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# PATTERNS OF CORRUPTION

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A Study of Sub-National Units in Romania

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## Declaration

I, the undersigned, Andrei Macsut hereby declare that this dissertation contains no materials accepted for any other degrees, in any other institutions. The dissertation contains no materials previously written and/or published by any other person, except where appropriate acknowledgment is made in the form of bibliographical reference.

Vienna, December 5<sup>th</sup>, 2022

Andrei Macsut

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a smaller, cursive 'M'.

*To honesty and the pursuit of knowledge for the benefit of humankind.*

## Acknowledgements

Nothing worth having comes easy, and this work is no exception. Completing it took longer and more work than I could imagine. Over the past six years, through some of the best and worst days of my life, this thesis has served as one of the few constants, providing purpose, as well as a wide range of emotions, from hope to despair, glee, and ultimately relief but also requiring discipline and drive to complete – more so than any other project that I have ever undertaken. May it serve to inspire further research and better policy.

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## Abstract

*This work analyzes the changes undergone by Romanian corruption since accession to the European Union in 2007, focusing on qualitative changes and adaptation to anticorruption policies and efforts. The main thesis is that, in Romania, the partisan logic of corruption leads to county-level differences in how corrupt behavior is manifested and prosecuted. One other, descriptive thesis stems from the first, namely that corruption in Romania has become more politically organized over the period. The theses are explored using data on public procurement and convictions for corruption at the level of sub-national units (the 41 counties of Romania).*

*Starting from a paradox of improvement in some corruption and transparency measurements but not in others, the work argues that anticorruption efforts in Romania have only focused on some forms of corruption, and presents evidence that factors such as political affiliation, incumbency, or electoral performance matter when it comes to who is prosecuted. Competing party networks form a multipolar and layered model of corruption, where clients receive access to public resources only in the administrative units where they have political connections and use denouncement to prosecutors as a tool to remove political rivals.*

*Findings point to a more general model, where county bosses act as the principal of corruption whereas the government behaves more like an agent. In this context, elections change not just the incumbents but also their networks of clients. Incumbents who manage to stay in power for consecutive electoral cycles have more consolidated corruption networks, implying that frequent power turnover may be an effective tool in controlling corruption.*

## Table of Contents

|  |    |
|--|----|
| Introduction: Puzzle, theory, and theses .....   | 1  |
| Research questions, theses, and summary of findings .....  | 1  |
| General model.....   | 2  |
| Layered multipolar model of corruption .....   | 6  |
| Novelty of the work .....  | 7  |
| Methodology .....  | 8  |
| Structure of the work .....  | 9  |
| Chapter 1: Theory and literature .....   | 11 |
| Defining corruption.....   | 11 |
| Defining transparency .....  | 17 |
| Transparency legislation .....   | 24 |
| Organized versus disorganized corruption.....  | 27 |
| Decisionmakers versus lower-level civil servants .....   | 33 |
| Systematic versus systemic corruption .....  | 37 |
| Corruption and reelection .....  | 39 |
| From disorganized to organized corruption .....  | 41 |
| Speed money versus access to resources .....   | 44 |
| Chapter 2: Global trends and case selection .....  | 50 |
| Description of the datasets .....  | 50 |
| Open Budget Index .....  | 50 |
| Varieties of Democracy .....   | 51 |
| Global trends .....  | 52 |
| Trends in post-communist Europe .....  | 54 |
| Case selection: the Romanian paradox .....   | 57 |
| Chapter 3: Access to information and competition in the Romanian public procurement sector ..... | 62 |
| Transparency and corruption in procurement .....   | 63 |
| Case selection.....  | 64 |
| The data.....  | 65 |
| Procurement data .....   | 65 |
| Indictment data.....   | 68 |
| Findings .....   | 69 |
| Discussion .....   | 82 |
| Chapter conclusions .....  | 87 |
| Chapter 4: IT sector procurement – in depth analysis.....  | 90 |
| Chapter overview .....   | 90 |

|   |     |
|---|-----|
| National data .....   | 92  |
| County-level analysis .....   | 94  |
| Aggregate data .....  | 94  |
| Market concentration .....  | 98  |
| Analysis by company and party .....   | 101 |
| A model of IT corruption .....  | 107 |
| Types of capture .....  | 111 |
| Chapter conclusions .....   | 113 |
| Chapter 5: Anticorruption and adaptation – DNA and county-level corruption .....                          | 115 |
| Chapter overview .....  | 115 |
| Main assumptions and concepts .....   | 116 |
| A brief history of DNA .....  | 119 |
| Regional disparities in DNA activity – facts and data .....   | 135 |
| Political organization of corruption – empirical findings .....   | 138 |
| Context and national figures .....  | 138 |
| Analysis of convicted mayors .....  | 154 |
| Analysis of lower-level offices .....   | 163 |
| County-level analysis: strongholds and incumbency .....   | 165 |
| Party-level analysis .....  | 177 |
| Drawbacks and limitations .....   | 186 |
| Chapter conclusions .....   | 188 |
| Conclusions .....   | 191 |
| References .....  | 193 |
| Annexes .....   | 201 |
| Annex 1 – Public procurement indicators .....   | 201 |
| Annex 2 – DNA convictions per 100k inhabitants per county .....   | 202 |
| Annex 3 – DNA convictions per county .....  | 203 |
| Annex 4 – Number of convictions per county by government incumbency of ruling party .....                 | 204 |
| Annex 5 – Number of convictions per county by type of office and ruling party .....                       | 205 |
| Annex 6 – Number of convictions per county by electoral performance .....                                 | 206 |
| Annex 7 – Number of convictions per county by type of office and electoral performance .....              | 207 |
| Annex 8 – Number of convictions per county by type of office, electoral performance, and incumbency ..... | 208 |
| Annex 9 – Ruling parties by county-level GDP per capita, compared to other parties .....                  | 209 |
| Annex 10 – Party strongholds by county-level GDP per capita .....   | 210 |

## Introduction: Puzzle, theory, and theses

### Research questions, theses, and summary of findings

This work analyzes the changes undergone by Romanian corruption since accession to the European Union in 2007, focusing on qualitative changes and adaptation to anticorruption policies and efforts. The main thesis is that, in Romania, **the partisan logic of corruption leads to county-level differences** in how corrupt behavior is manifested and prosecuted. Partisan logic refers to the competition for control over public resources (money, privileges, monopoly over decision making, public offices, etc.) that takes place along political party lines. One other, descriptive thesis stems from the first, namely that **corruption in Romania has become more politically organized** over the period of study.

Research on corruption often presents the phenomenon as homogenous across an entire country, and the assumption of homogeneity can also be found in anticorruption policy, which sees changes applied at national level through legislation issued by central authorities. While this might make sense from an administrative standpoint, oversight and law enforcement agencies can benefit from a deeper understanding of local and regional differences, as it would enable them to better channel their efforts and resources toward areas of greater risk. Also, students and researchers can benefit from seeing corruption as nuanced, heterogenous, and adaptive in order to design better predictive tools and models.

In post-communist Europe, Magyar and Madlovics mention that political competition is often “a façade for competition of patronal networks” (Magyar and Madlovics 2020a, 398–99). Such competition between networks and the changes that occur through power turnover are not necessarily smooth. This work seeks to explain the apparent paradox of why overall corruption

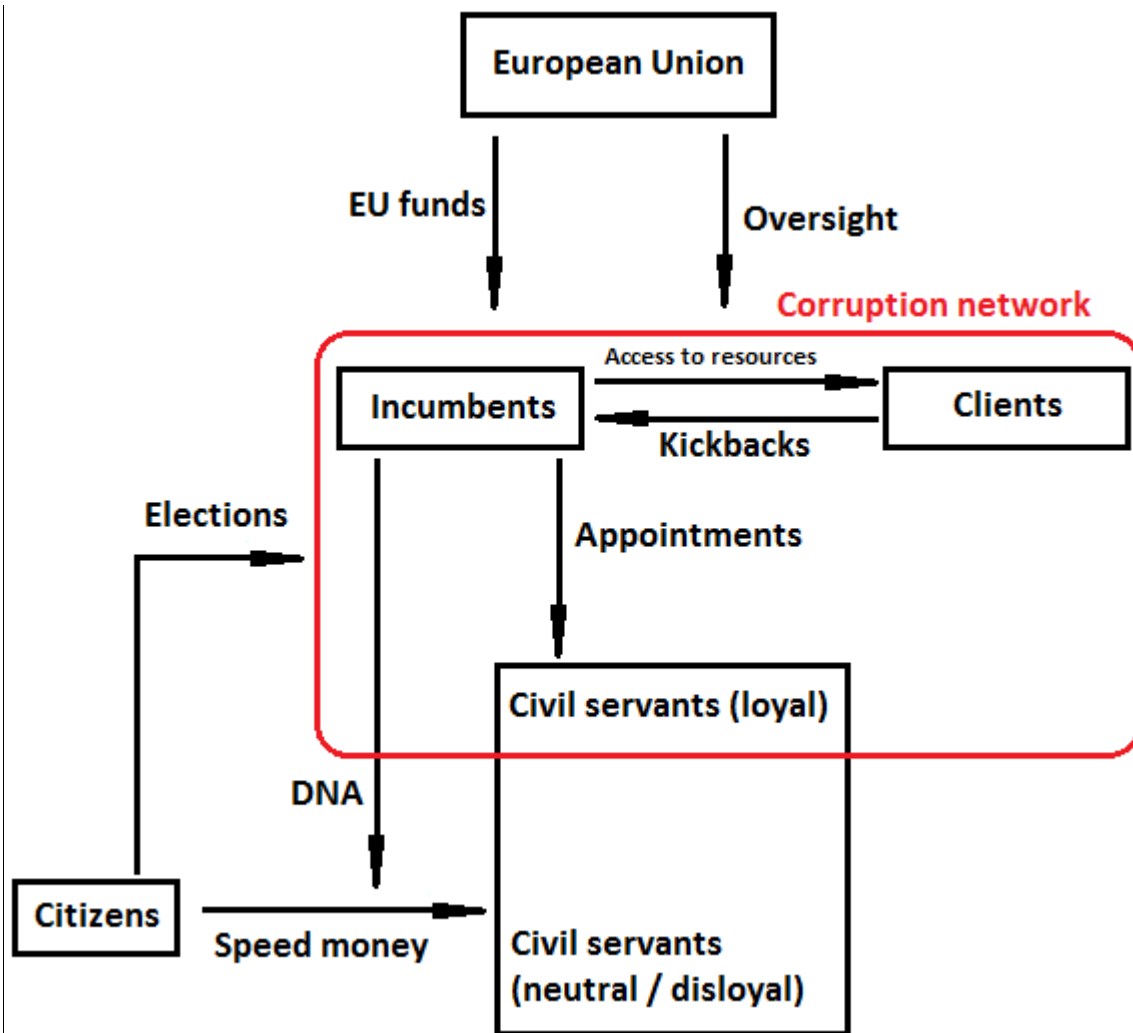


and transparency scores in Romania have improved while corruption red-flags and other, more objective, indicators have degraded. It explores an idea that has been intuitively known by anticorruption experts for years, but has not been tested empirically before, namely that the *type* of corruption and corruption mechanisms found in a certain country can differ from place to place, time to time or party to party. As such, the focus in this work is less on measuring corruption quantitatively, and more on identifying how it can vary qualitatively over temporal, geographic and political dimensions.

The work uncovers a model of multipolar (or insular) and layered corruption, in which political clients are rewarded with access to public resources only in the administrative unit controlled by their political connections or where a new kind of capture (by dependence) exists. This dynamic fits into a more general model (presented below) connecting voters to incumbents, corruption networks, law enforcement and the European union. It also finds that improvements in transparency and availability of information do not translate necessarily into fewer red flags of corruption in public procurement, as political clients appear to receive a quota irrespective of transparency norms or economic situation.

### General model

Differences in corruption patterns are tied to who is in power at county level and for how long. In party strongholds (i.e. counties where the same party has been in power for at least 3 consecutive electoral cycles), corruption networks appear to be more consolidated. The **general model** of Romanian corruption that emerges from the work is presented below:



Speed money refers to petty corruption that reduces waiting times for public service or removes administrative hurdles, which oftentimes takes the form of small bribes to civil servants (Ang 2020, 10). In the model, citizens can offer speed money to all civil servants, yet the ones loyal to the incumbents (be they at local or at county level) are somewhat protected from prosecutors because the network of corruption they belong to does not denounce them. As such, prosecution agencies such as the National Anticorruption Directorate (DNA) can become embroiled in political

struggles and may unwittingly help the consolidation of corruption networks by prosecuting and removing from office civil servants that are not part of the incumbent's network<sup>1</sup>.

Access to resources refers to public funds or other privileges that decisionmakers can grant to political clients in exchange for kickbacks or some other benefits that Ang refers to as “access money” (Ang 2020, 10). These can include public contracts, public offices or other resources that incumbents can offer on a (largely) discretionary basis, leading to the emergence of client firms and state capture. As can be seen, incumbents can report cases of speed money such as bribes to the DNA, if the recipients are not part of the corruption network, but they do not report instances of corruption involving access to resources because they retain monopoly over their allocation and would thus incriminate themselves.

The European Union, in this model, provides incumbents with funding but also oversees how such funding is handled, in a politically non-partisan manner. EU oversight does not, however, extend to speed money or domestic funds, making it possible to compare proven cases of corruption involving EU money and those concerned with other, national, resources.

The citizens in this model can vote to change the incumbents, yet elections also change the entire corruption network in place. While the captors change, and their behavior may differ, the capture remains. New incumbents come with new clients and new appointments to the civil service. However, new networks take time to consolidate, and their positions are not guaranteed, so frequent power turnover appears to be beneficial for controlling corruption.

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<sup>1</sup> The effects of prosecution, even when targeting genuinely corrupt can be two-fold: On the one hand they can remove corrupt civil servants from office, opening positions that can be filled either by more honest people or by someone belonging to the corrupt network (i.e. friends and connections of the incumbent), and on the other hand, they can frighten the remaining corrupt civil servants into joining the incumbent's network in search of protection.

Incumbents in this model can be either mayors or presidents of county councils<sup>2</sup>. This work argues that the latter are especially influential, as their stability in office and discretionary power allows them to behave like the principal, and exert bottom-up pressure for offices, funding, and public contracts, even clashing with party leaders and governments over anticorruption, political appointments, and changes to election rules. County bosses also exert top-down pressure on mayors and lower-level civil servants through their control over funding, appointments, and their capacity to make denouncements to the DNA. As such, corruption seems to ‘flow’ across party lines from county bosses outward to both the top and the bottom levels of administration.

Denouncement refers to the act of reporting suspicious or potentially illegal activity to law-enforcement authorities. Although anybody can make a denouncement, those inside the public sector have greater insight and understanding of regulation and are thus better able to identify potential breaches of the law such as corruption. Despite DNA having multiple tools to gather information and identify potential corruption cases, denouncement is one of the main sources of indictments<sup>3</sup>. As such, the decision to protect someone from being denounced became an important bargaining chip for political migration and influence. This work argues that the spectacular success of DNA was due in part to its political independence and in part because prosecution and denouncement of corruption deeds became part of everyday political struggles. Although parties could not control DNA’s activity, they did not need to do so in order to get rid of political rivals or disloyal civil servants.

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<sup>2</sup> In case of members of Parliament or Government the model is different, considering that the former do not have an executive role, so they do not exercise the same discretion over allocation of resources, whereas the latter are not elected directly by citizens and face more instability and uncertainty, which this work argues affects their influence within the party and their role within the corrupt network.

<sup>3</sup> The 2021 DNA annual report mentions that over 45% of cases (1294 out of 2844) opened during the year were based on denouncement from individuals or institutions (“DNA Annual Report 2021” 2022).

## Layered multipolar model of corruption

Corruption in Romania remains endemic despite improvements in some perception scores and this is evidenced by data on public procurement at both national and county levels, which is analyzed in later sections. The general model captures the overall relationship between incumbents, client and other actors, but county-level data reveals regional differences and patterns that also point to a different, more complex **model of layered and multipolar corruption** (presented in greater detail in Chapter 4), with the poles being at county level. Corruption networks appear to be territorially bound to the administrative units controlled by the individual or party connected to them, suggesting that networks of the same political color do not overlap or compete against each other.

