic interests and introducing incremental changes that would not disrupt the old system. However, the progress made by Romania in the last two years prior to accession is noticeable and it has the potential of reducing corruption in the public procurement sector pending the continuation of those efforts.
CHAPTER VIII

THE OVERDUE REFORM OF THE HEALTH CARE SECTOR

"Health care reform is like the Enchanted Bird: everyone describes it, everyone imagines it in his/her own way, but no one has seen it in reality!"  

1. Introduction

Health care systems are complex entities that have major economic and social implications. Perhaps the most obvious economic implication is represented by the governments' expenditures in the health care sectors, expenditures that affect the organizational structure and functioning of health care systems. For example, in 2006, the World Health Organization (WHO) estimated that the total amount of money spent on health care in the world amounted to USD $4.7 trillion. While some countries spend more on health care compared to others, there is a general agreement that health care systems constitute important sources of financial expenses. When associated with the problems of corruption, mismanagement and/or misallocation of health care funding, the prospects of guaranteeing an efficient functioning of the health care system becomes increasingly more problematic from both economic and social perspectives. From a social standpoint, the delivery of effective and affordable health care services has direct implications for the well being of individuals and society as a whole. Consequently, any reform of the health

care system has to also take into consideration the consumers of the health care services. In post-communist Romania, major health care reforms were initiated after 1997 but with moderate improvements in the functioning of the health care system and little impact on corruption in this sector, as will be shown later in the chapter. The absence of a common European health care policy meant that EU pressure was limited with regard to reforming and combating corruption in the health care sector and that the main point of pressure was the Romanian public.

This chapter assesses the institutional strategies designed to reform and combat corruption in the Romanian health care sector from 1997 until 2006. The first section briefly describes the unique characteristics of the health care system and the opportunities for corruption in this sector with a particular emphasis on informal payments, their magnitude, and consequences for the general public. The second section will present the organizational structure of the health care system in Romania, followed by the sections that analyze the institutional strategies adopted and implemented in this sector. The chapter will conclude with an evaluation of the institutional strategies for reforming and curbing corruption in the Romanian health care sector.

2. Health Care Systems—A Synopsis

2.1. Characteristics of Health Care Systems and Reform Trends within the EU

The health care system has four main features that set it aside from other sectors. Specifically, the health care market is characterized by 1) high levels of uncertainty, 2) asymmetry of information, 3) large number of actors, and 4) large sums of public money. First, the uncertainty in the health care market (i.e., who falls ill, when illness will occur,
what illnesses will people get, how effective the treatments will be) differentiates it from other types of markets in terms of the possibility for market failure (Arrow 1963). Consequently, medical care service markets and the health insurance market are prone to inefficiency (Savedoff and Hussmann 2006, 5).

Second, the information asymmetry leads to the situation in which the patients delegate decision-making to the physicians and the latter act as the agents of the patients (Lewis 2006, Maynard 2006, Savedoff and Hussmann 2006). In this principal-agent relationship, the patient trusts the physician to make the best decisions for his/her well being. However, physicians have a duty not only to act in the best interest of their patients, but also to protect the interest of their health care systems acting, thus, as “double agents” (Maynard 2006, 141). Furthermore, sometimes the physicians have their own personal interests which may lead to the prescription of expensive treatments or provision of substandard services that are likely to induce informal payments (i.e., under-the-table or, in Romanian, atenție) (Savedoff and Hussmann 2006).

Third, the large number of actors involved and the complex forms in which they interact make this sector particularly vulnerable to corruption (Savedoff and Hussmann 2006). When associated with the significant amount of information to be collected and analyzed and the high levels of uncertainty and information asymmetry, the opportunities for corruption and inefficiency in the provision of health care services are likely to increase. Lastly, although equally important, the large sums of public money that are involved in the health care sector are likely to attract dishonest characters and corrupt behavior. For example, it is estimated that the European members of the OECD collectively spend more than USD $1 trillion on health services each year, the United
States spends USD $1.6 trillion per year, and Latin American countries spend collectively about USD $136 billion per year for health care (half of which comes from public finances) (Savedoff and Hussmann 2006, 4). All these large sums of funds constitute attractive targets for corrupt activities.

These unique features of health care systems pose serious challenges to reformers from countries undergoing transition to democracy. On the European continent, the organization and regulation of health care sectors has been considered a national matter from the very beginning of the European Community. Although over the years health care issues have been incorporated into European treaties, the national governments continued to be assigned the main responsibility for health care policy, responsibility that governments have “guarded jealously” (McKee, Mossiales and Baeten 2002). Hence, even though EU institutions have made some progress in promoting public health in all member states, the candidate countries have been under little pressure to reform their health care sectors. Consequently, there was little external pressure (i.e., EU pressure) on the Romanian authorities to develop comprehensive reforms and anticorruption strategies in the health care sector. In the absence of the external pressure, the main impetus for health care reform had to come from within the country.

2.2. Corruption in the Health Care Sector

The features that make the health care market unique are also the features that make this sector more vulnerable to corruption. The combination of large sums of public money and many actors involved in managing those public funds is likely to lead to corruption, particularly when associated with poor oversight and regulations (Savedoff
Corruption in the health care may take various forms such as mismanagement/embezzlement of public funds (Prevenslik-Takeda 2006); false billing, paying doctors to refer patients to hospitals, hiding paperwork and accounts from government auditors (Sparrow 2006); and procurement of medication, equipment, and/or medical supplies and the construction or rehabilitation of health facilities (Vian 2002, Vian 2005, Lewis 2006).

Perhaps one of the most visible and, paradoxically, most tolerated forms of corruption is represented by informal payments. Also referred to as “gratitude payments” or “under-the-table payments,” informal payments are defined as “monetary or in-kind transactions between patient and a health care professional for services officially free of charge in state health facilities” (Balabanova and McKee 2002, 246). Informal payments are often explained as being rooted in the culture of a country and their continuation is justified as being part of the “gift tradition” specific to that culture and which is cherished and respected by everyone. The magnitude, manifestations, and implications of informal payments are examined all over the world from Asia (Chiu, et al. 2007), to Africa (Akesbi, Benchekroun and El Mesbah 2006, Maestad and Mwisongo 2008), to Latin America (Savedoff 2008), and Southern Europe (Liaropoulos, et al. 2008).

In the former communist countries of Central and Eastern Europe (CEE) and in the former Soviet republics, however, the extent of informal payments is particularly striking. There, the informal payments are one of the so called traditions inherited from the previous regime. The fall of communism opened the door for a long and difficult transition to democracy and market economy which, instead of improving the quality of health care services and eliminating the use of informal payments, has further
exacerbated existing problems. A multitude of studies have found that informal payments are a widespread practice, well understood by the public, and expected by the health care providers in CEE (Kornai 2000, Balabanova and McKee 2002, Leven 2005, Gaal 2006, Szende and Culyer 2006, Vian, Grybosk, et al. 2006).

A common finding of these studies is the discrepancy between the patients’ perception of informal payments and that of health professionals. Although some patients found justification for making such payments – such as wages disproportionately small relative to the qualifications and responsibility of health professionals or the need to show their gratitude for the service delivered – most patients see informal payments as additional costs imposed on them by health providers. On the other hand, health professionals perceive informal payments as token of patients’ gratitude or voluntary contributions to the cost of their care (Vian, Grybosk, et al. 2006, Gaal 2006, Balabanova and McKee 2002). Another common finding is that informal payments negatively impact the quality of care provided to patient, may lead to unnecessary medical interventions, discontinuity of care, and erosion of the professional image and trust, and may introduce inequality in access to health care with poorer segments of the population at disadvantage (Rose 2006, Vian, Grybosk, et al. 2006).

There are, however, some authors who claim that informal payments may in fact have a positive impact because they persuade health professionals to provide high quality care; they will deter health professionals from taking a second job or searching for alternative means of revenues who will, consequently, focus more on providing patients quality health care services; and they will introduce competition among health professionals for providing higher quality health care that is likely to be rewarded by
patients (Maestad and Mwisongo 2008). Furthermore, the authors argue that health professionals may distinguish between poor and wealthy patients and “can choose” to employ price discrimination. However, the authors recognize that there is no guarantee that health professionals will employ price discrimination and that the chances of being caught taking a bribe may make them less likely to accept small bribes. Consequently, the likelihood of health professionals charging some patients more than others for the same complicated service or the chances of them providing higher quality care to impress patients and extracts higher payments are difficult to consider as positive effects of informal payments. Reforming health care systems must, therefore, start with governments acknowledging the problem of informal payments, its magnitude, and impact in order to address the underlying factors that sustain the system of informal payments (Allin, Davaki and Mossialos 2006).

3. The Romanian Health Care Sector

3.1. Brief History

The Romanian health care system has a fairly long tradition dating back to the beginning of the twentieth century. The first organization of the health care was influenced by the Bismarckian sick-fund model of social insurance. According to that model, all the employees and their families as well as the self-employed were insured and the related premium was paid in equal proportion by employers and employees. Romania was, however, a mainly agricultural country and only five percent of the population had health insurance under this model (European Observatory of Health Care Systems 2000). After the end of the Second World War, the communist regime introduced the Semashko
health care system founded on the principles of universal coverage and free access to health care at the point of delivery. Health care professionals (e.g., doctors, nurses) were trained and employed by the state and their wages were fixed by the state. According to the socialist ideology, the working class, as the main builder of the socialist state, was rewarded financially for its role, which translated in equal or higher salaries than those of doctors or other categories of intellectuals. The latter had to find meaning in serving their society and not in accumulating wealth (Leven 2005, 449). The discrepancy between the workers' and doctors' wages combined with the high costs of supporting universal health care systems led to dissatisfaction among health care professionals and shortages in medical supplies, technologies, and drugs. The continuous deterioration of health care systems was further aggravated by the inequality of access to good quality health care services. For example, members of the nomenklatura had privileged access to high quality health care; those who had the right connections could also benefit from good quality services; finally, those who could make the side payments were more likely to get good treatments (Rose 2006). The result was the creation of system that promoted favoritism and corruption, and one in which making informal payments for prompt and effective treatment had become a “perfectly acceptable and expected method” (Leven 2005, 449). The system was reformed in 1983 when out-of-pocket payments were introduced for some ambulatory services, but the rest of the system was left unchanged. The Ministry of Public Health was the institution responsible for regulating and ensuring the proper functioning of the entire health care system (Vladescu, Scinte and Olsavszky 2008).
The centralized, state-controlled health care system was underfinanced, underequipped, and poorly managed. This, in turn, led to an increase in the inequality of access to good quality health care, the spread of informal payments, and privileges for members of the nomenklatura. These features specific to the Semashko system persisted in the new health care system (post-1989), which continued to be characterized by small proportion of GDP allocated to health care, lack of transparency and accountability, poor quality services, deficient management capacity, and insufficient medical equipment, drugs, and other supplies (Vladescu, Scintee and Olsavszky 2008). Additionally, the status of health professionals remained unchanged for the first five to seven years, with doctors and nurses continuing to be employees of the state with fixed salaries that were considered too low.

3.2. The Current Organizational Structure

In the first five years of the transition, the government and the Ministry of Public Health issued a number of decrees and decisions designed to slowly change and improve the organization and functioning of the health care system. The changes addressed a variety of issues from the financing of health care services to training, methods of payment for health professionals, and the management of major health problems such as tuberculosis and AIDS (Vlădescu, Scintee and Olsavszky 2008). Two pieces of legislation were of particular importance due to their implications in the long term. The first was Government Decision no. 370/1990, which introduced a new system for paying primary health care providers in a pilot project implemented in eight districts and which led to the introduction of this system in the entire country. The second major legislation
was the Law no. 74/1995 regarding the organization of the College of Physicians in Romania, a law that was actually implemented two years later. The main changes, however, began with 1997 when the Law no. 145 on *Social Health Insurance* was adopted and which will be discussed in more detail later.

The legislative changes adopted since 1997 have reformed the organizational structure of the health care system and changed the roles of the main health institutions. Thus, the current health care system is organized at two main levels: national (central) and district (*judet*) level (see Figure 30). The main institutions at the central level are the Ministry of Public Health (MPH) and the National Health Insurance House (NHIH). The MPH is responsible for ensuring the health of the nation through the development of health policies and strategies, and the planning, coordinating and evaluation of these health plans. The NHIH is an autonomous public institution responsible for managing and regulating the social health insurance system, although from 2002 until 2005, it functioned under the coordination of the MPH. Since 2005, the NHIH regained its autonomy and is responsible for developing the strategy of the social health insurance system, the monitoring of the activity of the District Health Insurance Houses (DHIH), the allocation of resources to the DHIH, and the allocation of resources by type of care (Vlădescu, Scintee and Olsavszky 2008).

At the district level, the health care system is organized and coordinated by the regional branches of the MPH and NHIH. The former discharges its powers through the District Public Health Directorates (DPHD) and the latter through the DHIHs. There are 42 of each, one in each of the 41 districts and a separate one for Bucharest. The
simplified organizational structure chart (Figure 30, above) depicts the different type of relations between the various health institutions down to the health providers and insured.

Figure 30
Organizational Structure of the Romanian Health Care System

Legend: \(\rightarrow\) control; \(<\cdots>\) contract relationship; \(\rightarrow\rightarrow\) premiums and services; \(--\) collaboration.

4. Institutional Strategies

The survey data presented in Chapter IV showed that health care sector is perceived to be one of the most corrupt sectors in Romania. Furthermore, the same data
revealed that 60 percent of respondents believed that "all" or "almost all" officials in health care sector were corrupt in 2005, more than 10 percent increase since 2000. The practice of informal payments in the health care sector is also revealed by the studies (i.e., Barometers of Health Services (BHS)) conducted by the Center for Health Policies and Services (CHPS) from 2002 until 2006, 2004 excluded. The percent of respondents declaring that they made informal payments to get access to health care services ranged from 35 in 2002 to 18 in 2005. If in 2002, the main reason for making such informal payments was to receive better care (34 percent), in 2005 informal payments were perceived to be a customary practice by 55 percent of the respondents although the percentage of those making such payments to ensure better care remained high (32 percent). The same studies revealed that the informal payments took the form of cash payments or presents and they varied in value from tens of dollars to several hundred dollars. The 2005 BHS also showed that most of the informal payments (63 percent) were made prior to the beginning of consultation or treatment and only 31 percent of them were made at the end of treatment or medical session. A common theme in all these surveys was the respondents’ attitude towards informal payments with an overwhelming majority of them disagreeing with informal payments or considering them to be a form of corruption. Thus, if in 2002 64 percent of them disapproved the practice of informal payments, in 2006 their number increased to 82.8 percent indicating an increasing decline in the tolerance of this practice (not necessarily in the practice itself). Moreover, the practice of informal payments continued to be a heavy burden for many Romanians, particularly for those with low and very low income. The 2005 and 2006 BHS revealed
that 18 percent of the poorest segments of the population had to borrow money to make such payments, further increasing their everyday hardship.

As in neighboring countries, corruption in the health care sector is considered to be one of the unfortunate features of the communist era that made the transition into the new system. Nonetheless, one of the goals of the health care reform is not only to eradicate the problems inherited from the previous regime but to also increase the effectiveness of the health care system as a whole. In this chapter, the following institutional strategies designed to reform and combat corruption in the health care sector are analyzed: 1) the enforcement of legislation, 2) the establishment and effectiveness of oversight institutions and anticorruption agencies, 3) the increase in transparency, 4) the adoption and implementation of the Freedom of Information Act (FOIA), 5) the adoption and implementation of ethics codes, and 6) the existence and implementation of merit-based civil service.

4.1. The Legislative Foundation

The process of reform in the health care sector started in the early 1990s and the main goal was to ensure a smooth transition from a centralized, state-funded, state-controlled system to a health care system better capable of ensuring high quality medical services for everyone. Thus, in 1992-1993, the project *A Healthy Romania* was developed in collaboration with foreign experts and financed through a loan from the World Bank. The project failed to reach its goals and, although it was developed based on the recommendations from the World Bank, lacked transparency and a clear methodology (Vlădescu, Scintee and Olsavszky 2008). The preparations for the big change that would
be introduced by the adoption of an insurance based health care system were carried out in the next three years (1994-1996) when pilot reforms were implemented in eight districts. However, the evaluations revealed that the pilot programs had no impact on hospital admissions, the general practitioners (family doctors) failed to play their designated roles as gatekeepers to the rest of the system, and the programs failed to introduce competition on the health care market (Vlădescu, Scinte and Olsavszky 2008, 144).

Although the initial attempts to reform the system were unsuccessful, they served as a starting point for the major reform that began in 1997 by providing information about the existing shortcomings and by suggesting solutions for the problems identified during the pilot phase. Thus, in July 1997, the Chamber of Deputies approved the Social Health Insurance Law (henceforth, Insurance Law), Law no. 145, almost three years after it was approved by the Senate. The law entered into force on January 1998 except for the provisions regarding the institutions responsible for managing the Social Health Insurance Fund (SHIF). The 1997 Insurance Law changed the financing of the health services from a tax-based system to a mandatory health insurance. Under the new law, employer and employees had each to contribute five percent of the monthly gross salary income to SHIF, a contribution that shortly afterwards was increased to seven percent for each contributor (Government Emergency Ordinance no. 30/1998). The same contribution quota was to be paid by retirees or any other categories of self-employed persons, whereas the contributions of the unemployed were to be covered from the unemployment funds. Chapter II, Section 1 of the 1997 Insurance Law lists the categories of individuals exempt from paying the monthly contributions, such as 1) children and
youth under the age of 26 (if they are pupils or students), 2) the spouses, parents or grandparents of the insured person if they do not have an income, 3) disabled persons without an income, and 4) politically persecuted people, war veterans, revolutionaries of December 1989. The law also specified that failure to make the monthly contributions would result in financial penalties.

The 1997 Insurance Law stipulated the rules regarding the establishment of the SHIF and the Social Health Insurance Houses (i.e., the National Health Insurance House (NHIH) and the District Health Insurance Houses (DHIH)). The SHIF was to be formed by the contributions made by the insured persons and their employers, subsidies from the state and local budgets, and other revenues (Article 51). The social health funds were to be used for the payment of drugs and medical services (83 percent), administrative expenses (five percent), a redistribution fund (seven percent), and a reserve fund (five percent) (Article 60).

As with much other legislation in Romania, the 1997 Insurance Law was amended twice from 1998 until 2002 when it was abrogated by the Government Emergency Ordinance 150/2002 (henceforth, the 2002 Insurance Law). The new law maintained most of the legislative provisions of the 1997 version while also introducing some important changes. Perhaps the most important change was the provision regarding the NHIH, which was subordinated to the Ministry of Public Health (MPH) (Article 60, paragraph 1). The President of the NHIH was nominated by the Prime Minister at the recommendation of the MPH and became a member of the government as Secretary of State (Vlădescu, Scintee and Olsavszky 2008). This provision was highly criticized by the College of Physicians in Romania (CPR), NHIH, and civil society organizations.
which saw in it an attempt to exercise political control over the NHIH and use the NHIF for purposes other than those intended by the law (Institute for Public Policy 2003). In 2005, the autonomy of the NHIH was reestablished through a Government Emergency Ordinance (GEO no. 38) which later became a law (Law no. 327.2005). The most recent change of the Social Health Insurance Law took place in 2006 when Law no. 95 was approved. The new law seeks to cover all areas of the health care system.

One of the important provisions of the Insurance Laws refers to those who are uninsured and are in need of medical attention. If until 2004, being uninsured was not a major impediment in accessing health care services, the situation changed since then. Any person must prove that he/she is insured in order to receive medical care – other than emergency care which is available for everyone for up to three days (Interview Physician 1, July 15, 2007). Thus, according to the NHIH Ordinance no. 122/2005, a person must pay retroactively for the previous three years or the period not covered during that time to obtain health insurance. If the person failed to pay the monthly quota although he/she had a regular income, the retroactive payment would include also interest and financial penalties for all those payments. The 2006 Insurance Law increased the retroactive payments to five years prior to the date when the health insurance is requested.

The unintended effect of these provisions may have been an increase in the number of uninsured people because they cannot afford to make the retroactive payments. Such potential categories may include farmers who failed to make the regular payments to the NHIF because their incomes were too low one or more years or the self-employed whose businesses were producing too little or no profit. It may apply to other social categories as well. For example, one of the interviewees shared his “adventurous”
hospital experience (Anticorruption Expert 2, May 20, 2007). Because he studied abroad for a couple of years, he failed to pay his health insurance in Romania. Unfortunately, shortly after his return home, his leg was broken in a car accident and it required surgery. To avoid making the retroactive payments, he decided to bribe his stay in the hospital. Consequently, he paid the head-nurse to cover the fact that his health insurance was not covered for the previous two years. Additionally, he made informal payments to the anesthesiologist and the surgeon to ensure a speedier intervention. However, the lack of experience in bribing procedures led him to confuse the anesthesiologist with a nurse, which led him to the embarrassing situation of asking the nurse to return the money so he can pass it to the “right” person. After three hours of waiting on the operating table, the money reached the anesthesiologist (who refused to take the payment directly from the patient), and the surgery began. Hence, the strict formal rules in this case had inadvertently reduced the incentives for compliance and, in association with a weak enforcement of Anticorruption Law, led to a decrease in the costs of corruption in the health care sector. Under these circumstances, compliance with the informal rules proved to be more beneficial for the interested parties (i.e., patients and health providers).

Perhaps realizing that three or five years or retroactive payments are a very serious burden on most uninsured people and they unintentionally sustain corruption, the law was changed in 2007 (NHIH Ordinance no. 617). According to this law, if a person was uninsured and owned no income for the past five years, he/she will have to pay retroactively for the past six months only. If the person received income but failed to make the monthly payments, he/she would have to pay retroactively for all those months, with penalties, and for the previous six months prior to receiving the health insurance.
The 2006 health care reform package attempts to address every aspect of the health care system and amends and introduces 17 laws. According to the Minister of Public Health, Eugen Nicolaescu, the changes introduced by the new legislation attempt to ensure the good funding of the services provided and to reduce the heavy financial burden of financing every single medical service and treatment which led to the overall underfunding of the health care system (Ionescu, Corruption Targeted in Romania's Health Reforms 2006). Figure 31 shows the evolution of the total health care expenditure in Romania in the decade prior to EU accession.

Figure 31
The Evolution of Total Health Care Expenditure

Source: Ministry of Public Health,
As the data indicate, although the amounts of money allocated to the health care sector increased every year, the system is still underfunded and in many hospitals patients are asked to bring their own medicine, bandages, syringes, and even food. The situation led President Traian Băsescu to say that the situation in the health care system can be explained not only by “bad management but also [by] corruption” (Ionescu, Corruption Targeted in Romania's Health Reforms 2006). Consequently, the 2006 reform legislation package promised to correct these problems and ensure that patients receive good quality health care services without being forced to make informal payments.

The health care reform process attempted to reshape the entire system and, therefore, also included measures designed to restructure hospitals with regard to their organization, functioning and financing (Law on Hospital Organization, Law no. 146/199 abrogated by the Law no. 270/2003); to strengthen the role of the family doctors as gatekeepers to the rest of the health care system; to empower patients by regulating their rights and obligations (Law on the Patient’s Rights, Law no. 46/2003); to privatize the health insurance system (Law on the Private Health Insurance, Law no. 212/2004); and to decentralize the health care system (according to the 1992 Law of Local Public Administration and the subsequent amendments) after the adoption of the 1997 Insurance Law. These series of legislative measures illustrate the magnitude of the health care reform process without saying much about their actual provisions, language, or impact. One of the common themes in all the interviews with public officials, physicians, and NGO representatives from the health care system was related to reform and legislation in this sector. All of the interviewees said that the health care reform lacks a clear vision, a clear philosophy, and a clear direction. The legislation was characterized as being
“confusing and difficult to implement: 1) there was never a coherence among the various legislative acts...and the result is a lack of clarity with regard to the precise responsibilities of the MPH, NHIS, and the CPR; 2) there is no secondary legislation [to the 2006 Insurance Law, n.a.] and all that is left is a law that exists on paper and is never implemented; 3) and a problem common to all Romanian legislation is the lack of clear sanctions, as is the case of the Law on Patient’s Rights” (Interview Health Care Expert 1, April 4, 2007).

The frequent changes in legislation as a result of the high turnover of the Ministers of Public Health (9 Ministers from December 1996 until December 2006) have also contributed to the confusing and often contradictory provisions. The major problem was that not only each administration had its own vision of how the health care reform should take place, but the replacement of every Minister of Public Health was accompanied by a series of legislative and personnel changes (Interview F. Furtunescu, Ministry of Public Health, May 24, 2007). Thus, “every new Minister changed the organizational structure of the institution to get rid of the unwanted staff and to bring in his/her own people” (Interview Health Care Expert 1, April 4, 2007). Additionally, the reform changes were “pompous and attempted to solve an immediate problem without a vision of how the future system should look like” (Interview V. Astărăstoae, CPR, May 24, 2007). The working approach in the health care system has always been “because this is how I want it” or “because this is how I think it should be done!” (Interview Health Care Expert 2, May 30, 2007). Consequently, there was almost no collaboration with non-governmental actors, including health care experts or professionals. According to the representative of the CPR, their input has been sought by political figures only when they were in the opposition. Once in government positions, the political leaders no longer sought or wanted to collaborate with the CPR. When their suggestions were considered,
the legislative decisions were of no political or economic interest for the decision-makers (Interview V. Astārāstoae, CPR, May 22, 2007).

Hence, the massive health care legislation is under continuous transformation and almost twenty years after the fall of communism, the Shemasko system continues to be the scapegoat for the slow pace of change. The legislative incoherence makes it difficult not only for the patients to understand how the system works and what their rights are, but also for the health care professionals to adjust to the new provisions while ensuring the best health care possible. The MPH’s attitude towards dialogue and collaboration with actors outside the government has been detrimental to the quality of legislation and the image of the institution among medical professionals and the general public.

4.2. Oversight Institutions and Anticorruption Agencies

4.2.1. National Health Insurance House

The 1997 Insurance Law stipulated the establishment of the NHIH and its district divisions (DHIH) as autonomous public institutions with responsibilities in administering the health insurance system. The law specified the organizational structure of the NHIH and DHIHs, the formation of the board councils and the procedures for electing the board members. Despite the provision stipulating that the Council of Administration of the NHIH should be established through a national election, the government decided to postpone the election and to nominate an interim Council that would prepare the election of the next board members. The Interim Council would be composed of 15 members that would represent the interests of the government, trade unions, and employers’ associations in equal number. The five representatives of the government were nominated
by the MPH, the Ministry of Labor and Social Protection, the Ministry of Public Finance, and two by the Romanian president. The president of the NHIH was directly appointed by the Prime Minister in consultation with the MPH (European Observatory of Health Care Systems 2000). Although initially planned to be a temporary solution, the procedure of appointing members to the Council of Administration became the rule. The 2006 Insurance Law increased the number of the board members to 17 by adding two representatives of the National Council of the Elderly appointed by the Prime Minister. The same law introduced another change regarding the number of representatives appointed by the President, which was reduced to one, and the inclusion of a representative of the Ministry of Justice (Article 276).

Even though the NHIH was initially established as an autonomous institution, from 2002 until 2005 it functioned under the coordination of the MPH. The change introduced by the 2002 Insurance Law followed the 2000 national elections that resulted in a new government and was in accordance with the practice of every new government in Romania (i.e., to change the legislation adopted during the previous administration). Additionally, the change was explained as a result of the power-struggle between the MPH and the newly created NHIH. The health insurance system meant that the MPH lost significant influence due to the transfer of responsibility for managing the NHIF to the NHIH. The situation was described by one of the interviewees as: “Who has the money, has the power, and the Minister of Public Health felt that it lost its power” (Interview Health care Expert 1, April 4, 2007). The result was a new legislation and a change regarding the control of the money allocated to the health care system.
The changes introduced in 2002 affected also the activity of the DHIHs and the creation of the health insurance fund. Thus, if prior to 2002, the DHIHs were in charge of raising the health insurance contributions locally and retained and used 75 percent of the collected funds, after 2002 that responsibility was transferred to the Ministry of Public Finance. The remaining 25 percent of the funds collected represented the redistribution fund administered by the NHIH. According to the director of the NHIH, Vasile Cepoi, the change had both positive and negative consequences for the functioning of the NHIH and the health insurance system. Under the 1997 Insurance Law, there was no unique National Health Insurance Fund (NHIF) and only 25 percent of the contributions raised locally were being used to correct for the economic and demographic differences between various districts. Consequently, the redistribution fund was insufficient to equilibrate the discrepancies between districts while the 75 percent of revenues raised in the economically powerful districts (e.g. Bucharest) were more than sufficient to ensure high quality services. The result was a migration of population from poorer districts to richer districts to receive better quality medical services and a deterioration of the health status of the population in the underfinanced districts. Hence, the creation of the NHIF ensured a better redistribution of funds and an improved level of equity in the provision of health care, although discrepancies continued to exist. The main disadvantage of the 2002 changes was the manner in which it impacted the personnel working in the health insurance system. If initially, the NHIH and DHIH staff had a separate autonomous status and higher salaries compared to other public servants, after 2002 that changed. The result was a migration of quality public servants from the health insurance system to other areas of activity and apathy among many of those left behind (Interview V. Cepoi, NHIH,
April 11, 2007). The impact of the 2002 Insurance Law and the changes regarding the NHIF is captured in Figure 32.

Figure 32
The Evolution of the National Health Insurance Fund


The data\textsuperscript{127} show that in 2003, the first year when the health insurance contributions were collected by the Ministry of Public Finances, the NHIF decreased slightly only to continue on an ascendant slope in the next three years. However, since 2003, the expenses from the NHIF have consistently been higher than the total revenues, indicating the existence of a combination of problems, such as inefficiency in collecting

\textsuperscript{127} All values in Figure 32 were adjusted for inflation and discounting and are expressed in real 1997 USD, the first year of the research study. See Chapter VI for a detailed explanation of the adjusting calculations.
the health insurance contributions, mismanagement of existing funds, misallocation of funds, or corruption.