Political affiliation, and incumbency in particular, matter when it comes to who gets indicted by the DNA, especially at county level. There are differences across party lines regarding who is monitored and denounced, implying that parties used different anticorruption tools such as DNA or transparency rules and regulations to tighten control over institutions and corruption networks, shielding their own while denouncing those not part of the network, be they decisionmakers or lower ranking civil servants. Political protection granted by refusal to denounce corrupt behavior can explain why DNA seems to have only a limited deterrent effect.

Competition for resources and spoils does not necessarily end with elections and is not limited to the electoral context. Rather, elections serve to define the starting point of political conflict, in which even tools meant to improve public integrity are sometimes used to advance particularistic agendas. In this sense, the explanation proposed by this work for the apparent paradox is that transparency and anticorruption norms in Romania helped to reduce petty corruption, while other

measures such as discretionary allocation of central funding expanded grand corruption and made local decisionmakers more powerful and better able to politically organize corruption.

### Novelty of the work

Currently, the study of corruption is largely split between cross-country comparisons<sup>4</sup> and in-depth analyses of single countries<sup>5</sup>. The former branch of study has thus far revealed that substantive differences exist between various political areas, such as that corruption in Eastern Europe is different from that in the West, for example, both in terms of scale and in terms of kind<sup>6</sup>. The latter branch has provided insight into the uniqueness of corruption in different countries, both from structural as well as cultural perspectives. There is, however, surprisingly little work done on intra-national differences in corruption patterns, as if within the borders of a state the phenomenon of corruption was homogenous. This is not necessarily the case. For example, corruption in northern Italy might be very different from the one found in the South (Putnam, Leonardi, and Nanetti 1993; Banfield and Banfield 1967), and the corruption one might experience in the eastern parts of Germany differs from that which they might encounter in the south or west of the country. As such, to classify or try to assess corruption in the whole of a country misses a degree of nuance that is known to exist but is also not properly understood.

This work aims to fill some of that knowledge gap by looking at different patterns that emerge between sub-national units (the 41 counties of Romania) in a unitary state with limited local

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<sup>4</sup> Some excellent comparative work can be found in Johnston (2005), Linstead and Naurin (2006a), Mungiu-Pippidi (2015c; 2015a), Lambsdorf (2007) or Rothstein (2011). Worth mentioning are also regional comparisons such as among Latin American countries (Rotberg 2019) or post-communist Europe (Klíma 2020; Magyar and Madlovics 2020b).

<sup>5</sup> Some of the work worth mentioning refers to China (Ang 2020), India (Vaishnav 2017), Russia (Ledeneva 2006), Greece (Konstantinidis and Xezonakis 2013) or Nigeria (Dumbili and Sofadekan 2016).

<sup>6</sup> Referring to the distinction between individual, endemic, and systemic classifications of corruption.

autonomy<sup>7</sup>. The fact that significant differences emerge even in such a context and that the differences noticed can be explained by political factors indicates that the political affiliation of county bosses matters for shaping the type of corruption found at local level. The first novelty of this work, therefore, is that it considers corruption as heterogenous across the country of study, highlighting evidence of different patterns found, as well as presenting possible explanations for the differences noticed.

A second novelty is the data used, which includes a dataset compiled from official press releases of the DNA, the main corruption prosecution body in Romania, containing information on corruption cases that the agency investigated and that ended in a definitive conviction in court. Use of this data allows comparisons of indictment and conviction figures across counties.

## Methodology

Supporting the thesis that the partisan logic of corruption leads to county-level differences requires evidence that 1. Corruption patterns in Romania differ across counties, and 2. These differences can be explained by political affiliation. Such evidence is obtained through a mixed-methods approach, by analyzing county-level data on corruption convictions (i.e. proven cases of corruption) and official data on public procurement. The analysis is supported by case studies and interviews that outline on-the-ground experiences and aid with interpretation of findings.

One unstructured interview was conducted face to face with a former deputy and president of a county branch of a parliamentary party, who did not consent to their identity being disclosed. Questions concerned political arrangements, networks of corruption, and loyalties in local politics. Another interview was done by email with a prosecutor of the DNA, also under the condition of

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<sup>7</sup> In Romania, county authorities are elected by citizens directly every 4 years, however they do not collect taxes (unlike mayors) and are reliant upon financial transfers from the center.

anonymity. Questions concerned internal procedures and information that is not available to the public, such as how prosecutors are assigned cases or how they prioritize their files. A third interview was conducted over the phone with Codru Vrabie, an activist and trainer on good governance, involved with several civil society organizations. Questions concerned local politics and the relationship that develops between the different political actors (mayors, prefects, and the presidents of County Councils in particular). In addition to these, information was drawn from informal talks with relevant stakeholders, which are mentioned throughout the work.

### Structure of the work

The work is structured into an introduction, five chapters, and a conclusion. The introduction contains an outline of the topic of study, the main thesis and puzzle, as well as a summary of the main findings. It also presents aspects of methodology, the novelty and justification of the work, as well as a section on what the reader can expect from each chapter.

The first chapter contains a theoretical breakdown of the main concepts used and an overview of where current research in the field stands. This touches upon the issues of corruption, transparency as an anticorruption tool, as well as political organization of corruption and how to assess it.

The goal of the second chapter is to establish Romania as a deviant case worth studying. To this end, national-level data on corruption and transparency is compared across different countries around the world. Trends and findings that emerge from this data present Romania as an apparent success story and a stand-out case, particularly among post-communist countries in Europe. The chapter also introduces an observed paradox between widely used perception-based indicators and more objective measures of corruption, who paint seemingly different pictures.



The third chapter goes deeper into the apparent paradox, presenting empirical evidence of an increase in corruption red flags in public procurement and revealing the ineffectiveness of transparency measures in reducing red flags such as single bidding. These findings contrast with previous evidence of transparency's positive performance in reducing corruption, as well as with the picture of overall improvement presented in Chapter 2. The apparent paradox reveals evidence in support of the general model and the two theses outlined in this work, pointing to efforts to combat speed money, while access to public resources was awarded in a more discretionary manner. This chapter details a number of mechanisms by which corruption in public procurement in Romania occurs and goes either unsanctioned or undetected. The goal is to present an overview of corruption overall in the procurement sector in Romania, as well as to identify factors that favor corruption and mechanisms by which acts of corruption are committed.

The fourth chapter builds upon the findings of the third and begins to show evidence of cross-county differences in corruption patterns, according to political affiliation, electoral performance, and government incumbency in particular. The chapter narrows the public procurement analysis to one sector (IT purchases), establishing that the IT market is not competitive despite being a thriving sector, and revealing a model of layered and multipolar corruption. This section also presents a new type of capture, that can exist even independently of political will.

The fifth chapter brings further evidence in support of the thesis by presenting a cross-county analysis of proven corruption cases, using data on county-level indictments and convictions collected from the National Anticorruption Directorate (DNA). The analysis compares corruption uncovered regarding EU versus national funds and reveals differences in patterns across parties according to electoral performance, type of office, and government incumbency, which is consistent to the general model presented in the introduction.

## Chapter 1: Theory and literature

Two of the central phenomena that this work analyzes are corruption and transparency, so this chapter seeks to outline some of the existing definitions of both concepts, as well as discussing them in abstract and comparative terms in the Romanian context. Such a discussion is necessary prior to the empirical chapters in order to clarify how both concepts can be measured and operationalized in practice. In addition, the current chapter presents and discusses other key concepts used such as organized and disorganized corruption or decisionmakers and lower-level civil servants, and reviews current literature in the field in order to clarify where the work fits within existing scholarship.

### Defining corruption

In Rousseau's work "On the Social Contract", power is said to reside with the citizens, who entrust it to representatives via an agreement known as the social contract. As such, public power can only be legitimately exercised in the interest of the public good. To exercise public power for private gain is, therefore, by definition, a corruption of the social contract. Hence, I define corruption as **"the privatization of public power"**, or the use of public power for private gain.

This understanding differs slightly from the more established definitions of corruption as an "abuse of public office for private gain" (Kaufmann 1997; Rose-Ackerman 1999) or as "systematic abuse of authority to divert public resources meant for universal use and social welfare maximization for the benefit of particular private interests" (Mungiu-Pippidi 2015d) because it covers a broader range of deeds and removes the subjective interpretation of what constitutes an abuse. The understanding of corruption as a form of abuse for private gain implies a breach of formal rules or regulations in exchange for payment. However, regulation itself oftentimes falls prey to manipulation (Boycko, Shleifer, and Vishny 1997), even if the regulator is acting in good faith and

believes they are serving the common good. The case of privatization in post-communist Eastern-Europe contains numerous examples of policies meant to transition to free-market economy that ultimately created or consolidated oligarchs or local barons. While some of the political elite undoubtedly tried to regulate to their benefit, others genuinely believed they were serving the common good. As such, policies sometimes not only enable corruption but also encourage it. One example is the lump sum that members of the Romanian Parliament receive every month. By law, MPs can use up to half of it (around 3000 euro) for office supplies and travel in their constituency with only a self-declaration to justify their expenses. In practice, almost all MPs collect the full amount monthly, with little evidence that the money is then used for their intended purpose (Serban 2021). This is not to say that all are corrupt, but to point out that the law itself makes little effort to prevent the use of public resources for private interest.

‘Abuse’ therefore is a subjective term that is understood differently across different contexts. When is something abusive and by what standards: When it violates the law? When it goes against social norms? When it contradicts academic theory? Faced with these questions there are two possible scenarios: that the term ‘corruption’ describes substantively different phenomena across different contexts and cultures or that the phenomenon of corruption is substantively the same in all contexts but is not always perceived or manifested the same. This work assumes corruption refers to the same general phenomenon, even when describing deeds that are not perceived as corrupt and does not agree with the view that the phenomenon necessarily implies some form of abuse.

If abuse is the characteristic by which corruption is assessed, and the understanding of what constitutes abuse changes from context to context, then anything can be corrupt if some believe it to be so, and nothing is corrupt if nobody believes it to be. If public power was used in a manner

that nobody considers abusive, is it still corruption if private gain came of it? For instance, if a doctor accepts a ‘gift’ before performing a life-saving surgery, they are not using their power in an abusive manner. The doctor was performing their duty, doing what they are supposed to do, namely using their power for the common good. To refuse to do so would constitute an abuse, as would doing so after requesting a bribe, but to perform one’s duty without conditioning it on reception of a bribe is not an abuse of power even if bribe was offered and accepted. If the doctor would perform the same duty just as diligently even without the bribe, then accepting the bribe offered cannot be considered abusive, yet it can be considered corrupt, because private benefit – exceeding the compensation allowed by the social contract – did come as a result of using public power.

Such cases are clear examples of corruption, precisely because nobody knows whether the exercise of public power for the common good was conditioned or not by the ‘gift’. That uncertainty hides the potential for abuse, even if no abuse is committed in practice. In the paradigm of ethical universalism, a doctor in a public healthcare institution should not offer help conditionally and should not accept reward for their help. Private doctors may do so, and may even refuse treatment if patients are unable to pay for their services (i.e. if there is no private gain for the doctor), yet doctors in public institutions are entrusted with public power and resources, and thus have an obligation to use that power and those resources for the common good and nothing else. To accept private gain when wielding public power is to violate the social contract whence that power originates. Because public power is meant to be used in the pursuit of the common good alone, then to use public power for the common good while also accepting a bribe for doing so is to accept the encroachment of private interest in the public sphere where it need not be. For this reason, the doctor that performs their duty diligently did not abuse their position when they accepted the bribe,

but they did commit an act of corruption because they used public power for more than the public good.

Corruption, however, is not restricted to behavior that yields material benefits to an officeholder. There are many types of illicit gains beyond a direct monetary payment such as a bribe. These include appointments to office, political favors, sexual favors, influence peddling, employment via the practice of revolving doors, etc. Some scholars have pointed out that private gain can also refer to personal feeling or affinities. For example, hiring based on personal affinity rather than measurable qualifications can be seen as a form of favoritism (Dobos 2017), wherein an official prefers to appoint a less competent person to a position because they get along better with that person than with other candidates. Their gain, therefore, is not material, yet their enjoyment of good company does little (if any) service to the common good they are supposed to pursue and may in fact be to its detriment. Hiring lovers or close friends in public institutions may not be illegal, but it is frowned upon because the public good implications are evident to the general public. Such nuances make it clear that the private gain associated with corruption is not necessarily material.

The social contract does allow for some licit benefits to come with exercising public power, such as remuneration, as well as higher social standing, the respect of peers, public pension etc. These are not meant as rewards to be craved, but as compensation for one's time and for shouldering the responsibility of serving the common good. The public official performs a public service (i.e. an activity that is needed for the common good, such as saving the life of patients) and is compensated for their time and effort such that they need not worry about their well-being and can continue serving the common good. If the licit benefits of office do not serve as adequate compensation, the official is expected to renounce their office, and surrender the public power entrusted to them.

They may also protest or request extra compensation such as higher wages but must not seek nor accept further personal and informal benefits while remaining in office, as this would be in violation of the social contract.

Understanding corruption as the “privatization of public power” thus covers a wider spectrum of deeds than the previously mentioned definitions, and captures the implication that power starts off as ‘public’ (i.e. resides with the sovereign citizens) but is then ‘privatized’ (i.e. used or subverted for private gain by those entrusted with wielding it). This approach also captures the goal of corruption (i.e. the reason why people engage in corrupt acts, even if they do not perceive them as such). It thus complements views like that of Rothstein and Teorell, who focus not on what corruption is but on what the opposite of corruption is, namely quality of government, which they define as: “the impartiality of institutions that exercise government authority” (Rothstein and Teorell 2008, 1). Public power cannot be impartial if it is used for private gain.

The model proposed by Klitgaard (1988) for understanding corruption was built on the principal-agent approach extended to the study of corruption by Rose-Ackerman (1978) and assumed that the value of the bribe, minus the moral cost of collecting it, minus the probability of detection multiplied by the penalty one could expect to receive had to be greater than the sum of licit benefits such as salary or moral benefit in order for corruption to occur. This model assumed that the agent had initiated corruption by requesting bribe, which is to say that the principal (the citizen) was honest until otherwise pressured (Persson, Rothstein, and Teorell 2013; Rothstein and Varraich 2017, 113). The criticism of the principal-agent approach can be boiled-down to the assumption that the agent may be corrupt but never the principal, meaning that honesty is assumed for the citizen or the beneficiary of public service but not for the provider. Corruption, therefore, could only flow top-down, from the decisionmakers to the public.

The assumption that a non-corruptible principal always exists does not, however, hold in thoroughly corrupt settings such as states in transition or countries with systemic corruption. In such settings, corruption is better understood as a collective action problem (Persson, Rothstein, and Teorell 2013), where there is an expectation for political office holders to be corrupt, and a widespread social desire to use public power for private gain if one is elected or appointed to office. Using public power for private gain is not often perceived as corruption, nor is corruption always perceived as illegitimate. In Romania, for example, attitudes toward corruption range from a belief that everyone would do the same if given the chance, to the perception that individual mentalities play a secondary role in explaining corruption (Iuliana and Preoteasa 2008). The former mindset is exemplified by a statement of Adrian Severin, former member of the European Parliament and member of the Social Democrat Party (PSD), who was caught in the act accepting money in exchange for a vote:

*“When too many people break a law, it means that the law must be changed, we cannot change the people. We are amazed that the people are corrupt, that everyone is breaking the law. If we are all corrupt, then no one is corrupt. Corruption means deviation and deviation cannot be of the majority or unanimous”* (Nicolae 2016).

The belief that one should use every opportunity to obtain personal benefits is not popularly viewed as corruption, but as an inherent part of holding power. The core ideas of the social contract are not widely known or understood in Romania, so power is still believed to reside within the authorities. As such, those who have achieved positions of power see themselves and are perceived as somehow deserving of privileges and entitled to reap some personal benefits. It is not surprising, therefore, that institutions that emerged from the social contract are dysfunctional, and that beliefs of ‘righteous’ or ‘legitimate’ corruption are common, even among citizens who are not in public office, and who see illicit private gains as a way to counteract the unjust distribution of wealth

(Iuliana and Preoteasa 2008). The collective action approach allows for the understanding of corruption as networks, as opposed to being limited to individual actors.

### Defining transparency

In broad strokes, transparency refers to **“the degree to which information is available to outsiders that enables them to have informed voice in decisions and/or to assess the decisions made by insiders”** (Florini 2007, 5). This definition presents the potential to act upon information that is available, yet whether or not action is indeed taken based on available information is an altogether different matter.

The study of transparency is surprisingly incipient given its importance for government accountability. Civil society organizations have long argued in favor of government transparency and have served as active watchdogs over government spending, yet there are some differences of opinion regarding what transparency does and little empirical study on its effects on corruption and good government.

By itself, transparency does not seem to do much to reduce corruption (Lindstedt and Naurin 2006b). Simply having information available is assumed to act as a deterrent, yet the threat of repercussion (be it vertical through elections or horizontal through institutional controls) needs to be genuine for deterrence to be effective. Where prevention fails, transparency might also help to hold government accountable post factum by exposing corrupt deeds and shaping public opinion ahead of elections. Yet this too requires that information triggers action in the form of mobilization. There is also a question to what degree such a penalty is effective in the context of systemic corruption, where replacing one corrupt establishment with another might be the only aftermath.

Several discussions have emerged starting from the definition of transparency. Relly and Sabharwal (2009) discuss transparency as a tool for economic performance, questioning whether



increased access to information helps businesses and offers a more predictable outlook of the market, while Bauhr and Grimes (2012) discuss government transparency as a measure of government openness, whistleblower protection and likelihood of exposure (or publicity). Their work also challenges some assumptions about the impact of transparency on accountability, showing that in certain circumstances, when transparency reveals endemic corruption, the *demos* may become demobilized rather than motivated to hold politicians accountable (Bauhr and Grimes 2014). This is consistent with other findings showing evidence of a positive relationship between Freedom of Information Acts and corruption in developing countries (Escaleras, Lin, and Register 2010), and work that reveals transparency is necessary but not sufficient to reduce corruption (Kolstad and Wiig 2009).

What is required for transparency to be effective in controlling corruption is freedom of the press and media penetration (Reinikka and Svensson 2004), public engagement and competition (Thomson and Alt 2019) between parties and media outlets. More transparency has been linked to electoral policies, indicating that democracies are more transparent than non-democracies (Hollyer, Rosendorff, and Vreeland 2011), although the assumption that transparency is an intrinsic part of democracy has been challenged, notably by Grigorescu (2003) who finds that the reasons why countries pass transparency laws include diverse sources of internal and external pressures such as privatization or interactions with international organizations. An explanation for this apparent paradox might be that democracy does not directly and immediately lead to greater transparency, but it does harbor the kind of conditions mentioned prior (such as political competition), that favor adopting transparency norms. Adoption of transparency norms in non-democratic countries might be the result of potential economic benefits (Relly and Sabharwal 2009), yet whether such norms eventually nurture democratic development remains to be seen.

Other authors go as far as to argue that good governance (which includes transparency) is arguably more important for political legitimacy than democracy (Rothstein 2021), implying that democracy is not necessarily the only outcome of good governance.

The explanation of how, why and when transparency works still relies on intuition and a number of assumptions, despite efforts to disentangle it from other concepts pertaining to good government (Bauhr and Grimes 2017). As a metaphor, institutions can be compared to large houses inside which decisions are taken. If there are no windows to the outside, the public have no idea what is going on, and have no way to ensure that public power is not used for the private gain of those inside. Adding a window allows the public to see what is going on inside, yet how much this deters corrupt behavior depends on the size of the window and how much of the inside one can see through it, on how many people actually glance through the window and how frequently, as well as on how the people outside react to what they see on the inside. This metaphor mirrors Fung's (2013) idea of an *Infotopia*, where information is 1) rich, deep and available; 2) proportionate to the threat to the citizen's interest; 3) organized and accessible and 4) where social structures act upon that information. If the public does not react to corruption or abuse, then the size or even the existence of a window makes no difference, just as willingness to react fiercely to even the slightest misstep counts for little if there are no windows at all. In either extreme, there is little incentive for those on the inside to alter their behavior. As such, much of the struggle of anticorruption revolves around changing behavior by widening existing windows or creating new ones and getting as many citizens as possible to look through them routinely and take action based on what they see.

This is a double-edged sword, as changes in behavior of civil servants do not necessarily favor the public good, given that active citizens and organizations have different goals and interests, not necessarily involving good government. In *Infotopia*, transparency is useful either for development

or to react to threats, yet the beneficiaries of transparency can differ according to context, as well as their ability to push for change. In addition, Olken (2007) finds that looking through the window of transparency can change not just the behavior of those inside but of the watchers themselves. His field experiment in Indonesia found that the most effective way to minimize unaccounted for expenses in public works was top-down auditing, where local elites and interest groups could not interfere with the findings. Bottom-up monitoring was shown to be much less effective, as well as vulnerable to being influenced itself. One of the interesting findings in Olken's experiment is that the number of jobs awarded through nepotism increased in villages that were told they would be audited. The author speculates that this is a substitute form of corruption – local powerholders could not take money away from the project, so they found alternate ways to connect their network to those public resources. An alternate explanation, however, is that officials in charge of the project wanted more leverage over the workers, to ensure better compliance with rules. As such, workers would be less inclined to miss workdays or take construction material for themselves. In other words, local powerholders attempted to centralize corruption around the projects in anticipation of top-down audits, just to ensure their own protection. In places where projects were not audited but were instead monitored by the local community, local powerholders did not take such dramatic measures, as citizens were easier to deal with than institutions.

The idea that transparency serves a multitude of (even competing) agendas is not new. In the United States, the Freedom of Information Act (FOIA) began as a progressive tool to make government more egalitarian and stronger overall, yet evolved into a libertarian tool calling for a smaller government (Pozen 2018). This 'ideological drift' to the right saw transparency used to substitute other forms of regulation, leading to a kind of 'corporate capture'. By opening a window

into the workings of institutions, transparency norms also allow outside watchers to more easily figure out who to bribe (Bac 2001).

Transparency is not limited to vertical transfers of information (from institutions to citizens). Much of the daily business of a bureaucrat in Romania is still running from office to office with paper documents to obtain information from other institutions or departments within the same institution, which is not much different for ordinary citizens. For example, students in Romania are required to visit three offices (library, social services and campus clinic) to obtain signatures that they are debt-free in order to pick up their diplomas, even though this information could be centralized at university level and made available to the office releasing the documents. It is unclear why institutional channels are not developed for sharing information either with citizens or with other institutions or, indeed, with different departments within the same institution. It may be a remnant of the former regime, which insulated every institution and office to maintain control over information. It also may be the result of over-burdening the administration to the point that some processes needed to be outsourced to the citizens themselves, or to other institutions that require information. It may be that the current arrangement is maintained top-down to conceal illicit activities, or it may be that the system has remained the same owing to internal pressure from bureaucrats who might lose their position of importance as gatekeepers of information. Whatever the case, efforts to construct horizontal communication and data sharing channels have thus far failed and, as the Chapter 4 reveals, have served as a convenient excuse to invest in expensive IT services and sign lucrative contracts with client firms.

Transparency is also not limited to a preemptive or ex ante role, as gaining access to information after a corrupt deed has been committed also falls within the definition. As such, whistleblowing

is also a measure of transparency albeit an ex-post one. In practice, whistleblowing is seen as a last line of defense against corruption, alongside investigative journalism.

A particular discussion also needs to be had on the topic of ambiguity. Even when laws and procedures are in place, their clarity is crucial in preventing corruption. Any kind of absence of clarity is tantamount to an absence of transparency, and allows an avenue for discretion, as it enables people in higher-up positions to intervene and decide on a course of action as they see fit in a given context. When it is unclear, either to the public, or to the officials in charge, what needs to be done in a certain situation, or who needs to make a decision, there is an incentive for the parties involved to each seek the outcome more desirable to them or more in their interest. While ambiguity can be the unintentional result of poor policymaking, it is also possible for it to be deliberate. Strategic ambiguity (Eisenberg 2006) is a term used to describe organizational communication that deliberately avoids specifics. While this can have the advantage of flexibility, it also carries the risk of organizational paralysis, as a lack of commitment to clear goals or a clear direction might put activities on hold or trigger competition between groups that try to impose their vision within an organization. Strategic ambiguity has been studied in the context of elections (Aragonès and Neeman 2000), and the language of ambiguity has also been documented in cases of corruption in Nigeria (Dumbili and Sofadekan 2016), while strategic obfuscation has been studied in both the private sector (Gu and Wenzel 2014; Straumann 2020), and in public decision-making, where it was found that unpopular views were less likely to be expressed in public deliberation, and that opposing viewpoints were given less respect (Meade and Stasavage 2005; Steiner et al. 2005). While it makes sense for politicians to avoid concrete commitments and specific pledges, the functioning of public administration requires clear and specific procedures, with clear-cut instructions and well defined and delimited responsibilities. When it is unclear who

does what or what steps need to be followed, it becomes possible to hide corruption in plain sight. This is the case of state employees with no clear attributes or of ad hoc procedures (such as procedures made on the spot for solving unprecedented situations, as was the case in Rădăuți, discussed in Chapter 3, or special procurement procedures used during the state of emergency in 2020). A watcher through the window might not understand what is going on or might even accept discretionary power as a means to get things done if the alternative is institutional paralysis. In either case, the watcher's capacity to react to what they see through the window of transparency is reduced.

While the essence of democracy is that the voices of all citizens are heard and their opinions considered when making decisions, the essence of civil society is that their voice should count not just during elections (Habermas 1996). Civil society organizations have long argued in favor of government transparency and have served as active watchdogs over government spending, yet there seems to be no consensus regarding what transparency does and little empirical study on its effects on corruption and good government. More surprising still is that studies on the effects of civil society itself have also been underwhelming. Civil society has modest but robust impact on corruption in some countries via contestation (protests, appeals to the Ombudsman, etc.) and the representation of public interest (participating in public debates, promoting issues on the public agenda) rather than through building social capital (i.e. working with parties or politicians, mobilizing voters, etc.) or by being itself less susceptible to corruption (Grimes 2008a), yet this stands true only in democratic societies, where there is a genuine threat of losing power through elections, and in societies where there is rich associational life (Grimes 2008b; Putnam, Leonardi, and Nanetti 1993). The combination of consolidated democracy and rich associational life grants citizens the power to actively oversee the government, and to alter institutions in favor of

horizontal accountability, yet conditions like this can only be found in a few select places around the world. Most countries have to contend with deficiencies in one or both, leading to questions of what can be done to reduce corruption and improve government accountability.

Similarly to transparency, civil society cannot curb corruption by itself (Villanueva 2019), as there are limits to what organizations of people can do without government support. CSOs require not only the right to exist but also funding and tools with which to conduct politically relevant activities, which a government can deny or try to suppress. This is not to say that civil society plays no role in control of corruption. Evidence that it does is abundant (Mungiu-Pippidi 2015d; Grimes 2013), yet its success is predicated on preexisting conditions which are not yet fully understood. There is currently no homogeneous tool for assessing the level of association across countries, much like there is no consensus on the tools that accurately measure levels of corruption, yet evidence suggests that civil society needs to work in conjunction with political competition, press freedom, and government transparency in order to mitigate corruption (Grimes 2013). Of course, powerholders whose interests are at stake react to efforts of civil society, international organizations or political rivals, changing and adapting not just the rules of the game but also the mechanisms by which they can expand and control corruption networks. Whether transparency is used as a tool for such changes is explored in the following sections.

#### Transparency legislation

There are three major pieces of legislation that regulate transparency in Romania: L544/2001, which is a Freedom of Information Act (FOIA), L52/2003 which regulates transparency of the decision-making process, and L571/2004 which is a whistleblower protection act (WPA).

L544/2001 requires all public institutions to communicate certain types of information by default:

- Norms regulating their organization and functioning;

- Their organization chart, department attributes, office hours and public hearing hours;
- Names of the leadership and of the official in charge of releasing public information;
- Contact details of the institution;
- Financial details including budget and balance;
- Programs and strategies of the institution;
- A list of public interest documents;
- A list of documents issued or handled by the institution;
- Ways of contesting decisions of the public authority in case of harm pertaining to the right to access public information.

The law also requires public bodies to publish an activity report at least once a year and obliges institutions to reply to requests for information in 10 days or 30 days for long of complex answers. In practice, the 10-day rule is seldom respected, and public bodies often take 30 days or more to reply to even basic requests such as a CV of the head of the institution. The law also allows institutions to charge a fee to cover making copies of documents, and this is sometimes used to request large amounts per page, discouraging the solicitor of information.

In its initial form, the law applied to any public body that made use of public money and operated on Romanian territory, though this was amended in 2016 to include a more detailed list of public as well as private bodies that offered public utilities or services. It was also amended in 2007 to include privatization contracts, as initiators of the respective bill argued that these oftentimes contained provisions detrimental to the state.



Law 571/2004 is one of the oldest whistleblower protection acts in Eastern-Europe, yet its provisions still only apply to the public sector. Whistleblowers from the private sphere may benefit from witness protection or other legal provisions, but existing labor laws contain no regulation concerning whistleblowers specifically. Witness protection itself is prone to infiltration by secret services and suffers from a combination of lax legislation, lack of data, and unclear procedures, and it experienced further stress in 2018, as the Government adopted changes to the Criminal Procedure Code, which, among other things, no longer admitted third party recordings as evidence in criminal cases. This would make it harder for civil servants for example to provide recorded evidence of corruption or other breaches of conduct that they were not directly involved in. These changes, and many others, were declared unconstitutional at the end of 2018.

In practice, there are few mechanisms for the protection of whistleblowers, and little understanding of what they are. One common confusion is between whistleblowers and ethics councilors, meaning that civil servants believe that a whistleblower is a role assigned to a specific employee, whose job then becomes to monitor integrity and signal potential breaches of conduct. It is not clear, therefore, that anyone can be a whistleblower if they witness an integrity breach. Moreover, mechanisms for reporting breaches of conduct do not protect the whistleblower's identity. One example is the 'Alexandru Ioan Cuza' police academy in Bucharest, who in 2016 required whistleblowers to report any potential breach of conduct by submitting a written notice containing their name and personal details<sup>8</sup>. This is a common practice in the Romanian public sector, as anonymous complaints are usually dismissed outright, and fear of false accusations is widespread.

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<sup>8</sup> This was revealed to me during an on-site visit as part of the "Coalition for Clean Universities" project, whose goal was to assess integrity in higher education. The report containing the main findings can be accessed at: <http://www.romaniacurata.ro/wp-content/uploads/2016/02/Raport.CUC-III-Transparenta.pdf>

L52/2003 stipulates that any bill proposed by authorities must be subjected to public debate before being enacted. Bills concerning issues such as national security or that may affect fair competition on the market, etc. are exempt from this process. Authorities must therefore provide information on what will be debated and how citizens can participate, as well as publish the minutes or recordings of such meetings.

While legislation on transparency has produced some changes in how public administration functions, it has not suffered significant changes since initial adoption. Some of the drawbacks include limited and discretionary accountability of decisionmakers and the lack of sanctions for breaching the law. For example, the FOIA only mentions that the civil servant in charge of responding to information requests can face disciplinary action for failure to answer. There is no requirement at all for the answer offered to be relevant to the query, and the head of the institution can decide not to take disciplinary action if they so choose. In essence, legislation on transparency has ‘no teeth’, the only course of action possible in case of non-compliance being to take the case to court, which few citizens are willing to do. Even in cases where institutions are brought to court, the worst they can expect is being ordered to respond to FOIA requests. There is, at the time of writing this work, no precedent of fines or other penalties applied to the head of an institution for failure to comply with FOIA. In addition, legal precedent is not binding, so even if a justice decides to issue a fine for non-compliance with transparency legislation, there is no guarantee that others would do the same. As such, the problem with transparency norms in Romania is that the legal framework is weak, and implementation is even weaker.

#### [Organized versus disorganized corruption](#)

Some authors (Waller, Verdier, and Gardner 2002) found that there is method and structure to administrative corruption, a sign that it did not happen by chance or in spite of the leadership’s

best efforts to combat it. Among former USSR republics, for example, corruption seems concentrated at the top, with autocrats that set the level of bribe that civil servants can extract and set up mechanisms to monitor and sanction excess. Where oversight is absent, civil servants can set their own prices. While the former system, which they label as ‘centralized’, implies that bureaucrats have to collect bribes to forward to the autocrat’s network even if they do not want to, it does allow the economic sector to develop more than the later system, in which the bureaucrats collect a share for themselves in addition to what they collect for the autocrat.