In addition to the responsibility regarding the administration of the NHIF, the main responsibilities of the NHIH also include: the development of the social health insurance system; the coordination and supervision of the activity of DHIHs; the elaboration of the framework contract\textsuperscript{128} and the secondary norms for the implementation of the framework contract in collaboration with the CPR, other relevant medical associations, and trade unions; the decision regarding the resource allocation to the DHIHs; the decision regarding the resource allocation by type of care; and collaboration with the MPH in the establishment of public health programs. As the central and highest institution in the health insurance system, the NHIH has the responsibility to monitor the activity of the territorial divisions and the provision of health care services. The NHIH has also an Internal Audit Division responsible for carrying out controls at the DHIHs in accordance to the decisions of the president of the NHIH (Law 95/2006, Article 294).

Although the monitoring and control responsibilities of the NHIH are briefly stipulated in the \textit{Insurance Law}, there is almost no data available regarding the number of controls conducted, the problems identified, and/or the solutions proposed since the establishment of the institution. The 2008 Activity Report of the NHIH specifies that in 2005 were conducted 980 activities of control and monitoring of the DHIHs, while in 2006 the number of control activities was 746. Pursuant to those controls, there were issued 1,847 recommendations in 2005 and 1,812 in 2006. The recommendations referred

\textsuperscript{128} The framework contract establishes the norms and rules under which the medical services are provided in the health insurance system. Under the health insurance system, all providers of medical services, pharmaceuticals, and medical devices are independent and are contracted by the NHIH. The framework contract is renewed and updated every year.
to the closing of framework contracts with medical and pharmaceutical providers, the reimbursement of medical services and drug prescriptions, the administration of budgets, and the evaluation of health care providers in the ambulatory clinics (National Health Insurance House 2008). The paucity of information regarding the activity of monitoring and auditing makes it, however, difficult to accurately assess the effectiveness of the NHIH in this area. The available data indicates that the central institution is attempting to fulfill its responsibility of control and audit, although more detailed data is necessary to determine how well that responsibility is being carried out.

4.2.2. National Control Authority

The National Control Authority (NCA) was established in 2003 according to the provisions stipulated in the Government Emergency Ordinance no. 64 and Government Decision no. 745. One of the responsibilities of the NCA was to monitor the activity of the NHIH and its territorial structures (DHIS) along with the activity of the health care providers (family doctors, ambulatories, policlinics, and hospitals) and suppliers of drugs and medical materials. One of the stated goals of the NCA was “to eliminate the acts of corruption from this system … [and] to create a normal environment for the provision of medical services and for the satisfaction of patients’ expectations” (Blanculescu 2004).

To attain the first stated goal, the NCA verified the implementation of the provisions regarding the conflict of interest and incompatibilities of public servants in the health care system as established by the 2003 Anticorruption Package. Pursuant to the verifications made at the MPH, the NCA inspectors found that a series of public servants holding executive positions were violating the 2003 legal provisions by holding positions
or shares (directly or through their close family members) at medical or pharmaceutical companies. For example, Victor Voicu, the President of the Committee for Transparency at the MPH was at the same time the President of the Scientific Council of the National Medicines Agency (NMA). The responsibilities of the Committee for Transparency include the creation of the list of drugs to be prescribed in ambulatory and hospitals, the criteria for including or excluding certain drugs from the list, and the creation of expert committees for the analysis of pharmaceutical documents presented by the providers. As with regard to the Scientific Council of the NMA, its responsibility is to authorize the marketization of all drugs in Romania. The conflict of interest was between the positions held by Voicu and those held by his wife. Specifically, she was the administrator and main shareholder of the SC Labormed Pharma SA, a company whose business was researching, manufacturing, and distributing drugs. Several similar examples of conflicts of interest were identified among high level officials in the MPH and in all cases they were asked to resign from the public office positions (Blanculescu 2004). Furthermore, cases of incompatibilities with holding public office positions were uncovered during the controls executed at the NHIH and its territorial divisions (National Control Authority 2004).

In addition to monitoring the implementation of this anticorruption provision, the NCA verified also the activity of the NHIH and DHIHs and the manner in which the health insurance funds were being managed. Pursuant the controls executed in 2003, the NCA concluded that there were serious deficiencies in the activities of all these institutions. Some of the problems identified were lack of responsibility regarding the collection of health contributions; deficient management of the NHIH and DHIH budgets
due to the non-observance of public procurement regulations; and non-observance of the frame-contract provisions regulating the activity of health providers and medical suppliers. Following the controls, the NCA took a series of measures that ranged from sanction recommendations made to the institutions hierarchically responsible for enforcing them (e.g., the NHIH in the case of a DHIH), to fines, and to notifications sent to the MPH or to the NAPO, depending on the seriousness of the problems identified (National Control Authority 2004). In cases where severe deficiencies were uncovered, those responsible were fired (e.g., Eugeniu Turlea, president of the NHIH) or forced to resign (e.g., Robert Serban, president of the DHIH Bucharest) (Blanculescu 2004).

Despite the seemingly effective activity, the NCA was dismantled in June 2005 through Government Emergency Ordinance no.49. The staff, budget, and infrastructure allocated to the NCA was transferred to the Office of the Prime Minister. However, the responsibility of eliminating corruption in health care sector was not part of the transfer nor was that related to monitoring the activity of health care institutions.

4.2.3. Court of Accounts

As the ultimate institution of *ex post* financial control of the management of public money, the Court of Accounts (CA) regularly monitors the activity of the MPH, NHIH and their territorial divisions. Hence, the CA exercises the role of an oversight institution that focuses specifically on how the health insurance fund is managed by the central and territorial institutions. Since the establishment of the NHIF in 1998, the CA has made annual controls of how the health contributions are collected and spent by the MPH, NHIH, and the DHIH. The most common problems identified every year included:
declarations of higher revenues than the actual contributions collected; failure to update the records of health care contributors (particularly the list of employers who had to make the health contributions for their employees); failure to properly monitor the collection of health contributions from companies; failure to calculate and enforce the financial penalties to late contributions; reimbursement of medical services not included in the basic health package (e.g., corrective plastic surgeries, private medical services); and reimbursement of hospital services to a higher price. An interesting situation identified by the CA in 1999 referred to the Decision no. 328/70/1999 of the MPH and the NHIH according to which every person requiring a prescription had to pay a 2,000 ROL as a fixed fee for the act of issuing the prescription. The CA concluded that the Decision was illegal and contravened the Law no.72/1996 on Public Finances. A summary of the financial losses identified by the CA from 1998 until 2004 expressed as unmet revenues and prejudices is presented in Table 16.

The category of unmet revenues refers to the failure of the institutions responsible for collecting the health contributions to do so, while the prejudices include all financial losses produced as a result of mismanagement or illegal behavior. As the data show, in most years the main problem was the collection of health contributions. The huge amounts of money lost every year are illustrative of the significant sums of public money allocated to the health care system and of the vulnerabilities and temptations for corruption that accompany them. Although the CA does not have an officially assigned role in combating corruption, the unveiling of illegalities may potentially deter corrupt behavior and reduce the financial losses in the health care system.

129 Data for 2005 and 2006 was not available at the time of this analysis.
Table 16

Problems Identified by the Court of Accounts (in Billion ROL & Million USD)

<table>
<thead>
<tr>
<th>Year/Problem</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unmet Revenues</td>
<td>1,032.05</td>
<td>16,477.7</td>
<td>21,223.0</td>
<td>9,201.5</td>
<td>25.546</td>
<td>28.555</td>
<td>3,025.69</td>
</tr>
<tr>
<td>Prejudices</td>
<td>43.360</td>
<td>5,333.0</td>
<td>131,813.0</td>
<td>88.615</td>
<td>446.882</td>
<td>44.396</td>
<td>29.625</td>
</tr>
<tr>
<td>Total (ROL(^1))</td>
<td>1,075.41</td>
<td>21,810.7</td>
<td>153,036.0</td>
<td>9,290.12</td>
<td>25,993.2</td>
<td>72.951</td>
<td>3,055.32</td>
</tr>
<tr>
<td>Total (USD(^2))</td>
<td>205.48</td>
<td>3,889.26</td>
<td>2,335.42</td>
<td>1,313.42</td>
<td>3,450.68</td>
<td>8.79</td>
<td>324.75</td>
</tr>
</tbody>
</table>

\(^1\) These values are not adjusted for inflation and devaluation.
\(^2\) These values are expressed in real 1997 USD and are, therefore, adjusted for inflation and devaluation.


4.3. Transparency

Given the asymmetry of information and uncertainty specific to health care systems along with the significant amounts of money and people involved in administering them, it is very important to ensure as high a level of transparency as possible without infringing on patients’ privacy. Transparency in health care sector refers to the provision of information regarding the NHIF; the activity and functioning of the health care institutions; the health benefits package the insured are entitled to; the medical services not covered by the NHIF; the rights and obligations of the health care providers and patients; and the data and evaluation reports regarding the provision of health care services, the administration of health insurance funds, or any data related to the functioning of health care sector. To ensure transparency, the main health care institutions must be able to collect the necessary information from the health care...
providers, to analyze it, and to present the results to those interested including the general public. Consequently, an increase in transparency and, implicitly, in accountability, is also contingent upon the existence of a well-established and highly functional health information system (HIS).

The *White Chart of Governance* issued by the SDP government in December 2000 identified the information systems as "the main provider of information in support of decision-making in health policy at both central and local levels as well as for result evaluation" (Csicki, Marcu and Ungureanu 2003, 7). One effect of the implementation of the 1997 health insurance reform was the increase in the number of health care institutions, each with its own information systems and with exclusive rights over that information. Thus, in addition to the MPH and its subordinated institutions, hospitals, institutes of public health, institutes of medical research and education, was also created the NHIH and its subordinated divisions. The result was double reporting, and incoherence in both the reporting of data and the coding of information (Csicki, Marcu and Ungureanu 2003).

The current structure of the HIS consists of three parallel sub-systems: 1) the formal statistical system led by the MPH and the National Institute of Statistics; 2) the monitoring of expenditures for the delivery of health services system led by the NHIH; and 3) the system composed of smaller information channels related to the national health programs and which are independent of each other. The three sub-systems operate almost completely independent of each other and with minimal or non-existence communication among the institutions responsible for gathering the data. Furthermore, each sub-system employs its own software, formats, definitions, standards and support for reporting data.
Sometimes, there are differences in coding the data within the same sub-system which makes it almost impossible to make an accurate comparison at that level, not to mention a comparison at the national level. The data providers (i.e., family physicians, hospitals, ambulatories, polyclinics, and territorial divisions of the MPH) are required to produce “double or triple reporting in formats and software which are not compatible” (Csicki, Marcu and Ungureanu 2003, 3). Additionally, the 2003 evaluation of the HIS identified a series of problems in analyzing and processing of data. For example, the report concluded that only data on diseases is analyzed and processed into information although data on health status and other health related issues is being collected. Moreover, data is aggregated at the district level which makes it difficult to get access to disaggregated data and nearly impossible to obtain individual level data. Finally, there is no monitoring system or quality assurance mechanism which results in inappropriate and insufficiently processed information and, even in breaching of confidentiality regulations (Csicki, Marcu and Ungureanu 2003).

To address some of the problems, the NHIH initiated in 2003 the Integrated Unique Information System (IUIS), a project estimated at €120 million (Mihalas, et al. 2009). The IUIS, the largest project developed by the software companies SIVECO and HP Romania, was built in a hierarchical structure consisting of three levels: NHIH—the highest level; DHIHs—the second level; and the providers of medical and pharmaceutical services—the lowest level. The overall objective of the IUIS is to provide the IT-management of economic and medical data required for an efficient functioning of the health insurance system (SIVECO Romania SA 2009).
Although SIVECO Romania claims that the project was a success, critics point to the problems in the implementation and utilization of the IUIS. For example, the IUIS failed to integrate the previous systems, particularly the Diagnosis Related Groups reporting system which has become mandatory since 2005, and, thus, IUIS is duplicating the reporting of most data. Additionally, the system has an unfriendly interface which has increased the time for filling in all forms up to four hours per day; the transfer of patient databases from previous systems was deficient and hundreds of patients were lost in each district with significant financial consequences for health providers; and the system does not cover all particular (i.e., medical) cases. Furthermore, although most Romanian family doctors do not have computer-based training, the implementation of the IUIS was not accompanied by a training of personnel (Mihalas, et al. 2009). The director of the NHIH, V. Cepoi, also expressed moderate optimism regarding the success of the IUIS stating that “only when the system will function properly, we will be able to know how many patients are being treated, how many should be treated, how many died and why. Then, the responsibility of everyone will be much higher” (Interview, April 11, 2007). Consequently, the increase in transparency in the health care sector depends on the complete implementation of the IUIS, its acceptance by health care providers, and the proper employment of the IUIS.

A deficient HIS has implications that range from poorly drafted legislation, to deficient public health programs, to mismanagement of NHIF, and a provision of incomplete information to the public. The 2003 evaluation report of the HIS in Romania concluded that “decisions in health policy are often taken on the basis of criteria other than data” (Csicki, Marcu and Ungureanu 2003, 4). Four years later, a similar opinion
was expressed by the director of the NHIH and one of the health care experts interviewed. The latter stated that “[T]he decisions are made based on unknown information. That is, no one can say exactly what data or information was used to reach a specific decision” (Interview Health Care Expert 2, May 30, 2007).

Nonetheless, some measures to increase transparency were more successful. For example, all main health institutions have created their own websites where they post information regarding the organizational structure, current legislation, legislative proposals, budgetary information, activity reports, and information relevant to insured and health providers. Although in theory the websites are great portals of information, in practice, they provide less information than advertised. For example, the NHIH posts only the 2008 activity report although the website was established in 2001, which implies that there should be electronic copies of all relevant documents of public interest since that year. Perhaps the least user friendly website is that of the MPH, which although very busy suggesting that it provides a lot of information, makes it very difficult to find any specific information (e.g., the statistical data provided). Additionally, the MHP does not make public its activity reports despite the fact that “transparency is one of the fundamental principles in the health care system and the MPH relies on transparency and cooperation with main stakeholders” (Interview F. Furtunescu, May 24, 2007).

Also in the spirit of increased transparency, the adoption of the Law on the Patient’s Rights (Law no. 46/2003) and the secondary legislation (NHIH Decision no. 386/2004) gave the patients the legal right to receive medical information relevant to his/her case, the right to privacy regarding the medical information, and the right to medical services and treatments. Article 38 of the law stipulates that health authorities
have the duty to make public the annual reports regarding the implementation of the Law on the Patient’s Rights. However, there is no information regarding the annual evaluation reports on the implementation of this law and the lack of sanctions for failure to implement it made it “a beautiful law and that’s it!” (Interview Health Care Expert 1, April 4, 2007).

Nonetheless, since 2005 information regarding the costs of services that must be covered directly by patients has been posted in clinics (Interview Physician 1, July 15, 2007). The measure is part of the government’s attempt to combat informal payments in the health care sector by providing the public with the information regarding the cost of medical services not included in the basic benefits package. However, the 2006 Barometers of Health Services (BHS) conducted by the CHPS revealed that almost 70 percent of the respondents do not know the services they are entitled to receive and almost 65 percent of them get information regarding the health care system from television. While the responsibility of being informed lies also with the public, the frequent changes in the health care legislation and policies make it difficult even for health providers to keep abreast. Consequently, the asymmetry of information is reinforced along with the doctors’ position as “guru for the patients” (Interview Health Care Expert 1, April 4, 2007), which further strengthens the practice of informal payments.

An interesting aspect of the patient’s rights legislation is Article 34, which stipulates that patients can make additional payments or donations to the health care providers or the medical institution where it received the service, in accordance with the law. This provision, which is not uncommon in other countries, is particularly important
for the discussion of informal payments in the Romanian health care system. The practice of “atentie” (informal payments) made to health providers is considered acceptable and within the limits of the law, as long as it is made after the conclusion of the medical service or treatment. Only when the health provider conditions the medical service on the informal payment, can one talk about corruption (Interview V. Astăreștoae, CPR, May 22, 2007). Thus, according to this interpretation, the practice of informal payments is legal and non-problematic as long as the health provider does not ask directly for such a payment. However, the BHS indicated that health providers rarely ask directly for informal payments and that most of the time they suggest through their behavior that such a payment is necessary. For example, in 2006 more than 31 percent of respondents said that a payment was suggested to them. Moreover, at its highest, the percent of those claiming that the informal payment was made as a sign of gratitude was 29 percent in 2005. Hence, although showing gratitude may be considered acceptable and customary, it is definitely not the predominant reason for making informal payments and it is not the patients’ primary choice. While showing gratitude is acceptable behavior, the direct or indirect requests for demonstrations of gratitude fall outside the scope of any law. Moreover, imposing the practice of gratitude on patients adds to the already stressful situation caused by the health problems that led them to seek medical care in the first place or it may deter patients from seeking medical help until it is too late.

4.4. Freedom of Information

The consistent implementation of FOIA is considered to generate more transparency by providing public access to information regarding the organization,
functioning, and activity of formal institutions as well as to the management of public funds allocated to those institutions. Although the effective implementation of FOIA started in 2002, the record of health institutions in responding to FOIA requests has not been publicized by those institutions. To date, there is only one report of the Agency for Governmental Strategies that disaggregates the data by ministries in 2003. All later reports issued by this Agency present the aggregated data for all central institutions without distinguishing among them. Based on the 2003 report, the MPH had a very good record in responding to FOIA requests. Thus, from a total of 6,149 FOIA requests received that year, it favorably answered 6073. The remaining 76 requests were rejected for various reasons, such as the information requested was part of the category of information excepted from public access, the information was nonexistent, or other non-specified reasons. The same year, there were 13 administrative complaints and three court complaints filed against the decisions made by the MPH in answering FOIA requests (Agency for Governmental Strategies 2003).

This very responsive beginning of the MPH is confirmed also by the study conducted by two Romanian NGOs, Pro-Democracy and TI Romania, in 2007. The study compared the response of public institutions to FOIA requests in 2003 and 2007 to determine the evolution in the implementation of this legislation. Thus, if in 2003 the MPH had a 100 percent rate of response to FOIA request, in 2007 the rate of response dropped to 25 percent (Asociatia Pro-Democratia & TI-Ro 2007). The increasing lack of responsiveness was also confirmed by the four FOIA requests I filed in the past two years and to which I received a single incomplete response on July 13, 2009. The response was
received several weeks after Dr. Jim Butterfield\textsuperscript{130} filed an identical FOIA request and the response was addressed to both of us, although it was sent only to me. Thus, no answer and no explanations were given to my demand for the number of FOIA requests received by the MPH from 2002 until 2006, the number answered favorably and rejected, and the reasons for declining to answer favorably the requests.

Compared to the MPH, the NHIH has a better record in answering FOIA requests, although no information regarding the actual number of requests received and answered every year is made public by the institution. Nonetheless, compared to 2003 when the NHIH also had a perfect rate of response to FOIA requests, in 2007 that rate decreased to 87.5 percent (Asociatia Pro-Democratia & TI-Ro 2007). The better rate of responsiveness of the NHIH compared to MPH may be explained by the difference in the longevity of the two institutions, the youngest institution (NHIH) being more inclined to promote transparency. The MPH has a well-established tradition of opacity and lack of dialogue with outsiders, even when they are health care experts or professionals. The adoption of FOIA and inclusion of transparency as a major part of health care reform has failed yet to produce a real change in the attitude of the MPH. The result seems to be the opposite, the MPH becoming “increasingly unreceptive to any outside input and less inclined to dialogue with main stakeholders” (Interview Health Care Expert 2, May 30, 2007).

4.5. Ethics Codes

The roots of the ethics codes in health care practices can be traced back to Ancient Greece, the Hippocratic Oath being an influential document on the ethics of

\textsuperscript{130} Due to the lack of response to my FOIA requests, I assumed that my nationality and credentials are not impressive enough to elicit an answer from the Romanian authorities. Dr. Butterfield agreed to file a similar FOIA request to test this hypothesis and also obtain some data.
medical practice. The College of Physicians in Romania (CPR) was assigned the responsibility for developing the Ethics Code for Medical Profession (ECMP), monitoring its implementation and observance of the rules, as well as for sanctioning those who violate the rules of ethics. According to the Law no. 74/1995 (which entered into force in 1997) on the Establishment of the CPR, the responsibilities of the institution include all areas of concern for physicians, including their accreditation and training. Additionally, the law also specifies that all physicians must become members of the CPR, failure to pay the membership dues resulting in the loss of accreditation.

The Ethics Code specifies the physicians’ responsibilities in exercising their profession; the importance of observing professional secrecy and of ensuring the patient’s right to privacy; the obligation of providing medical services; the responsibility of continuing their professional training; the importance of maintaining the image and integrity of the medical profession; the obligation to refuse any decisions that might produce illegal or unfair profit to the patient; and the appropriate conduct in special cases (e.g., the patient is a child, research on human subjects, etc.). Moreover, the Ethics Code specifies the physicians’ obligation to support the CPR in all aspects and to fully cooperate with the CPR when they are under investigation for allegations of misconduct.

The mere existence of the Ethics Code is insufficient to impact the physicians’ conduct and their relations with the patients. While the observance of the ethics rules is dependent upon being aware of the existence of such a code and its provisions, the impact is also contingent upon monitoring the implementation and enforcement of sanctions. According to the representative of the CPR, V. Astăŭstoae, in 2003 the institution had successfully persuaded the Ministry of Education to include the Ethics Code in the
curricula of medical schools. In 2007, the CPR convinced the MPH to include ethics as a special part in the training of resident doctors (Interview May 22, 2007). Despite these accomplishments, V. Astarastoe admitted that there was still little emphasis put on ethics in medical schools, a fact confirmed also by other interviewees in this sector. Moreover, the ethics of future doctors are endangered also by the practice of corruption in medical schools. "It is a major mistake to accept bribe for a medical student to pass an exam. This is unacceptable for any student, but more so for medical ones who will become doctors and make life and death decisions" (NGO Interviewee 5, April 30, 2007). Consequently, the importance of the Code of Ethics must begin in the medical schools, with professors teaching it to students and, most importantly, with professor acting as examples of honest behavior.

With regard to sanctions and their enforcement, the situation presents itself as follows. Pursuant to a FOIA request filed on March 13, 2009, the CPR provided only the 2006 activity report of the Disciplinary Committee from the ten reports requested. According to the data, the CPR investigated a total of 112 cases and made the following decisions: 83 cases were rejected; the sanctions were annulled in 10 cases; and sanctions were applied in 19 cases. The sanctions ranged from warnings to votes of censure (vot de blam) to fines. The reduced number of cases sanctioned may be due to the fact that the allegations were baseless or to the protective attitude of physicians towards their colleagues. The medical profession was described as being "very united, which makes it difficult to expose cases of corruption unless they are extremely serious" (Interview Health Expert 1, April 4, 2007). However, the reluctance to sanction violations

131 As the central institution, the CPR has the authority to maintain or reverse a decision reached by one of its territorial divisions.
of ethics “sends a negative message to future doctors. Moreover, the CPR must understand that it is not a syndicate and that it needs to stop acting primarily as a defender of physicians” (Interview Health Care Expert 2, May 30, 2007).

However, bribes in the health care sector are also exchanged among physicians and not only in medical schools. To get a job in a better hospital or in a bigger city, one can choose to pay if he/she has enough money. For example, a physician had money put aside for an apartment but she decided to make a different investment when she heard that a position was opened at a big university hospital in Cluj. She got the position and postponed buying an apartment for several years. In a different case, a physician said: “My husband has a stable position now and he decided that this year is my turn to get a good position, no matter how much we will have to pay!” That year, she got the clinical position she wanted (Interview Physician 1, July 15, 2007).

The lack of more information regarding the basis of the decisions reached by the CPR associated with the small number of cases investigated and a negative image of health care providers among the general public only reinforces the perception that there is a lack of commitment to combat corruption in the health care sector. Furthermore, the perception that physicians always cover their own and that they are almost never found responsible for their mistakes can potentially increase the lack of trust between public and health care providers. Although one wants to trust that the physician has his/her best interests in mind, one also wants to know that breaches of ethics rules or medical mistakes are being sanctioned. The absence of the latter contributes to the perpetuation of a negative image of the health care providers in the public eye.
4.6. Merit-Based Civil Service

4.6.1. The Rules of Promotion and Remuneration in the Health Care Sector

The structural changes produced by the introduction of the health insurance system affected also the employee status of health care providers. If under the Semashko system, all health care providers were state employees, under the health insurance system most health care providers are contracted by the NHIH and are no longer considered public servants. Consequently, the majority of health care providers are paid through different contractual arrangements by the NHIH and its district divisions. Thus, the payment for family doctors is calculated as a combination of age-weighted capitation (set at 85 percent for 2005-2007) and fee for service (set at 15 percent) for certain curative, preventive, and health-promotion services such as immunization, monitoring specific chronic diseases, and mother and child supervisions. The number of patients and services provided are calculated in points and, to prevent fraud and ensure the quality of services provided, thresholds were established for the number of points and registered patients per physician. Thus, the threshold is set at 2,000 registered patients and 23,000 services provided. All points above this threshold are calculated at a 25 percent of their value. The threshold is set higher in rural areas (35,000 points) due to the smaller number of family doctors compared to the total population (Vladescu, Scinte and Olsavszky 2008).

Since 1999, the specialists in ambulatory services, physicians trained in non-clinical specialties, and dentists are paid on a fee-for-service basis. In the case of ambulatory specialists, the fee-for-service is determined by a points system, while the fee-for-services of specialists in non-clinical ambulatories is expressed in prices. The
monetary value of points is calculated by taking into consideration the health insurance budget available and the total number of points for the services delivered by all health care providers in any three-month period. Less services delivered means higher point values and higher reimbursement per service. However, the point values are different for family doctors and specialists because the budgets for different types of services are separate and their sizes are determined in advance (Vladescu, Scintee and Olsavszky 2008).

The health providers in hospitals continue to be paid through salaries determined by the MPH. According to the Government Emergency Ordinance (GEO) no. 115/2004, which became Law 125/2005, the remuneration of medical personnel takes into consideration the position, responsibility, social value, complexity of services, education, professional aptitude, and performance (Article 3). The calculation of salaries would include the fixed gross income, the various bonuses (e.g., executive position, seniority (5-25 percent), night shift (25 percent), risk (15-100 percent)), and awards. Article 25 of the GEO no. 115/2004 also stipulates the rules for hiring and promoting medical staff. Thus, to be hired as a health care provider, one must pass an entrance exam, while the promotions are made through the transformation of the existing positions into new ones corresponding to the degree or level of advancement proposed.

A common complaint among health care providers is the low payment they receive for the services provided. Thus, the 2002 BHS found that 90 percent of physicians interviewed considered their salaries to be insufficient. Furthermore, 43 percent of them declared that their monthly revenues range between $50 and $150 and only 12 percent declared monthly revenues ranging between $251 and $350. When asked
what would constitute appropriate revenue, 27 percent of them responded “higher than $850 per month” and 22 percent said “between $451 and $550.” According to the Romanian National Institute of Statistics, the national average net income in 2002 was 3,790,000 ROL or $114.66, whereas the average net income in health care sector was 3,190,000 ROL or $96.5. In 2006, the national average net income was 8,660,000 ROL ($308.3) whereas that in health care was 8,230,000 ROL ($293). The salaries are even lower when compared to those who work in the defense or justice sectors and whose average net incomes are almost double than those of health care providers. The salary increases that occurred over the years have maintained the gap between these two professional categories and added to the dissatisfaction of physicians regarding their remuneration.

The low salaries are also used as the main justification for the perpetuation of the informal payments.

“If the salary of a doctor after six years of medical school is lower than that of a custodian in private sector, the result is a desire to migrate to other countries (specifically the U.S.) or to start accepting informal payments...And this happens because everything costs money: a surgeon cannot take the tram to work, he needs a car! Additionally, the books cost hundreds of Euros. So, it is a shame to see patients who mark “BRIBE” on the money they give to physicians, and the latter are being sent to jail. This for me is not corruption!” (Interview Health Care Expert 1, April 4, 2009).

A similar explanation was given by another interviewee, who said that the

“informal payments help me to survive... A physician needs money to participate in conferences and attending a major conference costs about €1,000; then there are the books which are very expensive, the continuous educations seminars that must be paid and the salary is insufficient.” (Interview Physician 1, July 15, 2009)
The increase in salaries of health care providers is supported also by the general public with a little more than 60 percent of them favoring such a decision. The public's support for higher salaries in the health care sector remained constant over time, the difference between 2003 and 2006 being of only 0.2 percent among those in favor. It should be noted that the public's motivation for this decision is rooted in the hope that informal payments would be less necessary if health care providers are satisfied with their income. The latter would also welcome such a decision and claim that corruption in the form of informal payments has a negative impact on their relationship with the patients. For example, "if the doctor begins looking at the patient as a possible whistleblower and the patient sees in doctor a potential criminal offender, the relation physician-patient deteriorates to the latter's detriment" (Interview V. Astârâstoae, CPR, May 22, 2007). Additionally, "informal payments reduce the level of satisfaction of health providers" (interview F. Furtunescu, MPH, May 24, 2007) and perpetuate the misconceptions regarding the relationship between physician and patient (Interview Physician 1, July 15, 2007).

The low remuneration of health care providers is, therefore, considered to be the major cause of dissatisfaction among health professionals and of the perpetuation of informal payments. In 2005, the Minister of Health, E. Nicolaescu, said that "we need a revolution when it comes to medical staff wages. As of 2006, we are considering paying them a fixed salary and then a further variable payment, probably unlimited, depending on their performance" (Ionescu 2005, 1515). However, the translation of that promise into practice was delayed due to the complexity of the 2006 legislation reform package and the drafting of the secondary legislation which was still being drafted a year later. On
the other hand, Allin and his collaborators (2006) found that the substantial salary increases of hospital physicians in early 1980s had no impact on the incidence of informal payments in Greece. Moreover, several studies conducted in Venezuela and Argentina showed that although low salaries may induce corruption, higher wages in the absence of close auditing; monitoring, and sanctioning does not reduce corruption (Savedoff 2008). There is also the issue of "how high is high enough" to deter corruption. If physicians do not perceive informal payments as corruption but merely as a token of their gratitude, the likelihood that higher wages will reduce corruption is limited. Furthermore, as long as central health care institutions do not publicly acknowledge that corruption in the form of informal payments is a serious problem in this sector, there is little incentive for the practice to decrease, less to disappear.