Disorganized or decentralized corruption is defined as “acts of bribery outside the core administration undertaken by individuals in public enterprises or government contractors”(Von Maravic 2007). It is characterized by little predictability in the sense that one knows they are expected to pay bribe, but it is unclear how much or to whom. It is also likely that several bribes will be requested for the same service, without any guarantee that the service will be performed (Shleifer and Vishny 1993; Rochlitz, Kazun, and Yakovlev 2020).

Another characteristic of disorganized corruption is little accountability. Civil servants collect bribes because they can, which is a sign that neither the leadership of an institution nor other institutions hold them accountable. If civil servants of any rank can collect bribes at leisure, it is unlikely that anyone would denounce anyone else, as it would mean also exposing themselves. Holding someone accountable also has little chance of changing anything in the way institutions work, given the individual character of corruption. Punishing one civil servant that is not connected to a network of corruption is like pouring a drop of water on a raging fire.

One key question that needs to be addressed therefore is how corruption ‘flows’. Is it top-down, from political leaders who enforce certain behaviors on society, or does it rise from the ranks of society to leave a mark on political practice? Magyar and Madlovics (2020a) offer a detailed

typology of the corruption systems that can be found in Eastern-Europe, distinguishing between top-down and bottom-up systems as well as voluntary versus coercive. Their analysis presents six ideal-types (Table 1.)

**Table 1. – Types of state corruption**

|                             |                         |                        |                              |
|-----------------------------|-------------------------|------------------------|------------------------------|
| <b>Voluntary corruption</b> | Free-market corruption  | Cronyism               | State organization collusion |
| <b>Coercive corruption</b>  | Bottom-up state capture | Top-down state capture | Criminal state               |

*Source: Magyar and Madlovics (2020)*

Broadly speaking, these types can be fitted on a spectrum according to the size and reach of the corruption network, from the ‘free-market’ or fully disorganized system in which corruption is individual and unconnected to other corruption deeds or to a greater political network, all the way to a fully organized system, which Magyar and Madlovics call a ‘criminal state’, in which the whole public sector is part of the same network of corruption seeking to extract rents from both private actors and from public resources.

In systems with ‘centralized’ or politically organized corruption, bribes that are not sanctioned by authorities are punished, whereas in ‘decentralized’ systems or systems where corruption is not politically organized, bribes are tolerated even if they do not make their way to political leaders (for example, petty bribes collected by doctors or teachers). In corruption systems that are not politically organized, powerholders collect their own bribes and favors and do not concern themselves with what lower-level civil servants are doing. They neither take measures to stop the civil servants from committing corrupt deeds nor try to bring them into their network, although they might try to insulate themselves from accountability and ensure that their own deeds are not investigated. As such, when there is no political organization of corruption (or when corruption is ‘disorganized’) a sort of “bidding war” can emerge, if lower-level civil servants are not required to collect bribes for the regime but decide to do so anyway and forward kickbacks in order to

secure favors (such as promotion or protection) from decisionmakers. Such systems might, therefore, exist not because of state incapacity to reform them (by, for example, organizing and centralizing corruption around a network or by imposing ethical universalism) but because political leaders are fine with receiving the extra kickbacks, even if they have no intention to create an organized corruption network.

The ideal types presented earlier are not static in practice, but vary over time and according to area, administrative unit, political affiliation and other factors such as **autonomy** or **power** of the actors involved. Autonomy refers to the capacity of an official to decide whether or not to engage in corrupt action without intervention or coercion from another level. In fully centralized corruption systems, there is only one autonomous actor, at the very top of the corrupt network, whereas in fully decentralized systems, every official is autonomous.

Power, on the other hand, refers to the capacity and willingness of an official to bring others into a network of corruption. As such, autonomy affects the chances that an official would choose to become a demander of corruption, while power refers to their capacity to turn others into suppliers.

The logic of politically organized corruption is therefore that **decisionmakers have autonomy to initiate corruption and power to expand their corruption network**, that stems in part from the ability to denounce or protect lower ranking officials or political rivals. Decisionmakers such as the governing party have an interest in keeping civil servants loyal while persecuting members of the opposition, acting as gatekeepers when it comes to information that can be used to prosecute someone for corrupt deeds. As such, in counties where the incumbent is from a governing party, there is more incentive to prosecute lower-lever civil servants while shielding decisionmakers, whereas in counties where the incumbent is from an opposition party, the incentive is to prosecute

the decisionmakers, who are rivals of the incumbents. This model is analyzed in greater detail in Chapter 5.

For the sake of clarity, decisionmakers are considered to be all elected or appointed positions with decision-making power within a state. These include elected officials such as mayors, county council presidents, local and county council members, members of Parliament etc., but also politically appointed offices such as members of government, heads of departments, agency directors, chief-accountants, school principals etc., as well as justices (whose rulings have power over institutions and the general public) and higher ranks within the military and police forces (ranks including and above lieutenant).

It is worth noting that a system of corruption can be fully politically organized without necessarily being fully centralized. This can occur when all corruption acts are directed by political actors, but these actors answer to different political leaders (barons or oligarchs<sup>9</sup>). Therefore, in such a scenario, there are multiple networks of corruption operating at the same time, and even competing for resources. These networks ensure no room for other autonomous actors but function independently of one another<sup>10</sup>. A typology of corruption based on these criteria can be seen in the table below:

**Table 2: Typologies of corruption based on level of power and number of autonomous actors**

|                               | <i>High power</i>          | <i>Low power</i>              |
|-------------------------------|----------------------------|-------------------------------|
| <i>Few autonomous actors</i>  | <b>Criminal state</b>      | <b>Ethical state</b>          |
| <i>Many autonomous actors</i> | <b>Barons or oligarchs</b> | <b>Free market corruption</b> |

<sup>9</sup> There is no clear distinction between oligarchs and local barons, although one can argue that the latter are necessarily 'within' the system, meaning that they hold political office and control a certain administrative unit, whereas the former need not be a part of the public sector at all but rather exercise political influence from an outside position of wealth and power, such as a business magnate. In practice, wealth and political power often reinforce each other.

<sup>10</sup> The fact that networks can be politically organized fully without also being fully centralized is the reason the two terms are used distinctly in this work. Their meaning is not always interchangeable.

We see that the desirable state is to have few actors with the autonomy to decide on becoming demanders of corruption and with little capacity to bring others into a network (the upper right cell). This is the ideal of an ethical state, in which corruption is individual and uncommon. Worth noting is that power is a double-edged sword. Positions of power and powerful individuals can impose their will upon others both in a positive sense (i.e. pushing the political agenda they were elected for) and in a negative sense (i.e. politically organizing corruption). For this reason, checks and balances are crucial, as they ensure that decisionmakers do not use their power in a negative way.

Measures such as transparency and anticorruption policies reduce the autonomy of public officials by increasing the opportunity cost of corruption to the point that it no longer seems worth it. They also increase the power needed to bring new members to a corrupt network. An official whose autonomy has been reduced will therefore be less likely to become a demander of corruption but might still agree to become a supplier for a powerful figure such as the head of an institution. Democratic practice thus contributes to lowering autonomy for corruption, as elections and the desire to remain in office disincentivize corrupt behavior. Moreover, elections and power turnover can change the networks that have access to public resources. As such, new corruption networks have to be set up after elections and around the new leadership, and there is also a chance that new leaders might not be corrupt to the same extent.

Where power is high, such as in autocratic systems where there is no check on the power of the top leadership, corruption can become fully politically organized, as in the case of a criminal state. However, in contexts where high power is not concentrated at the very top (such as in countries with executive instability), and there are no mechanisms to check the power of lower-levels of the administration, then it is possible for local barons to emerge as the main figures organizing

corruption networks. In a twist from Magyar and Madlovics' ideal types, local barons enable corruption to flow simultaneously from the baron to the lower-levels and from the baron upward toward the central government, making barons the key figures in political corruption. This, I argue, is the case in Romania, where executive instability and weak checks on the power of decisionmakers have allowed local barons to emerge and consolidate corruption networks, particularly in counties where power turnover is rare.

Where power is low, corruption can be endemic if there are no mechanisms to reduce the autonomy of officials. Note that 'low' power means that decisionmakers either lack the leverage to expand their network of corruption or lack the will to do so.

#### Decisionmakers versus lower-level civil servants

One of the main distinctions made in this work is between decisionmakers and lower-level civil servants. Decisionmakers are considered to be all high-level offices and positions with decision-making power within an institution. These include elected officials such as mayors, county council presidents, local and county council members, members of Parliament etc., but also politically appointed offices such as members of government, heads of departments, agency directors, chief-accountants, school principals etc., as well as justices (whose rulings have power over institutions) and higher ranks within the military and police forces (ranks including and above lieutenant). Lower-level offices include positions without decision-making power within the institution, such as customs workers, police officers and agents, prosecutors, accountants, consultants and experts, clerks, lower-level managers, doctors and nurses, teachers etc., as well as reservists irrespective of rank. In Romania, most decisionmakers are appointed politically, so they are almost all part of some political networks, and they retain a monopoly over allocation of public resources and spending of public funds. Lower-level offices, however, are not necessarily politically appointed



and have no authority over public resources. As such, corruption in such offices typically involves speed money, whereas access money is reserved only for decisionmakers. Finding regional differences in what type of offices are prosecuted can therefore be indicative of different priorities or mechanisms to protect network members.

The framework in Table 2 can be used to explain phenomena such as the influence of local barons in Romania, who can impose their will even on central authorities, the politicization of institutions as a means to increase power of corruption demanders, as well as the use of transparency and anticorruption as tools for increasing political organization of corruption.

In this context, it is unclear what the fate of honest civil servants is – whether they are sidelined, coerced into joining the network (even through denouncement that did not lead to indictments) or are left alone. As Magyar and Madlovics detail, joining a corrupt network is either voluntary or coercive. In case of voluntary association, incentives to join can be the possibility of promotion to higher office or even the possibility to collect bribe (which might not be allowed to civil servants acting alone). In this case, civil servants who are honest are left alone to do their job, but avenues for promotion are closed to them. They are allowed to remain in the system so long as they stay silent about the misdoings of others, but advancing their career requires joining the corruption network and contributing kickbacks. Voluntary association means that corrupt civil servants are given a choice between joining the network and providing kickbacks to the bosses or the party or ceasing individual corruption altogether.

In case of coercive association, civil servants are brought into a network against their will. This can be done through blackmail or intimidation, as non-voluntary participation carries the risk of defection and denouncement. One model not captured by the six ideal types of Magyar and Madlovics is that of selective cooperation, wherein civil servants cannot opt into a corruption

networks but must be ‘recruited’ by someone already on the inside. Having a vast network means having to share more of the spoils, and increasing the chances of whistleblowers, so decisionmakers might be selective and permit entry only to those who they feel can contribute. Controlling a small number of key positions or areas, such as public procurement, is sufficient to capture vast amounts of public resources. Civil servants not directly involved with the respective processes might not even have access to information and be unaware of the corruption taking places, thus reducing the risk of whistleblowing. In this scenario, there is no choice given to civil servants. They are either approached and recruited or compelled into honesty by the threat of prosecutors. Other scenarios might also be found, as these are likely to differ from one institution to another. In those mentioned above, individual corruption may or may not concern the leadership, although reducing individual corruption such as petty bribes creates the illusion of less corruption overall. Behind the scenes though, corruption might simply get more organized around political figures.

The soliciting and receiving of bribes, even in small, recurrent amounts, is a profitable endeavor if allowed, so the incentive to collect bribes exists even for low-level positions in public administration. Higher positions incur higher bribes, as well as the possibility to exert control over bribes collected at lower-levels. Disorganized corruption implies that the decision to collect bribes, as well as the amount collected, the share that lower-levels can keep, and the destination of bribes collected is taken by the lower-level civil servants themselves. Higher-ups may expect a share of the revenue, either for themselves or for the party, but do not enforce strict or unitary rules, and do not control who collects what. Their role is to allow, tolerate, and overlook the dealings of lower-levels in exchange for a cut or for silence regarding their own corruption.

Multiple poles of power (such as oligarchs or “local barons”) may enforce their own rules so long as they are not accountable to the top. As such, corruption in Vrancea county might be different from corruption in Teleorman, depending on the rules enforced by the local strong man. Where any such rules are absent, low-level bureaucrats might have discretionary power to collect and set the price of bribes, a share of which may or may not be forwarded to political actors (parties, officeholders). Therefore, the degree of political organization falls on a spectrum from fully organized (when all decisions regarding corruption are taken at the top), or the ‘criminal state’ described by Magyar and Madlovics, to fully disorganized (when each level has full discretion), or the so-called ‘free-market’ corruption. Corruption in Romania (and in most other countries around the world) thus falls somewhere in between these two extremes. This work brings evidence that Romanian corruption is organized at county level, which in turn generates differences in corruption patterns across time, counties, and parties in power.

By and large, politically organized corruption requires discretionary power of decisionmakers over lower-level civil servants, little accountability, and autonomy of decisionmakers to engage in corruption. Therefore, evidence of more politically organized corruption over time includes more proven cases of organized crime, more policies holding rank and file bureaucrats accountable while excluding or insulating decisionmakers from the same, political bias in anticorruption efforts, and other developments that cannot be otherwise explained. As such, the degree of organization is tested in this work by analyzing the impact of policies on decision-making power, discretion and accountability of office holders versus lower-level civil servants over time, as well as the mechanisms by which corruption networks operate. This temporal analysis uses data from the DNA’s press releases and annual reports (from 2010 to 2017), as well as public procurement

data (from 2007 to 2020). Changes based on political affiliation are identified according to variations in patterns observed after elections and power turnover.

### Systematic versus systemic corruption

It may be worth debating how the classification of corruption as organized or disorganized relates to its degree of systematization. Something is ‘systematic’ if it is done according to a system, while ‘systemic’ is something that applies to the system itself. Therefore, politically organized corruption is both systematic and systemic, although one can argue that the system itself might not, at least in theory, turn corruption into a goal and spin into a vicious cycle, as one would expect in case of systemic corruption.

Disorganized corruption, however, is more chaotic than systematic, as there is by definition no coordination between corrupt actors or agreement on amounts, shares or number of payments. As such, disorganized corruption might be neither systematic nor systemic, but merely endemic or widespread. Systemic corruption, on the other hand, implies that laws, rules and informal practices are changed to enable or allow corrupt deeds, that advancement to office is conditioned on complicity, and that a vicious cycle forms by which corruption breeds more corruption, as the system tries to maintain continuity. In other words, systemic corruption implies that the rules work for corruption whereas disorganized corruption can also occur in the absence of rules. As a result, the degree of systematization (from isolated or individual to systemic) and degree of political organization (from fully organized to disorganized) refer to different measurements of corruption that are not necessarily linked by causality. When corruption is fully disorganized, each civil servant is free of control from higher-ups and has full discretion over how much they collect and what they do with the benefits. Full organization means that no corruption happens without knowledge and approval from the top, and that everyone in the system is compliant with the rules.

Whether honest civil servants are coopted into the system, tolerated or pushed out in any scenario is a separate discussion.

In cases of disorganized or partially organized corruption (i.e. when there are no rules or when rules do not stem from the very top but from local strongmen), the top either 1. cannot or 2. will not control corruption. The question here is whether it wants to do so but lacks capacity to succeed or whether it allows such discretion to exist in order to reap some benefits.

1. Where the state is weak or institutions are not well consolidated, corruption can happen even without government will. Heads of departments in hospitals or universities in Romania for example have ample discretionary powers, either as a result of how institutional autonomy is framed or because their expertise is hard to replace. As such, they constitute a type of elite that has survived and maintained privileges under every government since 1990. Removing them from office would lead to a gap of expertise that existing human capital could not easily fill, at least not without potentially large political costs, whereas curbing privileges would entail legal and potentially constitutional battles over encroachment on institutional autonomy.

2. While institutions themselves can, by design or through real-world practice, harbor and generate corrupt practices, the drivers of political corruption are often political parties, particularly in post-communist Europe, where party capture preceded and was a stepping stone to state capture (Klíma 2020). These make and push for rules that either enable or contain the use of public power for private gain, as they are often the direct beneficiaries of kickbacks. Highly politicized public sectors mean that political parties have more direct influence over the provision of public services and goods, and thus more direct access to public resources. As such, the type of corruption and its degree of political organization might vary with the degree of party centralization. Parties with multiple poles of power such as local barons might be more decentralized than those dominated

by one strong figure at the top. Local barons or oligarchs have an interest in preserving and expanding their privileges, reducing their accountability to higher levels or to voters, while consolidating their hold on public resources and over lower-levels of administration. As a result, the degree of organization of corruption depends not only on the legislative and institutional framework of a country, but also on the results of elections, the centralization of parties and the intra-party competition for power. It is possible therefore for different areas to experience more or less politically organized corruption, according to the party in power and the rules at play. The last two chapters of this work go more in depth into regional differences based on political affiliation.

### Corruption and reelection

The present work argues that corruption networks become more consolidated in places where power turnovers are less frequent. A core feature of democracy is that powerholders are, in theory, held accountable in elections (Przeworski, Stokes, and Manin 1999). Voters can thus sanction misdealing and incentivize competition among parties and candidates which, much like in the case of economically free markets, is expected to result in the best outcomes over the long run. In practice, incumbents are not always sanctioned for corrupt dealings (Vaishnav 2017; Pereira, Melo, and Figueiredo 2009; Chong et al. 2015). This occurs either because voters lack information about the corrupt dealings (Costas-Pérez, Solé-Ollé, and Sorribas-Navarro 2012; Winters and Weitz-Shapiro 2013), because there is an absence of institutional opportunities to voice complaints about corruption (Ferraz and Finan 2008) or because voters tolerate corruption if the politicians in question have shown ability to deliver policy outcomes that the public considers more important, such as economic performance (Zechmeister and Zizumbo-Colunga 2013) or lower taxes and clientelist exchanges (Konstantinidis and Xezonakis 2013). Recent studies indicate that political leaders in some areas can extract up to 20% of public procurement in rents without negative effects to their reelection chances, although beyond this point they do begin to suffer (Vuković 2020). In

less developed countries, chances for reelection are not significantly harmed by corruption, particularly in the absence of free press (Kalulu 2014).

In a fully disorganized system, citizens encounter corruption at every level, and there is little predictability with regard to how much they are expected to pay, how many payments are needed and whether they will receive the public good or service at all. As such, fully decentralized systems can harm not only the economy (Waller, Verdier, and Gardner 2002), but also irritate citizens directly given popular discontent at visible and endemic corruption affecting them first hand.

In politically organized systems, where corruption is controlled by the top echelon, there is no need to pay multiple bribes to multiple people for the same service, and the framework of informal payments is itself well known and well developed. As such, direct exposure to corruption is lessened or less frustrating. While data on degree of political organization and reelection chances is missing, events in countries like Russia seem to point toward popular resistance to disorganization of corruption (Rochlitz, Kazun, and Yakovlev 2020), particularly after years of improved economic performance following efforts and consensus to organize. In Russia, the apparent break-up of the political consensus did not rollback political organization of corruption entirely. Rather, local strongmen wanted to revert to a more autonomous state, maintaining tight control over lower-levels while reducing accountability to the top.

It seems, therefore, that the electoral costs of corruption are greater in disorganized systems as opposed to those where corruption is politically organized. As such, corrupt powerholders that seek reelection have extra incentive to reduce the autonomy for corruption of civil servants by increasing the degree to which corruption is politically organized.

### From disorganized to organized corruption

Changing from disorganized corruption to a more politically organized system can be done using a variety of formal and informal tools. Formal tools include norms and laws that increase accountability to higher levels such as institutional leadership or elected officials. Control of wages or employment in the administration is also a way to ensure compliance, as is tighter enforcement of rules. By and large, the same tools that can be used to consolidate the center's control over administration (state centralization) can also be used to increase political organization of corruption, with the added mention that administrative centralization need not require politicization of offices, whereas political organization does. As such, these tools can be complemented by informal means such as nepotism or employing trusted friends or family members in institutions or politicization of institutions or the bureaucracy. Politicization adds an extra layer of accountability for office-holders – to the party rather than to other institutions or to citizens directly. As such, officeholders can be sanctioned politically according to rules different from formally established legal norms. Other informal tools include discretionary decision-making power especially when it comes to enforcement of rules. Choosing when to enforce the rules and when to overlook breaches of conduct is a way to ensure that underlings are incentivized to be on the leadership's good side.

Politically organized corruption implies 1) consolidating top-level control over lower-levels of the civil service (including through politicization of such offices) and 2) decreased accountability and/or increased discretion at the top. The first component is arguably essential in any centralized system, as it allows greater political control over the bureaucracy, enabling parties to push their political programs and implement policies. All three components that make up the Weberian ideal (meritocratic appointments, depoliticized wages, and politically insulated dismissals) are therefore not found in practice in any country, as parties and governments try to retain some leverage over



civil servants and therefore maintain political control over at least one of the three components. Not doing so would increase incentives for disorganized corruption, as low-level civil servants could not be held politically accountable. This is especially risky in systems where legal accountability is weak.

Working with the assumptions that 1. corruption does not “appear” but is rather the norm in society, permeating any form of government (Mungiu-Pippidi 2015d), and that 2. greater control of corruption increases development and the quality and availability of public goods and services, the question appears of how powerholders seek to consolidate control of corruption. One option for controlling corruption among civil servants is by increasing legal accountability, another is by increasing political accountability.

Legal accountability implies tighter regulation, crackdowns on institutional corruption, prosecution (in some cases a specialized prosecution agency, such as the DNA in Romania), and other measures to increase the likelihood of being caught and sanctioned for corrupt behavior. While the prospects of consolidating independent judiciaries appealed to organizations such as the European Union, the limitations of a punitive only approach became apparent in countries like Romania, where backlash against prosecution for corruption took the form of laws meant to decriminalize certain deeds, and suspicions of politically motivated investigations still exist (Mungiu-Pippidi 2018).

Legal accountability, in the theoretical sense, applies across the board, meaning that when the judiciary is independent and not itself susceptible to corruption, the odds of getting caught are greater if one is part of a network than if one is acting alone because there is always a risk of defectors denouncing other members of the network. Assuming equal odds of being caught, tried and convicted for a corrupt act irrespective of position within the state apparatus, the deterrent

effect of prosecution (if any) should increase with the degree of political organization and the size of corrupt networks. As such, a battle to ensure that the justice system is not independent can ensue, as it did in Romania, as corruption networks try to shield themselves from legal accountability.

Local strongmen or heads of institutions might fully control corruption at lower-levels, yet their loyalty might not be toward the same entity. A mayor might have a tight grip on the network within their institution but might find that county authorities or the government are hostile to them. Using the threat of prosecution to rally networks around the same party or leader results in corruption becoming politically organized, in addition to weakening rival political parties by diverting resources away from them. As will be seen in later chapters, the battle for control over local administration, as well as the battle against legal accountability shaped the political landscape of Romania in the last decade. Both phenomena can be understood in the framework of political organization of corruption. What is important to note here is that there is not necessarily one single corrupt network in a given country. Rather, multiple such networks can exist and compete for resources, each with distinct features and modes of organization. Fully organized corruption implies that all such networks converge, at some point, into one, yet such convergence is not necessary, which is why there are few examples of ‘criminal states’.

Holding civil servants accountable only toward the law is less effective for controlling corruption in countries where the judiciary is not fully independent, where it is itself vulnerable to corruption or where legislation or judicial practice are not clear – this latter situation potentially leading to institutional paralysis, as has been the case in Romania. In systems where corruption is still the norm, there is less incentive for increasing legal accountability – as this often requires extensive and difficult reforms to consolidate institutions and would also hold the powerholders themselves

accountable. A swifter and more convenient solution is, thus, political accountability, wherein bureaucrats answer primarily to politicians or parties rather than to justice.

Political accountability can be used either as a means to combat and reduce overall corruption, or as a means to organize it politically and reap private benefits. The two are not mutually exclusive and depend in large part on the objectives of the powerholders. Even those driven by good intentions (i.e. delivery of good public service) might falsely believe that tolerating a certain amount of corruption helps the institution function (Méon and Sekkat 2005). Increasing political accountability of the civil service creates leverage by tying one or more Weberian components to political will. In this context, it is possible for transparency norms to become a tool for political accountability of lower-level civil servants.

#### Speed money versus access to resources

Using Ang Yuen Yuen's concept of "corruption unbundling" (Ang 2020) and her distinction between speed money and access money, we begin to unravel the mystery of Romania's apparent anticorruption success. As previously mentioned, speed money refers to corruption (usually in the form of bribes) that reduces waiting times for public service or removes administrative hurdles, whereas access money refers to rewards (such as kickbacks) given to political decisionmakers in return for access to public resources and privileges such as public contracts. Access to public resources should, in theory, be closely regulated to prevent discretionary allocation to political clients. In practice, however, regulation can suffer from loopholes, grey-areas, and faulty implementation, meaning that resources which should have been granted on a competitive basis in return for service to the public interest are captured and directed to clients or patronal networks. In China, the promise of access to government stimulants was the driver of competition between provinces, as well as within provinces (Hillman 2014).

In the autocratic model described by Ang in China, there is a ‘profit-sharing’ scheme, which ensures that all public officials are incentivized to perform their duties diligently and has the added benefit of discouraging acts of individual corruption and speed money in general. Civil servants are also aware that the long-term benefits of development outweigh the short-term benefits of extorting resources through fines and other discretionary means. Ang explains that because the vast majority of China’s 50 million civil servants cannot hope for promotion to the highest positions of power, they focus on performing well at the level they are, knowing that they will still be there to reap the benefits years later. Decisionmakers, in turn, profit from development not just by increasing the value of bribes they receive but also use their success to further their political ambitions. Thus, profit-sharing, combined with government incentives to develop local economies and the autocratic nature of the regime fostered a model of “development at all costs”, with little or no respect for private property. Corruption still occurs, but mostly as high-level transactions between decisionmakers and economic actors, typically involving access to resources such as public contracts. Such transactions are also permitted or encouraged by the political leadership, given that patronage was the only robust predictor of when a high ranking official (a Party secretary) would be tried and convicted for corruption according to Ang’s analysis. The model thus described in China resembles the ideal type of a ‘criminal state’ (Magyar and Madlovics 2020a, 104).

In Romania, stimulants such as the profit-sharing scheme do not exist, since money is awarded based on political allegiance and personal connections rather than development performance. The democratic context ensures political competition as well as rotation of elites, so the only performance that matters for allocation of funds is electoral. Competition is not between provinces

but between parties for control of counties and resources, as well as between elites for access to higher positions that come with discretionary control over more resources.

The model of corruption in Romania illustrates similar relationships to those Ang describes in China yet differs in one crucial aspect – Romania is a democracy, meaning that elites and powerholders rotate. This does not break the status quo of state capture but changes who the captors are, leading to what has been described as “competitive particularism” (Mungiu-Pippidi 2015d), wherein elites and their clients compete for access to public resources. In the model presented, anticorruption policies mostly target speed money (which typically involves lower-level civil servants and citizens) while access to resources is largely insulated from scrutiny. Only European funds are subjected to effective oversight due to involvement of European Union institutions. The result is that measurements based on perception of corruption show significant improvement because citizens or businesses experience less corruption directly (i.e. they are required to pay fewer bribes), even while clientelism and state capture thrive. The process of establishing organized corruption networks to replace either endemic corruption or previously existing networks can be described as political organization of corruption because the process of using public power for private gain is guided or decided politically for the benefit of powerholders and their clients, while those outside of the network face much more scrutiny.

This work argues that corruption in Romania has become more politically organized over time in the sense that petty corruption involving small bribes to the doctor, to police agents or to teachers has been targeted by policy (banning the collection of “school funds” for example or a noticeable crackdown on bribes paid to traffic police), reducing the autonomy of lower-level civil servants, yet no significant policy has been enacted to prevent grand corruption or curb access money or the corrupt allocation of public resources, meaning that autonomy for corruption among

decisionmakers has remained high. Given the severe shortages that the school or the health system face, one effect of the crackdown on petty bribes is increased dependence of schools and hospitals on public funding and, implicitly, on the politicians who control access to it, increasing their power.

Politically organized corruption implies that decision-makers, much like in the study by Waller et al., hold the monopoly on deciding what is siphoned out of the budget under their control. Those who act with approval from the decisionmakers are protected, whereas others are denounced to the prosecution. Whistleblowing or even refusal to comply carries negative consequences for the civil servant in question. As such, powerholders use a variety of techniques to avoid drawing attention to their practices. These involve reduced transparency of tenders and of spending in general, rewarding silence and complicity, threats or clientelism to ensure that only loyal people work in the administration, etc. Powerholders also try to insulate themselves from legal and political repercussions, while at the same time consolidating their power over subordinates, thus making civil servants more accountable and less autonomous.

In Romania, the judicial battle against corruption has raged for many years but it is unclear how genuinely this was an attempt to reduce the use of public power for private gain or an attempt to protect those in power and prosecute political opponents. Perhaps the clearest example of government using its power to protect its political clients was the infamous Emergency Ordinance 13 (OUG 13), issued by the Government in 2017. Passed during the night of January 31<sup>st</sup>, the ordinance removed negligence in public office as a criminal offence, decriminalized refusal to denounce a close relative, and set a minimum cap on damages that can be incurred as a result of corruption before a case is considered a criminal offence. The last point in particular meant that cases of a civil servant embezzling less than 200.000 lei (~40.000 euro) would have to be handled

by a civil rather than a criminal court. In practice, this would mean that an institution rather than a prosecutor would have to take civil servants to court. If, however, the head of an institution was behind the embezzlement, they would be required to open a case against themselves. Needless to say, there are abundant reports of local authorities that do not go to court to recover losses, even if the head of the institution is not directly involved, as was the case in Botoșani (Duță 2017), Buzău, Horia commune in Neamț County (IJC 2016), Vrancea County (Vrînceanu 2015) and many others. Being an emergency ordinance, the bill came into effect immediately, prior to receiving a vote in Parliament.

In the face of protests and public outcry, various governments since 2016 have tried using a narrative in which prosecution agencies such as the DNA are not, in fact, independent, but act according to orders received from the President, who, in turn, answers to Brussels or Washington. The grain of truth behind this rhetoric is that prosecutors in Romania, at the time, enjoyed ample discretionary power over who they could detain and investigate, with little negative repercussions in case of abuse. Legislation regarding abuse of office was ambiguous enough that even honest mistakes could lead to arrest. Therefore, it was possible for a prosecutor to open an investigation against an honest officeholder for political gains, to settle a score or as a favor to a third party, be it national or foreign. However, rather than attempting to insulate the prosecution and the judiciary in general from outside influence, the reaction of the government has been to increase its influence over both, as well as to decriminalize some of the acts that holders of higher offices were accused of, and to denounce or outlaw some of the means by which evidence against them was collected.

An example is the establishment, in October 2018, of a prosecution office specifically for magistrates (commonly known as the “Special Section”). Prior to this, magistrates were prosecuted by the DNA following a notice of approval from the Superior Council of the Magistracy (CSM).

Establishment of the Special Section was criticized both by the European Commission and the Venice Commission (Venice Commission 2018) as an instrument for political meddling in the judiciary, but calls for disbanding it have thus far failed<sup>11</sup>.

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<sup>11</sup> In June 2020, a bill for disbanding the Section failed to gain support in Parliament, also following a negative notice from the CSM.



## Chapter 2: Global trends and case selection

This chapter presents arguments for the study of Romania as a deviant case in terms of improvements in the field of corruption and transparency. The main datasets used to make this assessment are presented, along with some global and regional patterns that outline Romania as a positive performer. This performance is contrasted with other indicators in Chapter 3 to form a paradox that the rest of the work seeks to explain.

### Description of the datasets

#### Open Budget Index

The Open Budget Index is a dataset compiled using data gathered through the Open Budget Survey (OBS), which is applied every two years starting in 2006 and contains 228 questions pertaining to best practices in terms of fiscal transparency, as established by organizations such as the International Monetary Fund (IMF) and the Organization for Economic Co-operation and Development (OECD). These include public availability of budget information, opportunities for the public to participate in the budget process, and the role of the legislature and audit institutions (Seifert, Carlitz, and Mondo 2013, 1). Over time the number of countries included in the OBI has increased, but, for the sake of consistency, this analysis only considers the original 84 countries that have been included since 2008.

The OBI has several advantages over other tools for measuring levels of transparency such as the IMF's fiscal Reports on the Observance of Standards and Codes (ROSC) or the World Bank's Public Expenditure and Financial Accountability (PEFA) program, in that it is updated regularly using the same methodology, allowing scores to be reliably compared over time. It also covers recent years, unlike the HRV Transparency Project, which only collected data from 1980 to 2011.