4.6.2. Continuous Medical Education

One of the responsibilities of health care providers, especially physicians, is to stay abreast with the latest developments in medical science and research. According to the Decision no. 67/2005\(^\text{132}\) Regarding the Establishment of a Credit System for Continuous Medical Education (CME), each physician must accumulate a minimum of 200 credits over a period of five years. Failure to acquire the minimum required number of credits results in loss of professional accreditation. The CPR decision specifies the activities that qualify for CME credits as well as the minimum number of credits a specialist must accumulate in his/her own field of expertise.

The list of professional activities that are part of the CME includes graduate studies, conferences, seminars, round tables, publications, and medical courses. The

\(^{132}\) This decision was replaced in 2009 by the updated Decision no. 2.
number of credits per activity varies from five credits per annual subscription to a medical journal, to 200 credits per publication of a book manuscript, and to 300 credits for receiving a doctoral degree. The Committee for Professional and Scientific Education within the CPR is in charge of monitoring the CME and developing standards and programs for the accreditation of physicians (Colegiul Medicilor din Romania 2008). Medical courses (traditional and online) for CME are offered also by the College of Physicians in Bucharest as well as by the major universities of medicine and pharmacy in the country and which have received the CPR approval.

The changes introduced by the health insurance system required that hospitals have managers with expertise in the management of medical practice. Consequently, a line of training refers to the preparation of hospital managers. However, there is a long tradition of hospitals being managed by physicians and, therefore, the continuation of that practice was made contingent upon the physician in charge of the hospital accumulating knowledge in medical management. Thus, “a two-week crash course in the management of medical practice is considered sufficient for the preparation of hospital managers” (Interview Health Care Expert 2, May 30, 2007). Nonetheless, the 2006 legislation reform attempts to correct the situation and to no longer allow medical doctors to be hospital managers at the same time. Additionally, the Minister of Health would have the power to dismiss any hospital manager who has a poor performance. While an important measure in delineating the medical performance from the management performance, in practice “one needs to have the appropriate political color to occupy a hospital manager position at big hospitals” (Interview Health Care Expert 2, May 30, 2007). Hence,
although attempts to improve the management of hospitals have been taken, the status quo is difficult to change.

5. The Impact of Anticorruption Strategies

The analysis of the institutional strategies designed to reform and combat corruption in the health care sector has shown that efforts have been made to modify the organizational structure of the health care system. Furthermore, the analysis has shown that the major change began in 1997 with the introduction of the health insurance system, a moment that marked the departure from the Semashko health care system inherited from the previous regime. As hypothesized, the lack of a unified EU health care policy resulted in low external pressure to reform this sector. Consequently, reforming and combating corruption in the health care was not the main priority of the Romanian government despite the fact that health care reform has significant implication for the well being of the population. The analysis has demonstrated that the results in reforming health care system were mixed, with some major changes being implemented and many problems remaining to be solved. Moreover, corruption in the form of informal payments was publicly acknowledged by some public figures as a problem in 2005 although actual measures to address it are yet to be seen.

The introduction of the health insurance system was the most important and profound change since 1990. The structure of the system was changed by the creation of the NHIF and the NHIH with its territorial divisions. Furthermore, the financing of the system was modified by the introduction of health care contributions that all insured persons must pay and by the payment of health care providers on a contractual basis. A
combination of capitation and fee-for-service payments was introduced for family doctors, while the ambulatory and non-clinical physicians are paid on a fee-for-service basis. These changes attempted to stimulate their performance in the provision of health care services.

Also part of the health insurance system, patients were given the right to choose their own family doctors, the latter being assigned as gatekeepers to the rest of the system. Moreover, the rights of patients to medical information and to ensure the confidentiality of that information were enshrined in the Law on the Patient's Rights. Another positive change regarded the establishment of the IUIS in 2003 in an attempt to improve the management of information regarding the insured and medical providers and to ensure the quality of the health care services. The creation of an informatics system for the collection of medical data has positive implications for the transparency of the health care system by providing information regarding the management of the NHIF. To ensure the quality of health care services, measures were also taken to guarantee the continuous training of health care providers and the observance of ethics rules. The CPR was assigned a major role in monitoring the continuous training of physicians and in investigating and sanctioning violations of the Code of Ethics.

Despite the many and frequent changes that took place in the health care system from 1997 until 2006, important problems continue to affect the functioning of the health care system and the quality of health care services. A major problem that was recognized by all the interviewees regards the under-financing of the health care system. Despite the fact that every year more money was allocated to the health care system, the total budgets are considered to be insufficient, a fact revealed by the increasing expenses from the...
NHIF compared to the revenues raised since 2003. The tendency to finance every public health program and to cover every medical service from the NHIF further exacerbated the problem by creating a general under-financing of the entire health care system. The reluctance of the MPH to collaborate with non-governmental actors and to have an open dialogue with health care experts had serious implications for the quality of legislation adopted and the policies implemented. Not surprisingly, the legislation was difficult to implement and required frequent changes to resolve the contradictions existing between chapters of the same law or to adapt them to the reality on the ground.

A major problem that is yet to be solved in the health care system is the absence of a unique system for collecting and processing data. The existence of parallel systems with different coding and definitions and which collect data on different formats makes it almost impossible to gather comparable data. Furthermore, within the same information system there are problems with the collection and processing of data with serious implications for the basis on which health care decisions are being made. Related to transparency and provision of information is the response of health care institutions to FOIA requests. Instead of observing more openness and transparency, the MPH has become increasingly reluctant to respond to FOIA request or to collaborate with non-governmental actors, for that matter. A different problem but with important implications for the delivery of health care services and the image of health care providers is the observance of ethics rules and, importantly for the public, the sanctioning of violations of these rules. The protective attitude of the CPR towards its own members and the reluctance to sanction unless there is a very serious case of ethics violations or
malpractice further reinforces the negative image of health care providers in the eyes of the public.

Perhaps the most interesting finding regards the attitude of health care providers and health care authorities towards informal payments. Among health care providers and public officials there appears to be consensus that corruption in health care sector is limited to public procurement and pharmaceutical contracts, while informal payments are merely a means of patients expressing their gratitude for the services provided. While the interviewees did not deny the practice of informal payments, for the most part it was downplayed as being less serious and in some cases was directly catalogued as not being corruption. According to one interviewee, “there is a manipulation of the population to emphasize corruption at the provider end...that way, no one will focus on what is going on at the higher levels when the big decisions are being made” (Interview Physician 2, May 24, 2007). Corruption in health care is considered to be “an image created by mass media” (Interview V. Astărăstoae, CPR, May 22, 2007) or a “subjective perception induced by mass media” (Interview V. Cepoi, NHIH, April 11, 2007). Another common point among health care providers and authorities is with regard to the low wages of health professionals. The latter are used to justify the acceptance of informal payments and/or the demand of such payments. A second justification is the practice of gratitude, although a small percentage of the general public considers informal payments a token of their gratitude.

However, a study financed by the World Bank found that in 2004 alone Romanian patients paid around $360 million in informal payments, amounting to almost $1 million per day in bribes to health care providers. The main reason expressed for bribing the
medical personnel was the need to ensure a basic, standard quality health care service. Furthermore, one in ten respondents said that nurses asked them directly for payment and one in twenty respondents said the same thing about doctors. Although informal payments are a matter of general knowledge among Romanians, the authorities were very reluctant to hear the negative results. According to the coordinator of the study, Mihai Vintoiu, it required two months of persuasion for the Ministry of Public Health to accept the idea of making public the results of the study (Ionescu 2005). Pursuant to the study, the authorities declared the need for addressing corruption in the form of informal payments in the health care sector.

Nevertheless, a comparison of the data on the perception and experiences of corruption in the health care sector shows a statistically significant increase in the experiences with corruption in the health care sector in 2005 (see Figure 33). As in the case of the judiciary, comparable data from the Barometers of Public Opinion was available for only three data points (fall 2003, spring 2004, and spring 2005). Nonetheless, the comparison is still significant because it provides information regarding the differences between experiences and perceptions of corruption. The question about the level of perception of corruption was measured on a frequency scale and in order to make it comparable to the question assessing the actual experiences with corruption, only the percent of those who answered that “very many” and “almost all” health care professionals are corrupt were added and graphed. Ninety five percent confidence

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133 The answers to the question “How widespread do you think corruption is among health care professionals?” was measured on a five point scale: 1= “Almost None”, 2= “Very few”, 3= “Very many”, 4= “Almost all”, and 5= “I do not know”. The questions assessing the experiences with corruption, “In order to be treated fairly in hospitals did you have to offer additional money, gifts, favors...?” was measured on a binary scale: 1= “No” and 2= “Yes”.
intervals were calculated around the data points in order to determine if there are significant differences over time.

Figure 33
Comparison of Perceptions vs. Experiences of Corruption in the Health Care Sector (2003-2005)


The analysis indicates that there is a discrepancy between perception and experiences with corruption, the former being consistently higher. However, the discrepancy is smaller than in the case of the judiciary (see Chapter V), indicating that in the health care sector people experience more direct corruption. Moreover, due to the illegal nature of corruption, people may be reluctant to admit that they engaged in corrupt
activities and, consequently, the actual experiences with corruption in health care may be higher.

A very interesting finding of this analysis is that both perceptions and experiences with corruption increased beginning with spring 2004. This indicates that the institutional strategies adopted and implemented in the health care sector have little impact on the perceived and experienced delivery and quality of health care services. Although much legislation and measures have been developed and implemented, their results are yet to have an impact. A significant change would require the demonstrated commitment of MPH to combat corruption and the health care providers' support, difficult to realize as long as there is a resistance to accept that informal payments are a form of corruption and, therefore, they are legally and ethically condemnable.
CHAPTER IX

CONCLUSION

The underlying argument of this study is that corruption is an informal institution that threatens democratic consolidation by creating incentives incompatible with the formal rules, altering the effectiveness of formal institutions, and undermining the rule of law. Hence, the goal of the study has been to examine the capacity of formal institutions to counteract the informal institution of corruption in four sectors: the judiciary, customs, health care, and public procurement, in the decade prior to Romania’s accession to the EU. This chapter summarizes the main findings of the study and it is divided into four sections. First, I revisit the theoretical model and original hypotheses and discuss whether they were confirmed. Second, I outline the differences in the impact of institutional strategies in the four sectors and discuss the factors that explain them. Third, I discuss the advantages of employing an institutional approach to the study of corruption. Fourth, I present the implications of this study and the future areas of research. Throughout this chapter I also address some of the limitations of the study.

1. Theoretical Model and Hypotheses Reexamined

To analyze the interaction between formal institutions and the informal institution of corruption, this study employed a unique theoretical model (see Figure 1, Chapter I). While the model was developed based on the literature on corruption and institutions, it
went a step further by incorporating their recommendations into a single model which
examines corruption as an informal institution interacting with formal institutions. Hence,
the model took into consideration the role played by internal and external actors in
stimulating political will, the institutional anticorruption strategies adopted and
implemented, and their impact on formal and informal institutions. Eight types of
institutional strategies were included: 1) enforcement of legislation and sanctions; 2)
oversight institutions; 3) anticorruption agencies; 4) increase in transparency; 5) freedom
of information; 6) whistleblower and witness protection; 7) ethics codes; and 8) merit-
based civil service. The model examined the proposed correlation between formal and
informal institutions according to which an increase in the effectiveness of formal
institutions should relate to a decrease of corruption. Furthermore, political will, an
essential element in fighting corruption, was disaggregated into two components,
demonstrated and rhetorical, to better capture its presence and to test the first two
hypotheses.

Hypothesis # 1. The more corruption became a salient issue for the EU, the higher
was the political will to fight corruption.

This hypothesis was confirmed. Corruption was not a major concern for the EU
when the EC issued its opinion regarding Romania’s application for EU membership in
1997. At the time, regional stability and the consolidation of democracies in former
communist countries in CEE were major concerns. Hence, the EU decided to employ a
comprehensive and inclusive approach to enlargement and to include each country based
on its progress towards achieving the EU membership requirements. However, as
corruption gained significance by the early 2000s, EU pressure on Romanian authorities
increased, particularly in two sectors of special interest for the EU: the judiciary and customs. The increase of EU pressure and, particularly, the change in EU pressure in 2004 has been qualitatively and statistically demonstrated. The impact of EU pressure resulted in an increase in the instances of demonstrated and rhetorical political will.

Furthermore, the analysis has demonstrated that EU pressure was unevenly distributed among the four sectors investigated. The judiciary was the major priority for the EU, a fact supported also by decisions to send a team of EU experts to collaborate with Romanian authorities and ensure the adoption of the judicial reform package in 2004. The unprecedented decision indicated the seriousness with which the EU was approaching corruption and the establishment of the rule of law in Romania. The second sector of major concern for the EU and in which the pressure exercised by the external actor was confirmed was customs. A corrupt customs sector would have multiple and far-reaching consequences for the safety, health, and economy of all EU member states. Therefore, EU pressure to clean up and reform this sector was not unexpected. However, in the public procurement sector and health care the situation was different. In the former, EU pressure started increasing in 2005 and its impact led to several demonstrations of political will to combat corruption in public procurement. In the health care sector, EU pressure was almost completely absent since the organization and regulation of health care systems has always been considered a national matter. Overall, the analysis has confirmed that EU pressure increased as the accession date approached, although it differed from sector to sector.

Hypothesis # 2. The more corruption became a salient issue for the public, the higher was the political will to fight corruption.
This hypothesis was only partially confirmed. Although corruption was shown to be a major concern for the public, a concern that undermined the trust in formal institutions, the available data failed to definitely demonstrate that public opinion pressure moderated political will. The existence of a statistically significant relationship between the number of articles presenting cases of corruption and the rhetorical component of political will has been confirmed. However, the number of corruption cases publicized by mass media was poorly correlated with the opinion surveys data showing high levels of perception of corruption. The absence of a statistically significant relationship between public opinion and political will may be explained by several factors. First, data collected from newspapers may not have accurately captured public opinion pressure. Second, except for the judiciary, corruption in the other three sectors represented a small proportion of the total number of cases of corruption publicized. Hence, a statistically significant correlation between the number of cases of corruption in each of the four sectors and political will was unattainable, except for the judiciary. Third, given mass media’s inclination towards sensationalism, small cases of corruption that plague the health care sector may be less attractive from an editorial perspective than cases involving bribes of thousands or millions of dollars. Fourth, it may be the case that the role of the public in fighting corruption is overestimated by anticorruption advocates. Corruption in the Romanian health care sector is widespread and well-known by everyone. However, there was little evidence found to support the claim that the public has exercised pressure on the successive governments to address the problem. The Romanian survey data indicated an increasing lack of acceptance of corruption in the health care sector and, at the same time, a continuation of the practice of informal
payments in this sector. Hence, at least in this case, the public’s disapproval of corruption had little impact on the political will to fight corruption.

Hypothesis # 3. The more anticorruption strategies were adopted, the greater the decrease of corruption.

Hypothesis # 4. The more anticorruption strategies were employed simultaneously (multi-dimensional approach), the greater the decrease of corruption.

Hypotheses 3 and 4 were both only partially confirmed. Increased demonstrated political will, whose presence was confirmed by Hypothesis # 1, manifested itself by a higher number of institutional strategies adopted. However, the mere adoption of more anticorruption strategies or their simultaneous employment has not automatically resulted in a decrease of corruption or an increase in the effectiveness of formal institutions. The analysis of institutional strategies adopted in the four sectors has confirmed the relative impact on reducing corruption and the existence of discrepancies among the effects of institutional strategies adopted within and across sectors. The differences within each sector were determined by factors such as the language of legislation, funding and personnel allocation, monitoring of implementation and enforcement of institutional strategies. All of these factors were underlined by the presence or lack of political will to combat corruption in that particular sector. Hence, the institutional strategies adopted in the judiciary have resulted in a greater decrease of corruption and a corresponding increase of the effectiveness of judicial institutions than the institutional strategies adopted in the health care sector. A major reason for that difference was the recognition of corruption as a major problem in the judiciary versus the denial attitude adopted by authorities in the health care sector. If corruption was not considered to be a problem in
the health care sector, there was no perceived need to adopt and implemented strategies that would address it.

The differences among sectors, discussed in more detail in the next section, were due in part to the specific features of each sector that led to the adoption of anticorruption strategies tailored for each sector, and to the significance the Romanian government assigned to fighting corruption in each sector. Some strategies, however, were more general in their applicability. For example, NAPO has jurisdiction to investigate and prosecute medium and high cases of corruption in all sectors; FOIA and the legislation regarding the protection of whistleblowers and witnesses in cases of corruption also have general applicability across sectors. Some institutional strategies contained measures that were sector specific. For example, the SCM is the oversight institution responsible for guaranteeing judicial independence and it is solely responsible for magistrates’ careers, whereas in the customs sector the counterpart institution is the IVD. Furthermore, in the public procurement sector, the two institutions with oversight responsibilities specific to this sector are NARMPP and UCVPP, whereas in the health care sector the CPR plays a similar, although more limited, role specific to the training and monitoring of the ethical conduct of physicians.

The varying longevity of the institutional strategies (i.e., older versus newer, such as SCM or IVD compared to NARMPP or UCVPP) also explains the discrepancies regarding the impact of anticorruption strategies. Where the institutional strategies were adopted a year or two prior to accession, their impact was difficult to observe since they did not have time to produce results (e.g., NARMPP and UCVPP). The adoption of some anticorruption strategies just months prior to EU accession was indicative of the pressure
felt by the Romanian government to show the EU that it was committed to combating corruption, even though some of these measures would not have time to show whether they worked or not. As long as the EU was willing to accept the adoption of anticorruption strategies as clear indicators of demonstrated political will, the Romanian authorities had only to gain by complying with the EU request to adopt more anticorruption strategies.

The study has also shown that Romania has opted for a multi-pronged approach to fight corruption and that it utilized multiple institutional strategies in all sectors. Hence, corruption has been addressed on multiple fronts in all sectors, although with mixed results. Thus, the employment of multiple anticorruption strategies produced more visible results in the judiciary and customs, where the strategies were adopted earlier than in the other two sectors and where the external pressure was higher. Moreover, the manner in which the anticorruption strategies common to all sectors (such as FOIA) were employed made a difference in the reduction of corruption across sectors.

2. Differences in the Impact of Institutional Strategies across Sectors

The impact of institutional strategies designed to reform formal institutions and combat corruption differed across sectors. The national or sectoral characteristics of the strategies adopted, the priority attached to their implementation, the external and domestic pressure to produce results, the time lag from their adoption to the assessment of their effects on the ground were all factors that influence the changes observed on the two dependent variables, the informal institution of corruption and the formal institutions
in the four sectors. Hence, some strategies had a greater impact on one sector than in the others, whereas some have failed to make a difference in any sector.

The enforcement of anticorruption legislation and sanctions is one of the main responsibilities of the judicial system, although the observance of legislation and regulations falls under the jurisdiction of all formal institutions. The data indicated that the number of convictions in cases of corruption has fluctuated little since the Anticorruption Law was adopted in 2000. The establishment of the NAPO as a special institution responsible for investigating and prosecuting medium and high cases of corruption contributed positively to the fight against corruption, although NAPO fell short of its intended purpose. That is, until 2006, no high official was investigated for corruption due to NAPO jurisdictional restrictions. The investigation of the former Prime Minister Năstase, which proved to be an important demonstration of political will for the EU, was initiated in the last year prior to accession. However, three years later, the investigation was blocked by Parliament and Năstase continues to enjoy his privileges as a senator. Consequently, the absence of sanctions for high cases of corruption reinforced the general perception that some segments of the population are above the law. Furthermore, the application of sanctions for medium and small cases of corruption failed to have an impact on the general public, who wants to see some “big fish” legally sanctioned for their corrupt activities. Consequently, the continuous high levels of perception of corruption among the general public are not difficult to explain.

There were noted discrepancies among sectors with regard to the public officials’ attitude toward corruption and their responsibility to fight it. The most aggressive approach to combat corruption was in the judiciary, where EU pressure and concomitant
political will of the Romanian leadership was also the highest, followed by customs, and in the last two years prior to accession, also in the public procurement sector. However, health care stands out as a sector where corruption was denied as a problem for almost the entire decade under study and, when finally acknowledged, was not followed by concrete measures to address it. As far as public officials in the health care sector were concerned, corruption was a problem for NAPO and other judicial institutions. For example, the director of the NHIH, V. Cepoi, said that corruption “does not constitute the object of their activity....but of specialized institutions” (Interview, April 11, 2007). Additionally, when the existence of corruption was recognized, it was catalogued as being the result of the public procurement activities in the health care sector or of the illegal activities of pharmaceutical companies. However, “solving cases of public procurement corruption or transactions of pharmaceutical companies does not solve the problem of informal payments in the health care, which is a reality and a problem” (Interview C. Galea, Chief Prosecutor NAPO, February 23, 2007).

The differences across sectors were also noticeable with regard to the impact of the activity of oversight institutions. The formal authority of institutions, their longevity, and the funding and personnel allocated have directly influenced the scope and effectiveness of their activity. For example, the 1991 Constitution recognized the role of the SCM as sole guarantor of judicial independence but the actual transfer of power from the Ministry of Justice took place in 2004 after the judicial reform package was adopted under EU pressure. The IVD oversight institution established in the customs sector was given the formal authority to develop activities that would prevent corruption in customs and to monitor the implementation of anticorruption strategies in this sector only in 2005,
although it was created in 2001. A similar situation was found in the public procurement and health care sector where oversight institutions were either created on the wake of accession deadline (e.g., NARMPP, UCVPP in the public procurement sector) or were not given formal authority to address corruption issues (e.g., NHIH in the health care sector).

The activity of oversight and anticorruption institutions was also influenced by the budgets and staff allocated. Insufficient funding was a common problem across all four sectors, although differences were identified across sectors. Thus, the SCM in the judiciary, the NARMPP in the public procurement sector, and the NHIH in the health care sector were all allocated larger budgets in the last few years prior to accession. By contrast, the budget of NAPO, the only specialized anticorruption institution, saw a reduction in its funding in 2006. A similar trend was noted also in the customs sector, where the budget not only for the IVD but for all customs institutions began decreasing after 2001. Budgets tell only part of the story, of course; how money was being managed directly impacted the effectiveness of the institution, a fact revealed by the customs institutions which managed to fulfill the EU requirements with regard not only to the transposition and implementation of the *acquis* in this area, but also the reduction of corruption as indicated by the 2005 BEEPS and 2006 CAID surveys of firms.

The problem of qualified and sufficient personnel to allow a proper functioning of the institutions led to other discrepancies across sectors. Once again, the judiciary was given priority manifested by a higher increase of personnel allocated, although the magistrates’ case load continued to remain high throughout the decade under study. In customs, the discrepancy between the number of customs officers and the volume of
work per person was a major concern, whereas in public procurement sector the paucity of specialists had consequences that ranged from accurate interpretation and implementation of procurement legislation and regulations to the activity of institutions responsible for monitoring public procurement activities. In the health care sector, the legislative changes that resulted in pay cuts for the NHIH personnel affected the effectiveness of the institution due to the migration of highly qualified people from the NHIH to the private sector or other public institutions and the attraction of less qualified personnel. Hence, the mere creation of oversight and anticorruption institutions has not always led to an improved fight against corruption, and funds and qualified staff were two of the factors affecting their activities.

All sectors made progress in increasing the transparency of their activities by establishing websites that gave the public direct access to a range of information classified under FOIA as being of public interest. Hence, information regarding the legislation in force, the proposed legislative drafts, the activity reports of each institution, and the management of public funds have all become available to the public. Since the adoption of the *Anticorruption Package* in 2003, the declarations of income and interests of public officials have also become part of the public information category. However, discrepancies in the enforcement of these formal rules were found across the four sectors. The highest level of transparency and the most information provided to the public was found in the judiciary, whereas the health care institutions were found again to be the least transparent. The discrepancy between the health care sector and the other sectors is particularly visible with regard to how the Ministry of Health responded to FOIA
requests over the year. The data showed a decrease in openness and transparency of this institution compared to that of institutions in other sectors.

The differences among sectors were determined also by the sectoral specific measures designed to increase transparency. Thus, the media were given more access to judicial procedures, and new mechanisms for recording judicial decisions were introduced. The customs procedures were computerized by the introduction of TARIR, NCTS, and ASYCUDA, which all reduced the direct contact between clients and customs officers and achieved two goals, specifically an increase in transparency and a reduction of the opportunities for corruption. The transparency of public procurement procedures was increased in 2006 through the inclusion of the public procurement dossier in the category of information of public interest. The introduction of e-Licitatie in 2002 and its upgrading in 2006 to completely align the regulations in this sector with the EU acquis had, however, a limited impact on increasing transparency due in part to the low levels of internet connectivity in Romania, high fees for online procurement transactions, and a resistance to change. Once again, the health care sector lagged behind the other three sectors due primarily to the lack of a well-organized and unified system for collecting and processing health information. The reform of the health care system resulted in the creation of parallel systems of collecting similar data, with each system utilizing different software, definitions, and coding schemes. Moreover, the data were poorly analyzed and, perhaps most importantly, often ignored when policy decisions were made. Consequently, a noticeable increase in transparency was difficult to achieve in the absence of relevant information about how the system worked and what impact the strategies had in practice.
One institutional strategy that had no visible impact in any of the four sectors was the protection of whistleblowers and witnesses. The activity of the National Office for Witness Protection is considered classified information and, therefore, no data was available to the public. The data regarding the implementation of the legislation regarding the protection of whistleblowers can be catalogued as "unknown" information. That is, except for one report done by an NGO in 2006, two years after the law was adopted, regarding the inclusion of legislative provision in the internal rules of the formal institutions, no data could be found on the actual implementation and enforcement of those provisions. Additionally, no interviewee was able to offer any information in that regard and the general agreement among them was that the law was not being enforced.

One interviewee related the story of an employee whose decision to blow the whistle on an important case of corruption led to the creation of a coalition against her; that is, almost 40 of her colleagues signed a petition claiming that she was mentally unstable and, therefore, her actions should be completely disregarded. The whistleblower's reputation and expertise, along with the evidence provided to her direct superior ensured that she was not fired, although she had to change jobs shortly after that (Interview Journalist 2, June 6, 2007). This example is indicative of the power of informal rules and the sanctions for violating them. It may also explain the reluctance of people to come forward with information about cases of corruption, regardless of their magnitude. If the case is very big, the risks associated with whistle-blowing are also higher and an honest act may not warrant the costs; if the case is small, the risk of being exposed as a whistleblower and the sanctions attached to that (marginalization, ostracism) from the colleagues at work may also not warrant the effort. In the absence of a
consistent enforcement of legislative provisions, it is very unlikely that this strategy will work.

A strategy whose implementation had different impacts in the four sectors was the implementation of ethics codes. In the public procurement sector, no ethics code was adopted. The proposal drafted in 2003 as part of a PHARE program was never finalized and all future discussions regarding such a code were successfully avoided by the authorities. In the other three sectors, however, codes of ethics were adopted and specialized disciplinary committees were established. Formally, the institutions in all three sectors made their employees aware of their code of ethics by posting copies in public places. In practice, however, not much emphasis was placed on informing them of their rights and obligations as public servants and there was even less emphasis on preparing the new generations of magistrates, customs officers, or health care providers with regard to the rules of an ethical conduct in their professions.

The largest difference in the implementation of this strategy across the three sectors, however, regarded the activities of the disciplinary committees in each sector. The customs sector had the highest number of disciplinary sanctions applied per year, followed by the judiciary and health care. In the judiciary, the number of magistrates disciplinarily sanctioned increased in the last two years prior to accession, indicating a decrease in tolerance towards corruption among magistrates. Although the magistrates were often accused as protecting each other, that phenomenon was nowhere as apparent as in the medical profession. The spirit of unity and the image of physicians as a special social category were used as justification for the low number of health professionals sanctioned for violations of ethics code and/or for corruption. The consequence is the
perpetuation of an image of impunity and a crystallization of distrust in public institutions and their employees among the general public.

The establishment of a merit-based civil service where the employees are selected based on their qualifications, rewarded and promoted due to their professional expertise and efficiency was another institutional strategy that yielded different results across the sectors. Thus, in the judiciary and customs new rules for promotion and career advancement to ensure a faster vertical mobility of employees and, thus, to reward them for their excellence in activity were adopted in 2005. New rules regarding the selection of new employees through exams were also adopted in both sectors. However, the implementation in practice of those rules was a different matter. For example, in the judiciary, a significant number of magistrates continued to be directly accepted in the magistracy and promoted to higher positions despite the direct appointment procedure being considered an exceptional procedure. In customs, promotions continued to be difficult even after the legislative change due to the limited financial resources (i.e., promotions involved higher salaries). The issue of establishing a merit-based civil service in the public procurement sector was limited to the preparation of experts in this area. Since there were no schools that specialize in public procurement, the only avenue for producing specialists was through training seminars. The number of such seminars increased in the last two years prior to accession, along with the number of public and private institutions offering them. However, the quality of the seminars did not follow the same ascending trend, most seminars being snapshots of the legislation and often offering contradictory interpretations of procurement regulations. Consequently, the effective training of public procurement experts was not achieved.
The health profession is, perhaps, the most regulated with regard to the preparation of health care providers. The major problem in this sector, as it was consistently expressed by all interviewees, was the low salaries of health professionals. Low wages were considered responsible for the widespread practice of informal payments and the decrease in quality of health services. Therefore, no decrease in corruption was noted in the health care sector. Furthermore, any change would require the recognition of informal payments as a major, unethical, and illegal problem by health care providers and health authorities. As long as corruption is portrayed as a token of patients’ gratitude, little change is likely to occur.