The OBI is a second-generation measurement (Hlatshwayo et al. 2018), concerned with concrete indicators rather than perceptions (such as whether budget expenditures are classified by administrative unit or not), and its preoccupation with public participation and auditing mean that its scores reflect not just the availability of information but also cover interactions with actors that can influence the behavior of an institution. As such, changes on OBI scores also reflect changes in how information is used.

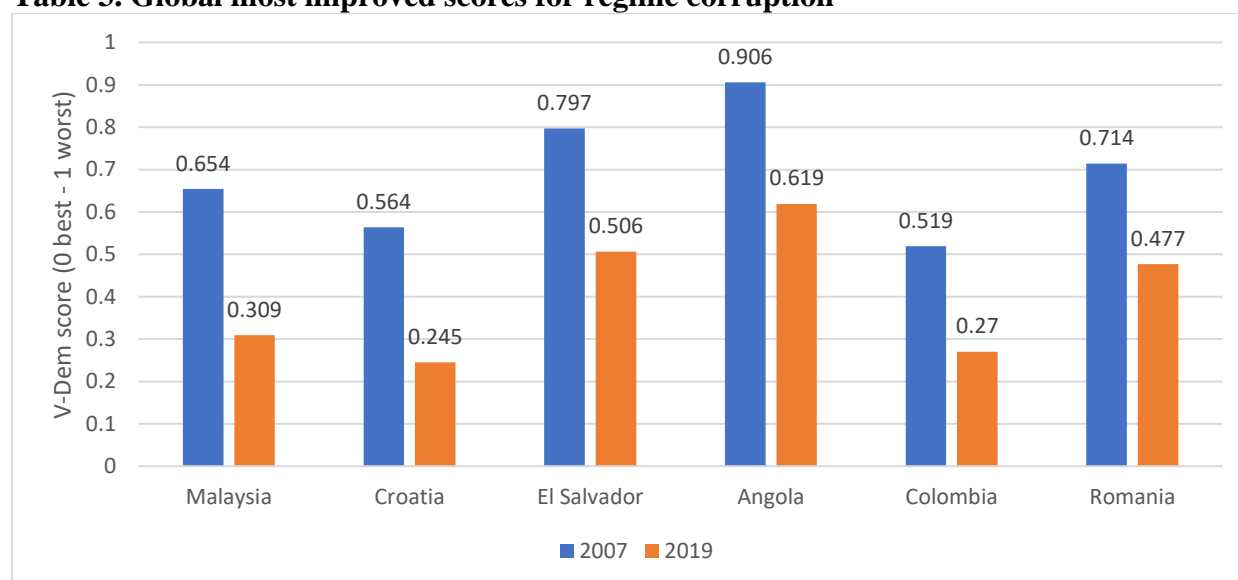
### Varieties of Democracy

Over the same timespan, 52 out of the same 84 countries have also become less corrupt according to the Varieties of Democracy (V-Dem) indicator for regime corruption (v2xnp\_regcorr), with another three also stagnating (Coppedge et al. 2020). The Varieties of Democracy dataset is a comprehensive measurement of democratic components in over 200 countries around the world, in some cases going back to 1789. Democratic components included in the dataset feature free and fair elections, civil liberties, judicial independence, executive constraints, gender equality, media freedom, and civil society, all of which are disaggregated into a total of over 400 indicators (Coppedge et al. 2021). V-Dem data is compiled using surveys through a network of country experts, so it suffers from some reliance on perception. Nevertheless, the data is widely used, even in the calculation of other corruption measurements such as the Corruption Perception Index (CPI). More objective indicators of corruption such as the Index of Public Integrity (IPI) have only been developed recently, so data exists only since 2017. As such, V-Dem data appears as one of the best sources for assessing changes in democratic indicators over time.



Overall, there is only a 0.05 point improvement in corruption scores for the 84 countries between 2008 and 2019. Progress made in one country is undone by deterioration in another, to the point that a 0.05 point increase over a 12-year span can be interpreted rather as stagnation than advancement. In this context, Romania's emergence as one of the most improved countries in terms of corruption (Table 3) is remarkable.

**Table 3. Global most improved scores for regime corruption**



Source: *Varieties of Democracy*

To what degree the true spread of corruption can be captured by subjective indicators is debatable, yet the study of objective ‘red flags’ of corruption is still in its infancy. As mentioned before, cross-country datasets gathering information on measurable indicators that might signal corruption, such as the IPI, are fairly recent, so the only reliable measurements spanning longer amounts of time are perception-based. With this in mind, perception is the result of personal experience with situations and contexts that one might not be able to explain, but in which one notices certain phenomena or behaviors.

Transparency norms require a certain level of development to be effective (Grigorescu 2003), yet they are also a key component of development efforts (OECD and United Nations Development

Programme 2014). This mutually-reinforcing relationship is one of the so-called ‘virtuous cycles’ (Mungiu-Pippidi and Johnston 2017) that policymakers should, ideally, seek to implement and encourage as long-term tools. The fact that some of the least developed countries on the list showed considerable improvement in transparency scores whereas others did not, paints a complex picture of internal struggle. Where no capacity to implement transparency norms exists (such as in war-torn or failed-states like Venezuela or Yemen), the reform desire and commitment to public integrity of the powerholders is irrelevant, and no relevant information will be published. Where capacity to implement such norms does exist, the question becomes whether the powerholders have a genuine commitment to development and reform. Efforts in some of the least developed states in the world have shown that transparency is possible even with limited resources, even though consistency may fluctuate over time.

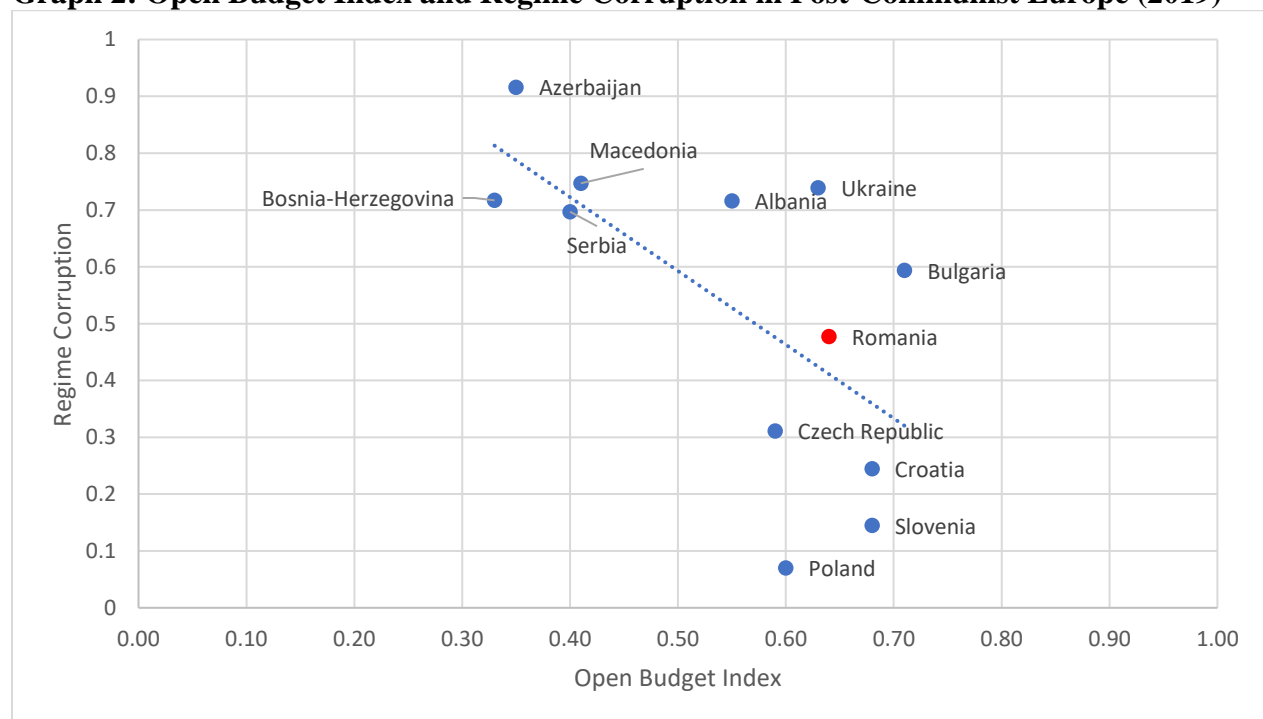
### Trends in post-communist Europe

Global trends paint an interesting picture, but they tell us little about the specifics of regions and regimes. Existing research has found that there is a significant relationship between the regime of a country and its level of corruption and transparency. Hollyer, Rosendorf, and Vreeland (2011) argue that democracies are more transparent than autocracies, and research has found that a similar relationship exists between corruption and democracy, at least under some circumstances (Brueckner 2021; Rose-Ackerman 1996), such as when the regime is consolidated (Kolstad and Wiig 2011). Countries that have gone through regime change and have yet to develop fully consolidated democratic institutions can therefore offer insight into how transparency norms and corruption evolve and adapt over time. The statement by Magyar and Madlovics in the opening part of this work refers to such regimes, referencing post-communist Europe. Their view that political competition in these countries is often a competition between rival patronal networks

stands even though some of those post-communist states are now EU members. One asks, therefore, if European membership has made a difference in terms of control of corruption or transparency.

Scores for the 14 European post-communist countries in the list are in line with the global findings. Average transparency score has only increased from 55 to 58 while regime corruption has declined from 0.56 to 0.52 between 2008 and 2019. Such small differences over the span of more than a decade highlight the challenges of controlling corruption and the time it takes for change. When plotted, the relationship looks as follows:

**Graph 2: Open Budget Index and Regime Corruption in Post-Communist Europe (2019)**



Source: *Varieties of Democracy and Open Budget Index*

Post-communist states in Europe have struggled with corruption since transitioning to democracy, yet some have managed notable success. The six post-communist states included in the analysis that are now members of the European Union appear as the least corrupt in the above table. The five that have been EU members for the entire period of time covered (Poland, Slovenia, Czech

Republic, Romania, and Bulgaria) have improved their overall regime corruption score by 0.034 without showing any overall improvement to budget transparency. This aggregate is somewhat deceptive, given that individual countries like Bulgaria had one of the worst performances in terms of corruption in the world. However, countries like Croatia or Romania performed well enough to offset this, making the overall improvement positive.

The non-EU countries (North Macedonia, Serbia, Bosnia-Herzegovina, Russia, Azerbaijan, Albania, Georgia, and Ukraine) show the opposite pattern, as transparency scores have improved by 0.048 whereas regime corruption has remained unchanged. Croatia, the only country in the group to become an EU member during the measured interval, has improved in both scores. On average, therefore, it seems that EU membership does help countries be perceived as less corrupt.

Among the non-EU post-communist states, the most improved in terms of transparency is Georgia, who is also second at reducing regime corruption after Ukraine. One explanation for this is Georgia's desire to become an EU member-state, which requires it to better control corruption. The three former Yugoslav republics in the group have performed worse in both indicators, which is consistent with the view that transition from autocratic regimes to democratic ones does not reduce corruption in countries with high ethnic fractionalization (Brueckner 2021).

Of the EU member-states (again excluding Croatia, who joined the Union later) Romania stands out as the most improved in terms of regime corruption, and is one of two countries whose transparency score has improved, alongside Bulgaria. The latter finds itself in the difficult position of having improved the most in terms of transparency while regressing the most (by a wide margin) in terms of corruption. While it may seem bizarre, it is possible that Bulgaria sought to control a growing tide of corruption by making more information publicly available, that transparency did not threaten corrupt interests, so elites had no reason to oppose it, or that transparency may have

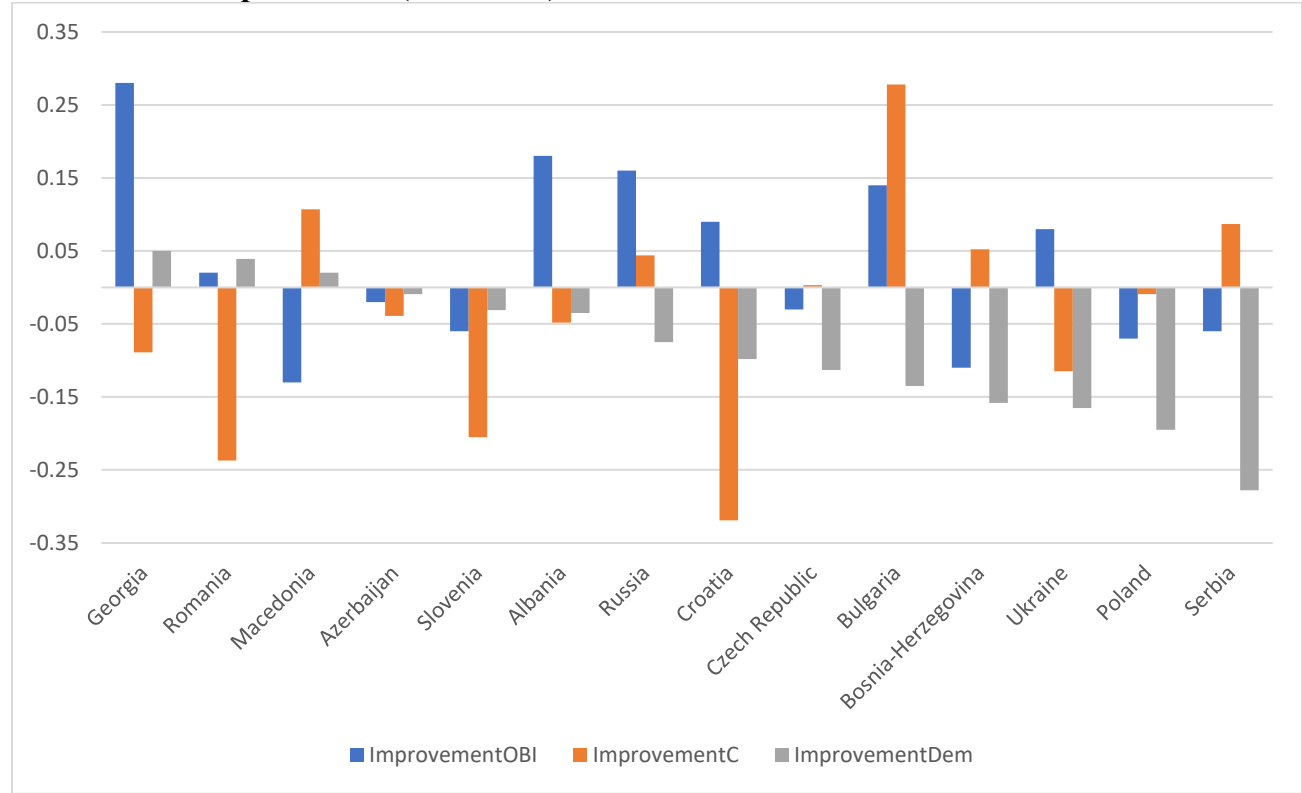
actually aided corruption by providing key information to potential clients of corrupt networks. Given that OBI measures not just availability of information but how institutions and citizens engage with it, an improvement in score can also be explained by a greater desire to monitor public spending in a context of increasing corruption and misuse of public resources.