Hence, this study has demonstrated that, particularly after 2000, there were clear indications of political will manifested through comprehensive diagnoses of corruption, the intermittent inclusion of the main stakeholders in the policy-making process, the adoption of anticorruption reforms, and the creation of more transparent monitoring systems at the national and sectoral level. Similarly demonstrated has been the importance of identifying demonstrated political will and differentiating it from anticorruption rhetoric which, although frequently employed by policy-makers to create an image of anticorruption fighters, often failed to materialize in concrete measures.

The analysis has also shown that one factor stood out in explaining the presence or absence of political will, namely the external pressure exercised by the EU. The EU pressure was a constant factor in explaining the instances of political will and in supporting the anti-corruption leaders if and when they appeared (e.g., Minister of Justice Macovei in 2005 and 2006). The consistent and increasing EU pressure was especially noticeable beginning with 2004, the year when EU pressure was the highest. Although
institutionsal strategies were adopted prior to 2004, most of them were done at the EU request and, in the absence of demands to implement the adopted strategies and to carefully monitor their enforcement, the results produced were modest. The significant increase in external pressure to combat corruption and reform the three sectors of particular importance for the EU (i.e., judiciary, customs, and public procurement—in order of their salience for the EU) materialized in the adoption of comprehensive reforms in all three sectors. However, most of those measures were adopted just prior to accession, as it was the case in the public procurement sector where the EU began exercising more pressure at the last minute (i.e., in 2005), and, consequently, their actual impact could not be assessed prior to accession.

The EU decision to grant Romania membership was, at least in part, made on faith; that is, the EU hoped that the pace of reforms would continue after the accession and that the implementation of those adopted reforms would produce the desired changes. To ensure that progress in combating corruption and increasing the effectiveness of formal institutions would continue, the EU adopted safeguard clauses that would allow it to continue monitoring Romania and to sanction it for failure to carry on its pre-accession promises. In July 2007, the EC issued its first report assessing Romania’s progress in combating corruption and continuing the reforms initiated prior to accession. The EC concluded that the Romanian authorities have demonstrated “good will and determination” to continue judicial reform and fight against corruption and that it has achieved “some progress in the reform of its judicial system” (European Commission 2007, 2). However, the report noted that the progress made in addressing high-level corruption remained insufficient despite the changes in NAPO jurisdiction introduced in
2006. A problem emphasized by the EC was the absence of dissuasive sentences in such cases and of a “very high number of suspensions of these penalties in cases of high-level corruption” (European Commission 2007, 3). The failure to follow up rigorous prosecutions with appropriate judicial decisions has significant implications for the public’s trust in formal institutions and in their political leaders.

The success in consolidating the rule of law and curbing corruption was dependent also on the climate of political stability in the country. The year 2007 was full of political turmoil and corruption was at the centre of the political crisis. Only three months after the accession, the PM Călin Popescu Tăriceanu requested the dismissal of three ministers, including the independent Minister of Justice Macovei, who had launched an aggressive campaign against high-level corruption and was threatening political figures from all political parties. In response, President Băsescu withdrew his political party, DP, from the governing coalition. The PM retaliated by calling up on his party, NLP, and the opposition to demote the President and on April 19, 2007 the Parliament approved by 322 to 108 votes the suspension of the President on allegations of abuse of power and constitutional violations. A month later, the President won almost 75 percent of the referendum votes and was reinstated as the head of state. What followed was a political situation marked by tension, conflict, and inefficiency due to the lack of cooperation between the President and the government led by Tăriceanu, who refused to resign. The government coalition created after the 2008 national elections between President Băsescu’s party and the SDP broke down ten months later and from October 13, 2009 until January 2010, when the new post-presidential election government was formed, Romania was without a functioning government. Throughout all this turmoil,
corruption was a major bone of contention with accusation of corruption flowing from all parties, but with no high-profile case of corruption being finalized.

The second factor of pressure, public opinion, was shown to be insufficient by itself to stimulate political will and to lead to the adoption of anticorruption reforms, particularly outside the election years. Although since 1996, every election resulted in a turnover of power, which suggested that the electorate sanctioned political leaders for their failure to translate in practice their campaign promises, no other clear indications of public pressure were found. As mentioned earlier, in the Romanian case the public failed to play an important role in encouraging the political will necessary to combat corruption even when corruption had a direct impact on their quality of life as was the case of health care. In this sector more than in the other three, the balance between incentives and costs for compliance with the formal or informal rules was tilted in favor of the informal rules of corruption.

Overall, the largest progress in combating corruption and increasing the effectiveness of formal institutions was registered in the judiciary, the sector of highest salience for the EU and with serious consequences for the rule of law and democratic stability of the country. Customs came second with regard to the increase in the effectiveness of its formal institutions and decrease of corruption, whereas in public procurement sector some positive changes were registered in the last couple of years prior to accession. The least progress in addressing corruption was made in the health care sector where corruption in the form of informal payments continues to be denied as being a serious problem by both health care authorities and health care providers. Additionally, three years after the comprehensive health care reform designed to tackle
informal payments was initiated, corruption in health care not only has not decreased, but it captured the attention of international mass media such as the *New York Times* and *National Public Radio*.

Another interesting finding of this study was the discrepancy between perceptions and experiences of corruption reported by the Romanian public over time. The comparative analysis of the survey data for the judiciary and health care sectors\(^\text{134}\) revealed, as expected, a higher perception of corruption than the actual experiences with corruption reported in both sectors. Moreover, the comparison showed that the two longitudinal trends (i.e., perceptions and experiences) followed similar patterns over the years while maintaining the gap between perceptions and experiences. That is, when perceptions of corruption decreased, the reported experiences of corruption decreased and vice versa. The analysis also revealed that while in the health care sector the differences between perceptions and experiences with corruption are relatively small (about 20 percent), in the judiciary the differences was much higher (about 40 percent). Moreover, in 2005, the experiences of corruption trend slightly decreased while the perceptions of corruption trend slightly increased indicating that other factors other than actual corruption were influencing the public’s perception of corruption in the judiciary. The focus of the mass media on covering cases of corruption in the judicial sector along with the consistent and high pressure exercised by the EU have placed the judiciary at the center of anticorruption rhetoric and, implicitly, influenced the public’s perception of corruption in this sector.

This finding suggests that caution should be employed when using solely perceptions of corruption to assess the level of corruption and/or changes over time

\(^{134}\) See Chapters V and VIII for a detailed discussion of the comparative analysis.
because they may be artificially inflated. On the other hand, perceptions of corruption may be illustrative of a failure of the anticorruption strategies to produce results or a lack of publicizing the results in combating corruption, whenever they are present. If higher exposure to the problem of corruption influences the public’s perception of corruption, an increase publicity of the results in curbing corruption may also affect the public’s perception of corruption and anticorruption efforts. Therefore, perceptions of corruption data should be interpreted carefully by comparing it with data regarding the actual experiences of corruption and by taking into consideration contextual factors (e.g., anticorruption campaigns, high mass media coverage of corruption, or anticorruption rhetoric).

3. The Advantages of Employing an Institutional Approach to the Study of Corruption

To analyze corruption as an informal institution, this study relied on two institutional approaches—Historical Institutionalism (HI) and Rational Choice Institutionalism (RCI). It has shown that the informal institution of corruption developed under the communist regime when they were tolerated because they served as alternatives to an increasingly deficient state command economy and as substitutes for formal institutional reform. The expansion of corruption after the fall of communism has demonstrated the resilience of informal institutions. Hence, the path dependence explanation, whose significance for understanding and analyzing institutions was emphasized by HI, was useful in explaining the endurance of the informal institution of corruption in post-communist Romania. Moreover, the functional mechanism proposed by HI to explain the survival of institutions provided the necessary framework for
understanding the incentive structure underlying the informal institution of corruption. That is, effective informal institutions are supported by an incentive structure that induces actors to engage in corrupt behavior because either the benefits are higher than the costs or it is too costly to violate the informal rules even if the benefits are unsatisfactory. In the case of the informal institution of corruption, the endurance of systemic corruption was explained by an incentive structure in which the costs for violating the informal rules were too high for people to ignore.

The collapse of the communist regime meant the creation of new institutions or a remodeling of the institutions that survived the regime change. However, that was a costly and long-term process that led to the creation of a fluid environment where the new rules needed time to be fully developed, implemented, and legitimized by the general public. That environment of uncertainty has been shown to be conducive to the growth of the already established informal institution of corruption. Existing informal institutions meant that the actors' expectations were stabilized and the probabilities of their actions established (Knight 1992, 147). In other words, the informal institution of corruption inherited from the communist regime created a common set of shared expectations about the informal rules, which, in turn, influenced the actors' behavior. Under such circumstances, the probability of an individual to violate the informal rules was determined by the power of incentive structure underlying the informal institutions. RCI was useful in explaining the actors' behavior and the probability of choosing to comply or not with the informal rules. Thus, when informal institutions are effective, an individual's best strategy would be to comply with the informal rules. Non-compliance, when sanctions are high, is unattractive and unlikely to occur, even though the actors may
prefer different institutional arrangements. That explains the high percentage of Romanians complying with the informal rules of corruption in the health care sector although they would have preferred non-compliance.

Moreover, changes in observance of informal rules at the individual level are unlikely to produce systemic changes unless a sufficient number of individuals make the same choice (Knight 1992). In the absence of certainty that an actor's behavior is not unique and that others will violate the informal rules, the individual actor's action will have no impact at the systemic level. Hence, the incentive structure underlying the informal institution of corruption and the calculus approach emphasized by RCI were useful in explaining the resilience of the informal institution of corruption. Additionally, RCI provided the framework for understanding the mechanism through which institutional change, formal and informal, takes place. A change in the balance of cost and benefits affected the effectiveness of the institution. For example, the adoption of anticorruption strategies that led to an increase in transparency, accountability, and an increase in the effectiveness of judicial institutions influenced the incentive structure of the formal institutions in the judiciary. However, the increase in the costs for non-compliance with the formal rules has not yet surpassed those for complying with the informal institution of corruption. Nonetheless, the study has demonstrated that by altering the balance between costs and benefits for complying with the formal and informal rules, one can change the effectiveness of formal and informal institutions.

An institutional approach to analyze corruption offers an analytical framework for understanding the "rules of the game" that regulate human interaction (North 1990, 4). Intrinsic to any institution are not only the rules but also the sanctions associated with the
violation of those rules. The institutional approach provides the framework for investigating the informal rules of corruption and the sanctions associated with their non-compliance. Information regarding the balance between the risks for violating the informal rules of corruption and the benefits for complying with formal rules becomes particularly important in the development of effective anticorruption strategies. Anticorruption strategies that are likely to result in a small reduction of the costs for violating the informal rules may be unlikely to succeed, especially if the sanctions for non-compliance with the informal rules are high.

An institutional approach helps us differentiate the “rules from the players” (North 1990, 4). That is, it helps us differentiate the informal institution of corruption from informal organizations, such as mafia or clans. Hence, an institutional approach offers an understanding of the underlying rules of corruption, of their evolution, and their consequences and it helps us discerning it from the strategies employed by actors in informal organizations. Additionally, analyzing corruption from an institutionalist perspective helps us distinguish it from culture. More too often culture has been used to justify the persistence of corruption. Although culture influences informal institutions and the two are sometimes difficult to discern, for analytical purposes it is important to maintain them separately. I agree with Helmke and Levitsky (2006, 7) that a definition of informal institutions as shared expectations or beliefs is useful in delineating it from culture, understood as shared values.

Hence, an institutional approach to analyze corruption offers an analytical framework for examining the underlying rules of the game, for identifying the incentive structure supporting the informal institutions, and for examining the mechanism to
generate informal institutional change. The analysis of corruption as an informal institution has the advantage of analytically differentiating it from informal organizations and culture and, thus, allowing one to focus on informal rules and to investigate the relations between informal institutions, on the one hand, and informal organizations and culture, on the other hand. Moreover, an institutional approach allows one to investigate corruption in interaction with formal institutions and to determine the degree and mechanisms through which they impact each other. Such an analysis is especially important in developing the strategies to increase the effectiveness of formal institutions and decrease the effectiveness of informal institutions (i.e., institutional strategies).

4. Implications and Future Research Agenda

This study has demonstrated that combating corruption and increasing the effectiveness of formal institutions are complementary actions. Thus, the institutional strategies designed to strengthen formal institutions implicitly reduce the effectiveness of the competing informal institution of corruption by increasing transparency and accountability and limiting the discretionary powers of public officials. However, the study has also shown that not all strategies are equal and that some are more likely to produce the intended results than others either due to the existence of demonstrated political will to combat corruption or because they are less likely to produce significant disruptions in the status quo. The important variation across sectors in the implementation and enforcement of similar institutional strategies (e.g., FOIA) indicated the salient role played by non-governmental actors (particularly the EU) in supporting the fight against corruption.
Although the EU is unique in the world, other international institutions and/or organizations can and should play an important role in promoting the rule of law and fighting corruption. While conditioning or denying financial support may not always be effective, especially if the country is rich in natural resources, other tools of pressure should be identified and employed, such as building partnerships with national actors willing to curb corruption, supporting them in the challenging endeavor to create anticorruption agencies or institutions with both financial and technical support. The tools and strategies available would differ according to the type of international institution and the country with which it deals. International institutions such as the World Bank have demonstrated their commitment to combat corruption by developing anticorruption strategies and allocating financial and human resources to countries that expressed combating corruption as their goal or agreed to fight corruption in order to receive financial support. One of the pitfalls of the Western approach to fighting corruption in developing countries is to impose an anticorruption strategy that ignores the specific problems the country encounters (e.g., poor developed bureaucratic apparatus); the informal rules that govern the interaction between the public servants and the general public; and the domestic actors committed to combat corruption. Fighting corruption is a difficult and long term endeavor that requires the support of political actors, civil society, and even the general public. A failure to take into consideration the domestic actors and to adapt anticorruption strategies to the specific conditions of each country is likely to limit the chances of successfully combating corruption.

An additional important lesson that can be drawn is that sustained external pressure is more effective than one-time or intermittent pressure. Without external
pressure, the countervailing pressures on leadership to adhere to the status quo may be otherwise insurmountable. Hence, careful monitoring of how the external funding allocated to combating corruption was managed, of how the anticorruption strategies were implemented, of the results in curbing corruption are all important elements in assessing the political will over time and the success in combating corruption.

Nonetheless, an interesting research question is how the role of the EU in combating corruption in candidate countries has changed post-accession when the leverage of the EU has diminished. As mentioned earlier, the safeguard clauses and the threat of activating them if insufficient progress was made failed to deter the Romanian political class from attempting to halt the fight against high-level corruption. Moreover, the post-accession analysis of the institutional strategies adopted just prior to accession will reveal if the EU decision to grant Romania membership based on the promise of change was warranted or rushed. For example, the progress made in the public procurement sector was applauded by the EU months prior to accession. However, the 2009 Business Environment and Enterprise Productivity Survey (BEEPS) found that 52.3 percent of the surveyed firms identified corruption as a major concern for their businesses, a 22.5 percent increase since 2005. The same survey found that the number of firms expected to make gifts to secure government contracts also increased 23 percent since 2005, indicating that the impact of institutional strategies was limited or that perhaps some strategies were not even implemented.