### Case selection: the Romanian paradox

In previous sections we discussed briefly the link between democracy and transparency and corruption. In transitional regimes such as those of post-communist countries, the degree of democratization offers some insight as to their progress. Although 2007 is nearly two decades removed from the start of transition in most of the 14 countries, democracy in all of them was far from consolidated. Moreover, V-Dem's electoral democracy indicator (v2x\_polyarchy), described in the codebook as essential to all other democracy scores measured, shows a gradual worsening of democratic institutions in 13 of the analyzed countries since 2007. The exception is, once again, Romania, where the indicator has remained by and large stable throughout the interval. A summary of the situation in post-communist Europe is presented below:



**Graph 3: Evolution of transparency, corruption, and democracy scores among post-communist European states (2008-2019)**



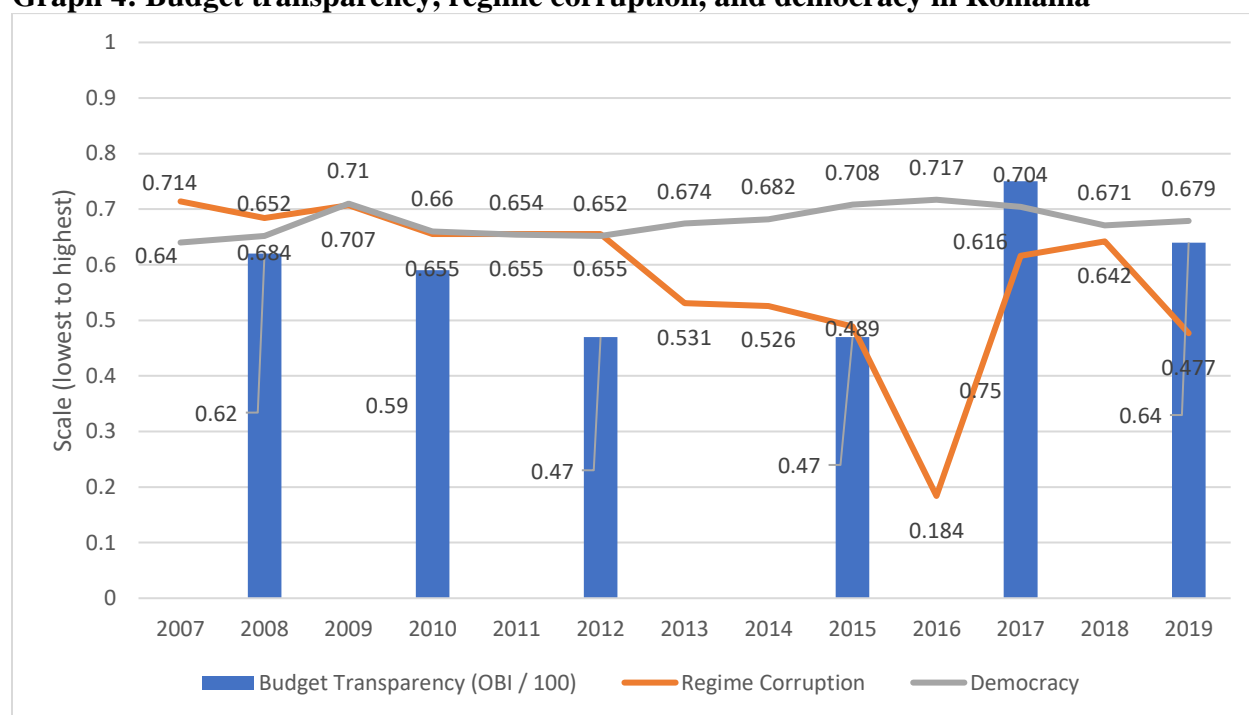
Source: Open Budget Index, V-Dem data

As can be seen, Romania and Georgia are the only countries that have reduced at least the perception of corruption *and* improved their transparency, without a degradation of their democracy scores. In a context of democratic backsliding visible across the region, this makes Romania and Georgia deviant cases (Seawright et al. 2014, 10; Gerring and Cojocaru 2016, 399). Their deviancy comes from the different evolution over time across the three observed indicators of democratic consolidation, transparency norms and overall (perceived) levels of corruption compared to other post-communist countries.

The study of deviancy is useful to explain why some cases do not follow an established theory or observed pattern. In this instance, the deviancy can be seen as a positive development, or a success story, so a look at the context and mechanisms at play might help understand what makes this apparent success possible. Exploratory and causal research has been conducted at length regarding

both Georgia (Mungiu-Pippidi and Johnston 2017; Di Pippo 2014; Shelley, Scott, and Latta 2007) and Romania (Mungiu-Pippidi 2018; Dimulescu, Doroftei, and Pop 2013; Andrei, Matei, and Gh. Rosca 2009), yet the present work focuses on the latter country, in part because of the greater improvement in corruption scores, and in part because Romania is an EU member, thus presenting an opportunity to study the effect of EU institutions on corruption (included in Chapter 5).

**Graph 4: Budget transparency, regime corruption, and democracy in Romania**



Source: Open Budget Index, V-Dem data

As can be seen, shortly after entering the EU, Romania suffered worsening across transparency and democracy scores, likely because of the financial crisis that affected much of the world, as well as a result of authorities being less committed to pre-accession requirements. Corruption scores remained fairly constant until 2012, a year that coincides with significant electoral changes, as well as increasing anticorruption efforts, as will be seen in subsequent chapters. As the country rebounded economically, commitments to public integrity and good government re-emerged, at least on the surface. The story of Romania shows that evolution of scores is far from linear. The

variance over time highlights the constant struggle that goes with keeping corruption under control, information available, and democracy alive.

Particular about Romania is the low-starting point. In 2007, Romania had the highest corruption score of any EU member (0.714), twice as much as the second ranked Slovenia (0.35). It also ranked last in terms of democracy (0.64), although it was fourth best in terms of transparency. In 2019, although Romania ranked second worst in terms of corruption owing to a worsening in Bulgaria, the gap between it and other post-communist states had narrowed substantially. The same is true in terms of democracy, although, as mentioned, this is sadly the result of democratic backsliding in the other countries, particularly Bulgaria and Poland.<sup>12</sup>

There is also a paradox of Romanian corruption, as mentioned in the introduction. On the one hand, as we have seen, corruption scores (as measured by indicators such as V-Dem data) have improved significantly since EU accession in 2007. This, alongside an improvement in transparency scores makes Romania the only former communist country in the European Union to have improved of both transparency and corruption indicators in the respective interval, without democratic backsliding. On the other hand, as the next chapter shows, more objective corruption indicators such as “red flags” in public procurement have, at best, remained constant and, at worst, degraded over the same period, meaning that whatever changes are captured by corruption scores at country level are not reflected in more specific measurements of corruption within the country. So, what explains the corruption paradox, and how can one get a clearer picture of corruption in a given country? How has corruption changed in Romania over the past years, and what do the changes imply about how corruption is studied more generally?

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<sup>12</sup> Hungary would also fit in this description, although it is sadly not included in the analysis because transparency data only began being collected later.

The present chapter has highlighted some patterns and trends in corruption and transparency globally and presented Romania as a deviant case worth studying. Is Romania truly a success story or is there something more hidden in the apparent paradox observed?

The following chapters delve deeper into what explains Romania's rapid improvement in anticorruption scores, highlighting that the improvements do not necessarily signal that there is genuinely less corruption but merely corruption of a different kind. Chapter 3 presents some of the indicators used to assess levels of corruption in a more objective manner, and brings evidence that, in recent years, corruption in Romania may have actually risen, even as overall transparency improved.

## Chapter 3: Access to information and competition in the Romanian public procurement sector

The purpose of transparency norms is to enable non-political actors to monitor decisionmakers, hold them more accountable, and to reduce overall corruption and the negative effects that come with it. In public procurement, corruption is not only prevalent, but easier to identify due to the range of tools developed in recent years at European level.

Free markets are supposed to deliver the best value for money because there is free and fair competition between suppliers. Where public contracts are therefore not awarded in a competitive manner, there is reason to suspect that other (underhand) interests are at play. As such, the level of competitiveness in public tenders is a good proxy for the level of corruption in the respective sector. Increased competitiveness can, thus, indicate better control of corruption, whereas decreased competitiveness can point to the opposite.

This chapter completes the paradox introduced previously by presenting evidence that concrete measurements of red flags of corruption have not decreased despite the progress shown by previous measurements. It does so by testing the relationship between access to information on procurement (the independent variable) and the level of competitiveness of the tender in Romania between 2007 and 2020 (the dependent variable). The competitiveness of a tender is a broad term describing how open and honest the procurement process is likely to be. Ideally, the winners of a procurement contract would not be known ahead of the procurement process, and the contracting authority would not sway the result or alter the process in favor of any particular bidder. As such, factors that limit competition can be classified as ‘red flags’ and used as proxies for corruption in public procurement (Cingolani, Toth, and Fazekas 2016).

Competition in public procurement depends on a number of factors such as the state of the economy and to what sector the tender pertains, but it is also a reaction to how open and fair the procurement process is perceived to be. Vitezslav Titl (2021) found that legal reform enacted in the Czech Republic in 2012, which made it impossible to award contracts for tenders where only one bid was submitted, managed to increase the amount of information that contracting authorities provided in the tender, as well as to lower costs of public contracts by 10%. It therefore seems that institutions believed that more information about tenders would attract more bidders. As such, the expectation in this chapter is that **the more information institutions publish about tenders, the more competitive the bid.**

### Transparency and corruption in procurement

There is a growing body of work on transparency and corruption, yet no consensus on the dynamic and interrelation between the two. Good government literature considers transparency an integral component (Johnston 2002), assuming that the more information about a given process is available to interested parties, the less likely it is that that process will be corrupt. This has, time and again, been shown to be inaccurate, as other factors such as how reactive society is to corruption play a major part in changing corrupt behaviors (Bauhr, Czibik, and Fazekas 2017; Thomson and Alt 2019). Broadly understood as **access to information that enables informed participation and assessment of decisionmakers** (Florini 2007), transparency needs to be not only relevant to stakeholders, but acted upon by them and broader society in order to reduce corruption (Fung 2013; Thomson and Alt 2019).

In their colossal Indonesian experiment, Olken (2007) found that top-down auditing is effective in reducing corruption only when the threat of being caught carries a serious risk of sanctions. Ferraz and Finan (2008) found that public pressure needs to be maintained in order for corrupt acts to be

sanctioned at the ballot. This requires information relevant for the general public to be broadcast and kept salient. Relly and Sabharwal (2009) discuss transparency as a tool for economic performance, questioning whether increased access to information helps businesses and offers a more predictable outlook of the market. There are many types of transparency, and some are better at preventing corruption than others.

In public procurement, information that is available to interested parties before the bid is more valuable for competition than information published afterward (Bauhr, Czibik, and Fazekas 2017). Assessing the integrity of procurement is a painstaking and subjective endeavor, however. Attempts to monitor procurement are still being piloted at European level (through mechanisms such as Integrity Pacts for example), yet even in ideal circumstances only large and complex tenders would be targeted. Recent work in the field of integrity in procurement has focused on assessing the degree of corruption at national level by using more ‘objective’ indicators of corruption (Mungiu-Pippidi 2015b), that can be precisely measured over time.

### Case selection

Analyses of corruption usually focus on cross-country comparisons. While there are benefits to this approach, corruption is not a unitary phenomenon. When, where and how public power is exercised for private gain differs not only across borders, but also across time, context and political dimensions. In the study of corruption, Romania is often presented as an example of good practice, not only because of its spectacular prosecution efforts, but also because of efforts to provide more and more relevant information. On the OpenTender.eu platform, Romania has published roughly 12.7 million tender contracts, more than twice as many as any other country, and national sources have also been active in supplying information. As such, there is an abundance of relatively new

and unexplored raw data pertaining to public procurement, which could offer insight regarding integrity in one of the EU member-states struggling most with corruption.

## The data

### Procurement data

Data for the analysis was drawn from the official government data hub (data.gov.ro). All available extracts of competitive procurements made through the official Romanian procurement portal (SEAP) were downloaded<sup>13</sup>. Data was cleaned by removing ‘junk’ entries (entries where information was scattered across multiple wrong fields or values entered were nonsensical). These accounted for less than 1% of total entries. Data on direct procurement was not included, and neither were tenders that by law do not need publishing on SEAP (such as certain types of military spending). Data was further cleaned by removing duplicate entries, which accounted for around 10% of the entire dataset. Some contracts were entered 30 times, and the duplicates were not evenly distributed across the years, but clustered between 2009-2012<sup>14</sup>. The next step of cleaning was to remove obvious outliers such as contracts with an unrealistically high number of bidders (some contracts in 2007 and 2008 mentioned over 100.000 bidders). In total, 1.068.834 contracts were included in the analysis. The following indicators were subsequently drawn from the dataset, as shown in **Annex 1**:

- ***Number of contracts per year*** – This represents the total number of procurement contracts entered in the portal each year, excluding junk entries.

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<sup>13</sup> By law, all public procurement above a certain threshold must be made using a competitive procedure and must be published on SEAP. Direct procurement or other non-competitive procedures are not included in the datasets used, which is why one can expect that contracts on SEAP are meant to attract a plurality of bidders.

<sup>14</sup> On the government platform, data was uploaded in .csv format until 2012, and in .xlsx format for all subsequent years. Although it is unclear why different formats would affect the number of duplicate entries, this is the only explanation I could find for the differences.



- ***Missing values*** – Each contract has 38 fields of required information. Empty fields, or fields marked with “-” or other symbols were coded as missing data and counted. In 2018, SEAP was updated to SICAP, dropping one indicator (the value of a contract expressed in EUR), and changing the variable names but otherwise the same data was collected. For the sake of consistency, the indicator was also removed from the datasets prior to 2018.
- ***Percentage of missing data (% missing values)*** – The number of empty fields was converted into a percentage of fields empty out of the total expected value (the number of contracts multiplied by 38 fields). This indicator serves as a proxy for transparency, as it measures availability of information.
- ***Average number of competitors per contract*** – This is calculated by dividing the total number of bidders in a year to the total number of awarded contracts.
- ***Median number of bidders*** – Because a small number of highly competitive contracts can offset the accuracy of findings, the median is a more appropriate tool for measuring competition on the procurement market.
- ***Number of contracts with a single bidder*** - Single-bidding is one of the indicators used to assess and identify potential cases of state-capture (Mungiu-Pippidi 2015b) as it points to political clients setting the procurement agenda for institutions, ensuring public money is directed toward pre-determined winners. While it is possible for a tender to have specific technical or financial requirements that only one company on the market can address, such requirements may also be specifically crafted with the aim of ruling out competition and allowing only a certain company to bid. As such, single bidding should be rare in a healthy and competitive environment (an ANTICORRP analysis found that less than 5% of public

contracts in Germany were awarded through a non-competitive procedure) (Mungiu-Pippidi 2015b, 13).

- ***Percentage of single bids (% single bidders)*** – This is one of the clearest red-flags of corruption, as having a large share of public tenders where only one participant bids is a sign of a non-competitive procedure. At EU level, around 23% of public contracts are awarded through single bidding (Titl 2021, 1), while the European Commission, through the Single Market Scoreboard, considers having more than 10% of contracts awarded through single bidding to be bad practice<sup>15</sup>.
- ***Number of winners*** – This indicator counts how many companies manage to win at least one public tender per year. One characteristic of state capture is that public tenders go to a small number of companies with political connections.
- ***Share of contracts awarded to companies that have won at least one other tender (% winners)*** – This indicator was obtained by subtracting the number of companies that won at least one contract from the total number of awarded contracts. The remainder was the number of contracts that went to companies that had already won a tender. This was then expressed as a percentage of the total number of awarded contracts. In a country report on Romania, Doroftei and Dimulescu (2015) find that in 44% of cases, the number of contracts awarded to a company can be explained by single bidding or political connection. Their analysis focused on large contracts (over 1 million euro) in the construction sector, yet the findings suggest that politically connected firms win more often, reducing the opportunities

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<sup>15</sup> [http://ec.europa.eu/internal\\_market/scoreboard/performance\\_per\\_policy\\_area/public\\_procurement/](http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/). See also (European Commission. Directorate General for Regional Policy., The Government Transparency Institute Regional., and Fazekas 2019)

for honest competitors. A large share of contracts going to firms that have won public tenders before can therefore be indicative of non-competitive practices.

OpenTender data is only available starting 2009, so earlier years are excluded from the analysis. For all OpenTender variables, scores range from 0 to 100, with higher values representing better performance (i.e. the fewer ‘red flags’, the higher the integrity score).