Another important area of research regards the role of the public in supporting the fight against corruption. The literature on corruption advocates for the inclusion of the public if success in curbing corruption is to be reached. It stands to reason that once
people understand the consequences of corruption and are aware of the means to fight it, they would become more involved. However, the findings of this study suggest that a closer look at the role of the public in fighting corruption is necessary. This research has shown that as long as the incentives to violate the informal rules are low and the costs are high, it is very unlikely to gather the public support for combating corruption, even if there is awareness about corruption and its effects.

Additionally, the theoretical model used in this study may be applied to other types of competing informal institutions in other democratizing settings, such as in Latin America where clientelism and patrimonialism are considered to be competing informal institutions. More recent studies have shown that competing informal institutions can take other forms. For example, Daniel Brinks (2006) studied an informal institution that allows the killing of perceived violent criminals in Brazil and Argentina. He claimed that there was a competing informal institution which “short-circuits due process and shows no regard for the physical integrity of those who come in contact with the police” (Brinks 2006, 226). Hence, the application of this theoretical model (replacing, of course, EU pressure with a different actor) may yield important results and offer additional answers regarding the interaction of formal and informal institutions.
Appendix A

The *Acquis* Chapters
Appendix B

Scheme Used for Coding Newspaper Articles Regarding Corruption Cases
<table>
<thead>
<tr>
<th>CODE</th>
<th>DEFINITION USED FOR CLASSIFYING THE ARTICLES</th>
<th>PERCENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUSTOMS</td>
<td>This category includes articles that present cases of corruption in the customs sector involving customs personnel.</td>
<td>4.32</td>
</tr>
<tr>
<td>EDUCATION</td>
<td>This category includes articles that present cases of corruption in the education sector (involving teachers, professors, or any other personnel working in this sector).</td>
<td>4.32</td>
</tr>
<tr>
<td>FINANCIAL</td>
<td>This category includes articles that present cases of corruption in the banks sector (e.g., corrupt financial transactions, bank frauds).</td>
<td>4.25</td>
</tr>
<tr>
<td>FIRMS</td>
<td>This category includes articles that present cases of corruption involving businesses, enterprises, and/or factories.</td>
<td>15.95</td>
</tr>
<tr>
<td>GOVERNMENT</td>
<td>This category includes articles that present cases of corruption involving ministers, secretary of state, or any other national government official.</td>
<td>10.31</td>
</tr>
<tr>
<td>HEALTH CARE</td>
<td>This category includes articles that present cases of corruption in the health care sector (involving doctors, nurses, or any other personnel working in this sector).</td>
<td>3.14</td>
</tr>
<tr>
<td>JUDICIAL</td>
<td>This category includes articles that present cases of corruption in the judiciary involving magistrates (judges, prosecutors), lawyers, and court clerks.</td>
<td>13.63</td>
</tr>
<tr>
<td>MEDIA</td>
<td>This category includes articles that present cases of corruption in mass media (television and written media).</td>
<td>0.54</td>
</tr>
<tr>
<td>MILITARY</td>
<td>This category includes articles that present cases of corruption in the military (i.e., involving military personnel).</td>
<td>3.50</td>
</tr>
<tr>
<td>PARLIAMENT</td>
<td>This category includes articles that present cases of corruption involving members of Parliament (MPs).</td>
<td>1.86</td>
</tr>
<tr>
<td>POLICE</td>
<td>This category includes articles that present cases of corruption in the police sector.</td>
<td>12.74</td>
</tr>
<tr>
<td>PRIVATIZATION</td>
<td>This category includes articles that present cases of corruption regarding the privatization of state-owned assets (e.g., firms, factories, enterprises).</td>
<td>2.21</td>
</tr>
<tr>
<td>PUBLIC OFFICIALS</td>
<td>This category includes articles that present cases of corruption involving public officials (in public administration at all levels such as mayors, prefects, local councilors, and inspectors of the Financial Guard) except Government officials.</td>
<td>16.88</td>
</tr>
<tr>
<td>PUBLIC PROCUREMENT</td>
<td>This category includes articles that present cases of corruption in the awarding and administration of public procurement contracts.</td>
<td>4.57</td>
</tr>
<tr>
<td>TRANSPORTATION</td>
<td>This category includes articles that present cases of corruption involving train and bus tickets controllers.</td>
<td>0.75</td>
</tr>
<tr>
<td>OTHER</td>
<td>This category includes articles that present cases of corruption that do not fit into the other categories.</td>
<td>1.00</td>
</tr>
</tbody>
</table>
Appendix C

List of the Barometers of Public Opinion with Dates When They Were Administered
<table>
<thead>
<tr>
<th>BOP Code</th>
<th>Definition</th>
<th>Month Administered</th>
</tr>
</thead>
<tbody>
<tr>
<td>S97</td>
<td>SPRING 1997</td>
<td>JUNE</td>
</tr>
<tr>
<td>F97</td>
<td>FALL 1997</td>
<td>DECEMBER</td>
</tr>
<tr>
<td>S98</td>
<td>SPRING 1998</td>
<td>JUNE</td>
</tr>
<tr>
<td>F98</td>
<td>FALL 1998</td>
<td>NOVEMBER</td>
</tr>
<tr>
<td>S99</td>
<td>SPRING 1999</td>
<td>MAY</td>
</tr>
<tr>
<td>F99</td>
<td>FALL 1999</td>
<td>OCTOBER</td>
</tr>
<tr>
<td>S00</td>
<td>SPRING 2000</td>
<td>MAY</td>
</tr>
<tr>
<td>F00</td>
<td>FALL 2000</td>
<td>NOVEMBER</td>
</tr>
<tr>
<td>S01</td>
<td>SPRING 2001</td>
<td>MAY</td>
</tr>
<tr>
<td>F01</td>
<td>FALL 2001</td>
<td>NOVEMBER</td>
</tr>
<tr>
<td>S02</td>
<td>SPRING 2002</td>
<td>JUNE</td>
</tr>
<tr>
<td>F02</td>
<td>FALL 2002</td>
<td>OCTOBER</td>
</tr>
<tr>
<td>S03</td>
<td>SPRING 2003</td>
<td>MAY</td>
</tr>
<tr>
<td>F03</td>
<td>FALL 2003</td>
<td>OCTOBER</td>
</tr>
<tr>
<td>S04</td>
<td>SPRING 2004</td>
<td>MAY</td>
</tr>
<tr>
<td>F04</td>
<td>FALL 2004</td>
<td>OCTOBER</td>
</tr>
<tr>
<td>S05</td>
<td>SPRING 2005</td>
<td>MAY</td>
</tr>
<tr>
<td>F05</td>
<td>FALL 2005</td>
<td>OCTOBER</td>
</tr>
<tr>
<td>S06</td>
<td>SPRING 2006</td>
<td>MAY</td>
</tr>
<tr>
<td>F06</td>
<td>FALL 2006</td>
<td>OCTOBER</td>
</tr>
</tbody>
</table>

Appendix D

Discount Rates
<table>
<thead>
<tr>
<th>MONTH</th>
<th>DISCOUNT RATES* (PERCENT)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2002</td>
</tr>
<tr>
<td>JANUARY</td>
<td>-</td>
</tr>
<tr>
<td>FEBRUARY</td>
<td>34.6</td>
</tr>
<tr>
<td>MARCH</td>
<td>34.2</td>
</tr>
<tr>
<td>APRIL</td>
<td>34.1</td>
</tr>
<tr>
<td>MAY</td>
<td>32.2</td>
</tr>
<tr>
<td>JUNE</td>
<td>30.6</td>
</tr>
<tr>
<td>JULY</td>
<td>28.3</td>
</tr>
<tr>
<td>AUGUST</td>
<td>27.2</td>
</tr>
<tr>
<td>SEPTEMBER</td>
<td>25.6</td>
</tr>
<tr>
<td>OCTOBER</td>
<td>23.8</td>
</tr>
<tr>
<td>NOVEMBER</td>
<td>22.2</td>
</tr>
<tr>
<td>DECEMBER</td>
<td>20.4</td>
</tr>
</tbody>
</table>

*The mean value of the discount rates is 16.93 percent; the lower bound confidence interval is 14.93 percent; and the upper bound confidence interval is 18.93 percent.
Appendix E

Budgetary Funds for the National Customs Authority (1997-2006)
<table>
<thead>
<tr>
<th>Year</th>
<th>Budgetary Fund</th>
<th>Special Fund for Modernization</th>
<th>Extra-Budgetary Funds</th>
<th>External Credits</th>
<th>Total (Nominal Value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>63,347,958,000</td>
<td>175,892,000,000</td>
<td>--</td>
<td>--</td>
<td>239,239,958,000</td>
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<tr>
<td>1998</td>
<td>150,243,452,000</td>
<td>400,000,000,000</td>
<td>47,000,000,000</td>
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<td>597,243,452,000</td>
</tr>
<tr>
<td>1999</td>
<td>175,175,050,000</td>
<td>350,091,737,000</td>
<td>100,000,000,000</td>
<td>--</td>
<td>625,266,787,000</td>
</tr>
<tr>
<td>2000</td>
<td>272,347,104,000</td>
<td>375,488,000,000</td>
<td>270,337,830,000</td>
<td>--</td>
<td>918,172,934,000</td>
</tr>
<tr>
<td>2001</td>
<td>757,217,751,000</td>
<td>481,838,853,000</td>
<td>351,000,100,000</td>
<td>212,430,000,000</td>
<td>1,802,486,704,000</td>
</tr>
<tr>
<td>2002</td>
<td>973,629,137,000</td>
<td>--</td>
<td>528,120,100,000</td>
<td>--</td>
<td>1,501,749,237,000</td>
</tr>
<tr>
<td>2003</td>
<td>1,208,613,572,000</td>
<td>473,825,132,000</td>
<td>--</td>
<td>--</td>
<td>1,682,438,704,000</td>
</tr>
<tr>
<td>2004</td>
<td>1,286,194,594,000</td>
<td>319,528,875,000</td>
<td>--</td>
<td>108,265,000,000</td>
<td>1,713,988,469,000</td>
</tr>
<tr>
<td>2005</td>
<td>1,369,471,600,000</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1,369,471,600,000</td>
</tr>
<tr>
<td>2006</td>
<td>1,717,228,830,000</td>
<td>--</td>
<td>--</td>
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<td>1,717,228,830,000</td>
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</table>

Source: Romanian National Customs Authority, Response to FOIA request (March 9, 2009)
Note: The Values are expressed in million ROL.
Appendix F

Budgetary Funds for the Customs Sector Adjusted for Inflation and Discounting
<table>
<thead>
<tr>
<th>YEAR</th>
<th>CPI</th>
<th>TIME</th>
<th>REAL 1997 ROL*</th>
<th>NOMINAL ROL</th>
<th>CI LOWER 95 (USD)</th>
<th>CI UPPER 95 (USD)</th>
<th>1997 ROL*</th>
<th>1997 USD**</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
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<td>233,376,390</td>
<td>33,376,390</td>
<td>33,376,390</td>
<td>33,376,390</td>
<td>33,376,390</td>
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<tr>
<td>1998</td>
<td>259.1</td>
<td>2</td>
<td>597,243,456,126</td>
<td>1,092,715,893,879</td>
<td>1,092,715,893,879</td>
<td>1,092,715,893,879</td>
<td>1,092,715,893,879</td>
<td>1,092,715,893,879</td>
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<tr>
<td>1999</td>
<td>254.5</td>
<td>3</td>
<td>625,266,787,000</td>
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<td>3,105,659,818,690</td>
<td>3,105,659,818,690</td>
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<td>2000</td>
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<td>918,172,934,000</td>
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<td>1,417,662,131,373</td>
<td>1,417,662,131,373</td>
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<tr>
<td>2001</td>
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<td>5</td>
<td>1,802,486,704,000</td>
<td>2,614,673,696,500</td>
<td>2,614,673,696,500</td>
<td>2,614,673,696,500</td>
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<td>2,614,673,696,500</td>
</tr>
<tr>
<td>2002</td>
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<td>1,501,749,237,000</td>
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<td>3,123,638,412,960</td>
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<tr>
<td>2003</td>
<td>155.3</td>
<td>7</td>
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<td>2,125,999,841,971</td>
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<tr>
<td>2004</td>
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<td>8</td>
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<td>3,902,808,417,348</td>
<td>3,902,808,417,348</td>
<td>3,902,808,417,348</td>
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<tr>
<td>2005</td>
<td>109.0</td>
<td>9</td>
<td>1,699,471,600,000</td>
<td>3,201,209,914,495</td>
<td>3,201,209,914,495</td>
<td>3,201,209,914,495</td>
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<tr>
<td>2006</td>
<td>106.6</td>
<td>10</td>
<td>1,717,228,830,000</td>
<td>4,104,595,740,000</td>
<td>4,104,595,740,000</td>
<td>4,104,595,740,000</td>
<td>4,104,595,740,000</td>
<td>4,104,595,740,000</td>
</tr>
</tbody>
</table>

*Adjusted for inflation.

**The real 1997 value reported in Figure 23.
Appendix G

The HSIRB Approval
Date: June 8, 2006

To: Jim Butterfield, Principal Investigator
Mihaiela Ristei, Student Investigator for dissertation

From: Amy Naugle, Ph.D., Chair

Re: HSIRB Project Number: 06-03-13

This letter will serve as confirmation that your research project entitled “An Institutional Analysis of Corruption in Romania: A Comparison of the Judiciary, Customs, Health Care and Public Procurement” has been approved under the expedited category of review by the Human Subjects Institutional Review Board. The conditions and duration of this approval are specified in the Policies of Western Michigan University. You may now begin to implement the research as described in the application.

Please note that you may only conduct this research exactly in the form it was approved. You must seek specific board approval for any changes in this project. You must also seek reapproval if the project extends beyond the termination date noted below. In addition if there are any unanticipated adverse reactions or unanticipated events associated with the conduct of this research, you should immediately suspend the project and contact the Chair of the HSIRB for consultation.

The Board wishes you success in the pursuit of your research goals.

Approval Termination: June 8, 2007
Survey Reports, Anticorruption Handbooks and Studies, Documents


Colegiul Medicilor din Romania [College of Physicians in Romania]. "Departamentul Profesional-Stiintific si Invatamant" [“Department of Professional and Scientific


Curtea de Conturi. "Raport cu Privire la Achizitia de catre SNP Petrom SA a unor Active (Statii de Comercializare Carburanti)" [Report regarding the Acquisition by the SNP Petrom SA of Several Properties (Gas Stations)]. Bucuresti, Romania: Curtea de Conturi, 2003.


_____. "Romania: Electronic Government Procurement (e-GP)." *The World Bank*. 


**Books**


**Articles, Book Chapters, Working Papers, Conference Presentations**


_____.