### Indictment data

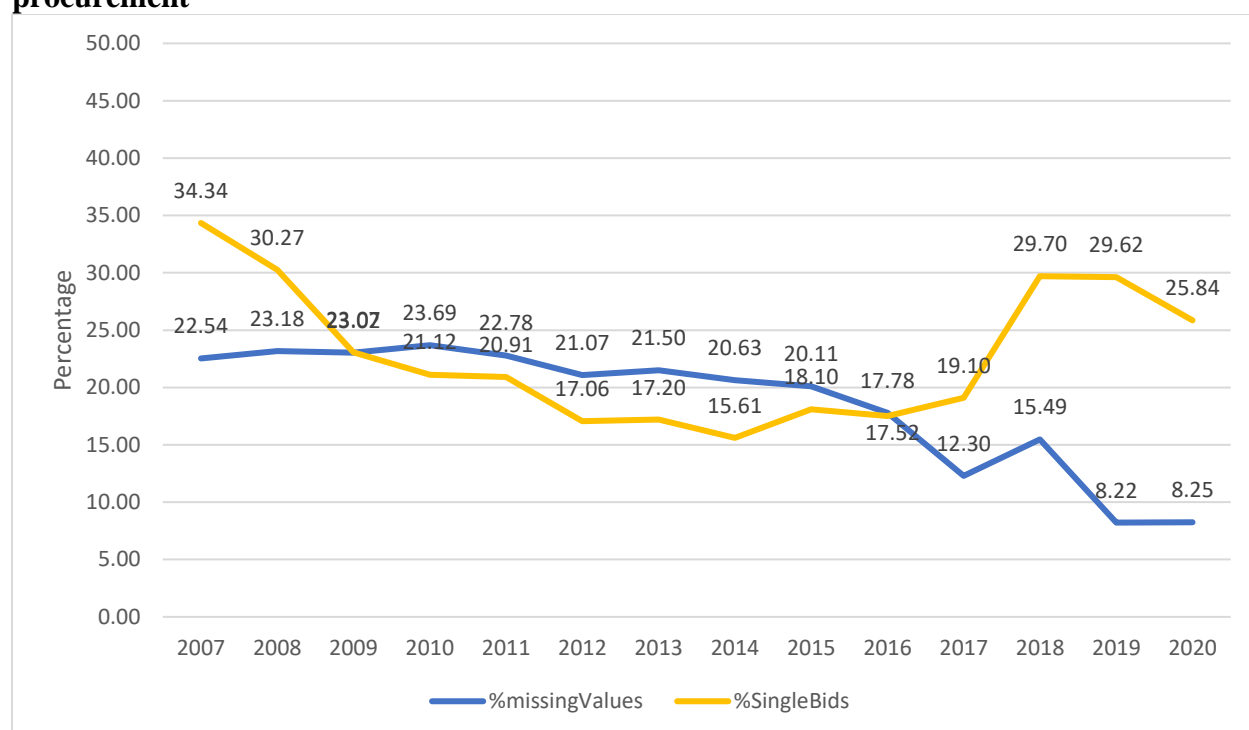
Another indicator is used to assess control of corruption, namely the number of indictments made by the DNA. For the sake of clarity, an indictment refers to the moment when corruption charges are brought before a judge, coinciding with the start of a trial. Indictment figures are relevant because they highlight cases in which the prosecution believed strongly that a corrupt deed has been committed and has gathered what it deems sufficient evidence to prove it. A conviction refers to the moment that a guilty verdict is reached. The prosecution can decide who and when to indict, but only a judge can convict. As such, not all indictments end in conviction. In this work, indictment figures are taken from DNA annual reports and include all indictments issued, irrespective of the trial’s outcome, as a measure of how active prosecutors were over time. In other sections I refer to convictions when referring to proven cases of corruption (i.e. when a sentence is issued).

Note that these indicators do not capture all of the relevant factors that might influence the outcome of a procurement bid, yet they offer a somewhat objective measure of corruption risks in procurement, and of availability of information relevant to the process. Data is aggregated per year, so comparisons across sectors are not included in the analysis. Similarly, the value of contracts is not considered for reasons presented in the Discussion section, so changes in red flags surrounding larger or smaller tenders are not captured in the analysis.

## Findings

The table below shows the relationship between percentage of single bidder contracts and the share of missing values published on the official public procurement portal for the interval 2007-2020. Until 2017, findings are in line with the expectation that more information improves competition in procurement.

**Table 4: Share of missing values and single bidder contracts in Romanian public procurement**



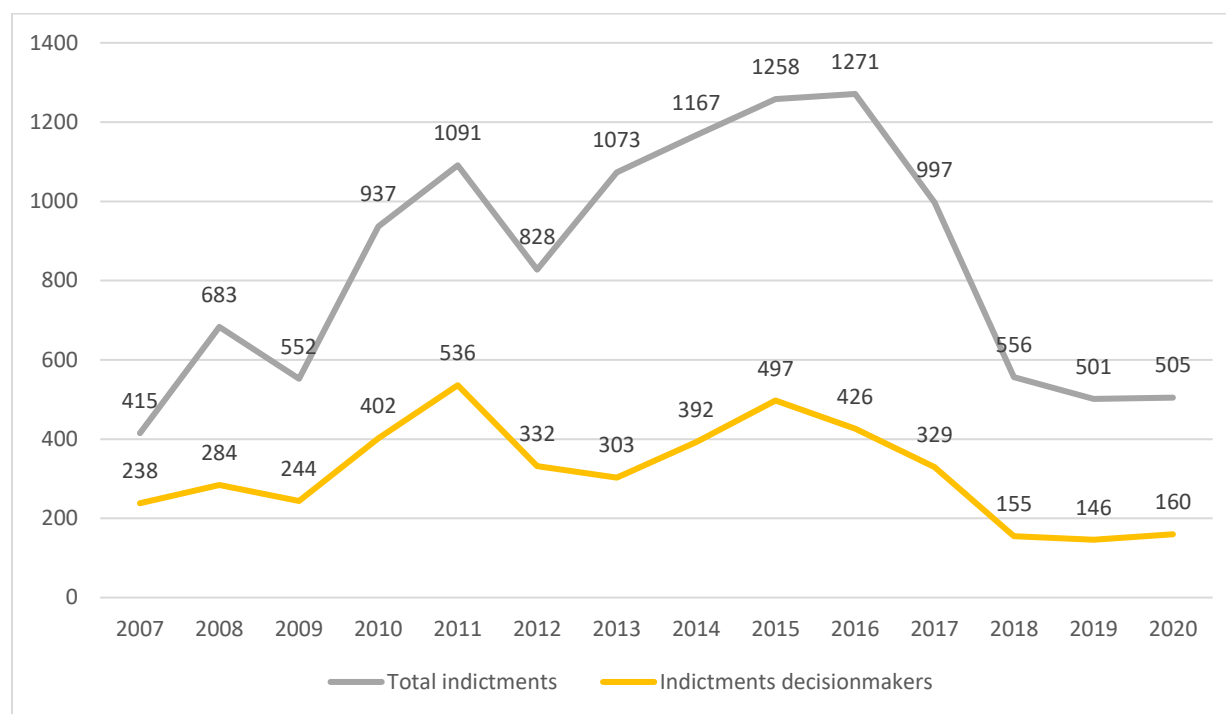
Source: SEAP data available on [data.gov.ro](http://data.gov.ro)

Starting with 2017, this situation was reversed, as the percentage of single-bidder contracts rose even as the share of information missing from the procurement platform declined. Over this interval, more information did not seem to encourage more participation in public tenders. Rather, we see a trend of making more information available, whereas the ratio of single bidder contracts fluctuates more spectacularly. In the early years of the study, we see the share of missing data on SEAP rose, even as single bidding declined. This can be explained by confusion and lack of

administrative capacity, as civil servants struggled to get familiar with the system and to internalize new norms following EU accession. After 2010, the share of missing values gradually declined from 23% to 20% in 2015, coinciding with a period of stability also in terms of percentage of single bidders. Worth noting is that some of the missing values were in the fields relating to number of bidders, but these were not common enough to significantly change the figures presented here. The increase in share of single bidding coincides with a decrease in the share of missing information on SEAP, which is not consistent with the expectation that more information implies fewer corruption red flags.

One possible explanation for the sharp increase in single bidding observed since 2017 is the launch on the second National Program for Local Development (PNDL 2), wherein the Government made funding available for local authorities, with minimal oversight or integrity requirements. These funds, while still bound to transparency legislation, were usually spent on contracts awarded following less competitive procedures, in which only a few companies competed, and even fewer won (Pârvu 2021). Considering the pattern of spending and the numerous reports of PNDL being used to reward political clients, the program became a reference for how corruption can occur legally. Chapter 5 explains how programs such as PNDL can affect local level corruption.

Since 2016, competition in procurement has declined, single bidding has increased dramatically all while the quantity and the quality of transparency and data has increased. 2016 was the year when Romania's famed DNA issued the most indictments for corruption, as seen in the graph below. Yet, despite larger budgets in subsequent years and in spite of the increase in corruption red flags, these numbers also dropped starting with 2017.

**Graph 5: DNA indictments per year (total and decisionmakers)**

Source: DNA annual reports

These numbers refer to cases that the DNA has successfully brought to trial and managed to obtain a conviction, so they refer to proven corruption cases. As an independent prosecution agency, DNA has jurisdiction over public sector corruption and other crimes assimilated to corruption, as well as crimes that affect EU financial interests, and some crimes where the damages exceed one million euro.

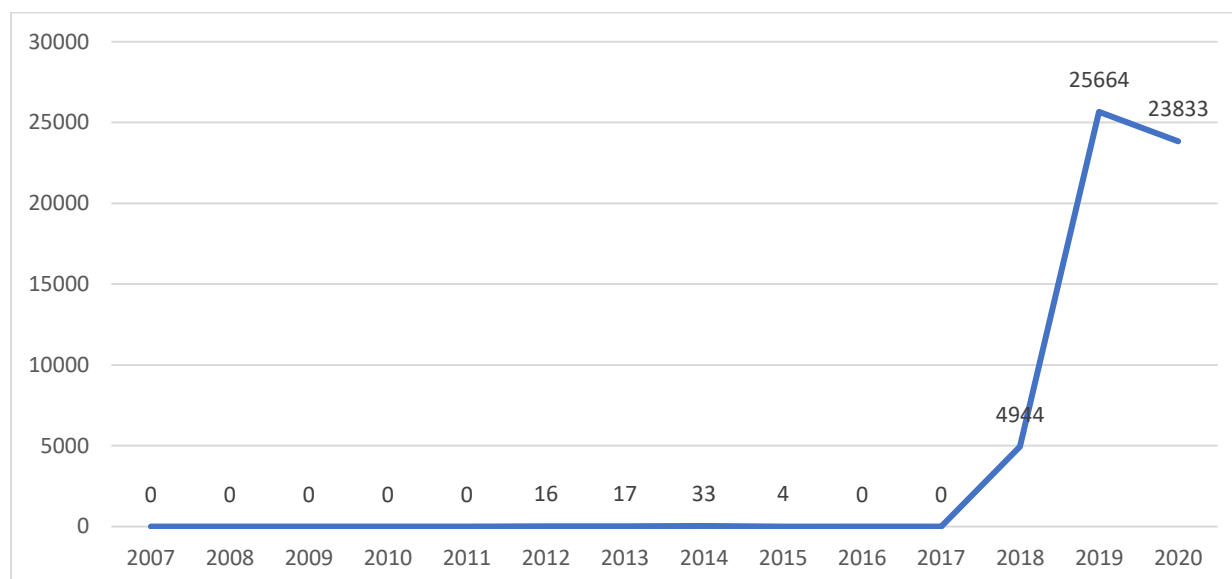
Comparing the two graphs, one can see that the period after 2016 coincides both with an increase in the share of single bidding and a sharp decline in the number of indictments, indicating that indictments may have had a discouraging effect on corruption red flags. Powerholders appear to have been less willing to rig procurement procedures for fear of being caught. The elections of late 2016 brought to power a government that was openly hostile to DNA and its chief prosecutor. The

“justice laws” passed early in 2017 restricted DNAs ability to prosecute, which explains the sharp drop in new indictments, in spite of higher budgets than in any of the previous years.

Although in 2017 only 19.10% of contracts were awarded to single bidders, the total number of public procurement contracts signed that year was the second largest in the interval (after 2008), so the total number of single bidder contracts was the highest since 2010. Such spikes had not been seen before following electoral years. The exceptional character of 2017 can be explained not just by the second PNDL, but also by the push against DNA. Having secured both the local and the general elections, Social-Democrat party clients appear to have been encouraged by the policies that would shield them from prosecution and seemingly began to organize and rig more and more procurement bids. Single bidding remained high in absolute numbers in the following years, even as the total number of procurement procedures declined to the smallest values in the interval. The new establishment tightened control over who gets access to public money, and made sure DNA was less able to interfere. Corruption, in other words, became more politically organized – perhaps the most so in the interval studied – owing to the kind of control that PSD and its leader at the time, Liviu Dragnea, exercised over local and county decisionmakers.

Moreover, despite fewer missing values overall in the SEAP dataset, the type of missing data changed. One of the reasons the value of contracts was not included in the analysis is that starting with 2017, this data began missing from official centralized datasets at an unprecedented rate. Until 2017, fewer than 35 contracts in total per year did not specify their currency value. This figure jumped to around 5.000 in 2018 (11.5% of contracts), over 25.000 in 2019 (51%) and over 23.000 (52%) in 2020.

**Graph 6: Contracts where the monetary value is missing in official SEAP datasets**



*Source: SEAP data available on data.gov.ro*

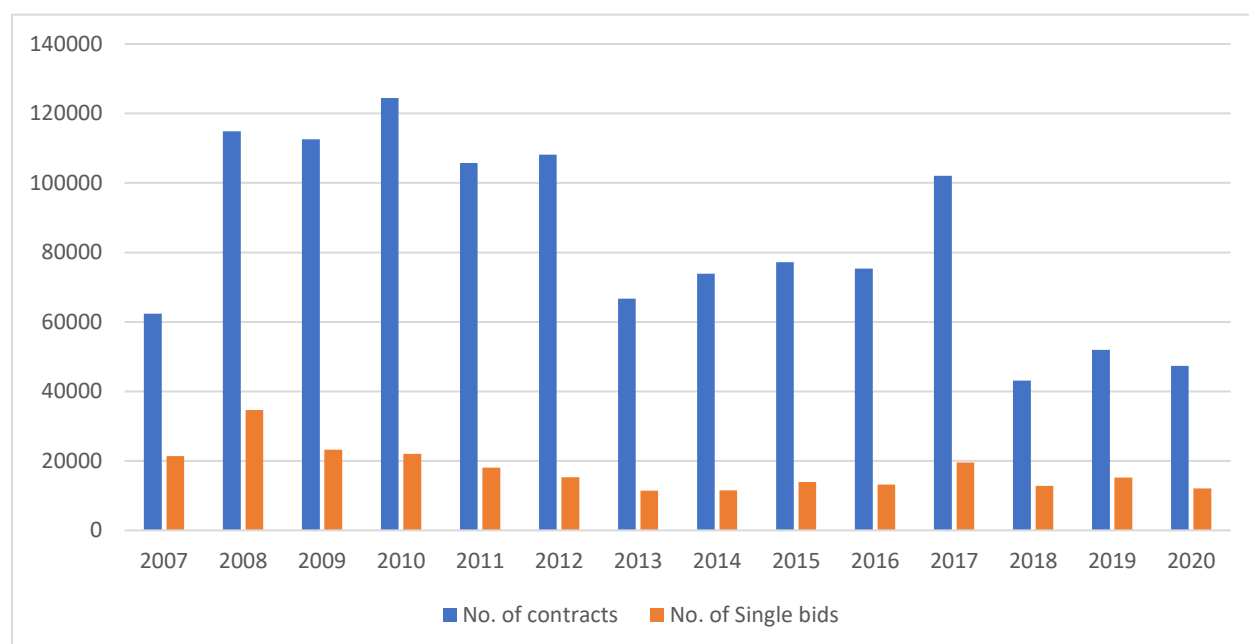
Although this data is available in the procurement documents uploaded to the SEAP platform, it no longer appears in the official centralized datasets provided by the government and must be collected entry by entry from SEAP itself, which is a tedious and difficult process which discourages quantitative analyses. Why such values began to go missing is unclear. If legislative changes were responsible, the number would have started to increase in the latter half of 2016, considering that the new legislation on public procurement came into effect in May. However, all procurement contracts from 2016 and 2017 mentioned the currency value. As such, although less data overall was missing from SEAP contracts, more and more data on their monetary value became unavailable.

The picture becomes more interesting when considering the total number of contracts, as seen in the graph below. There is some fluctuation in the number of single bidder contracts, notably in



2008, after EU accession and before the financial crisis, as well as, again, in 2017, yet both of these coincide with an increase in the overall number of contracts. Interestingly, the number of single bidder contracts did not decline much after 2017, despite the total number of contracts declining to the lowest values in the interval. One can therefore argue that there is a kind of ‘quota’ of contracts that are awarded to client companies each year via single bidding, irrespective of how many contracts there are in total. A similar kind of ‘quota’ was observed in the Czech Republic, where the value of contracts awarded to politically connected or anonymously owned firms did not decline after the reform making single bidding impossible (Titl 2021).

**Graph 7: Total number of public procurement and single bidder contracts in Romania per year (2007-2020)**



Source: SEAP data available on [data.gov.ro](http://data.gov.ro)

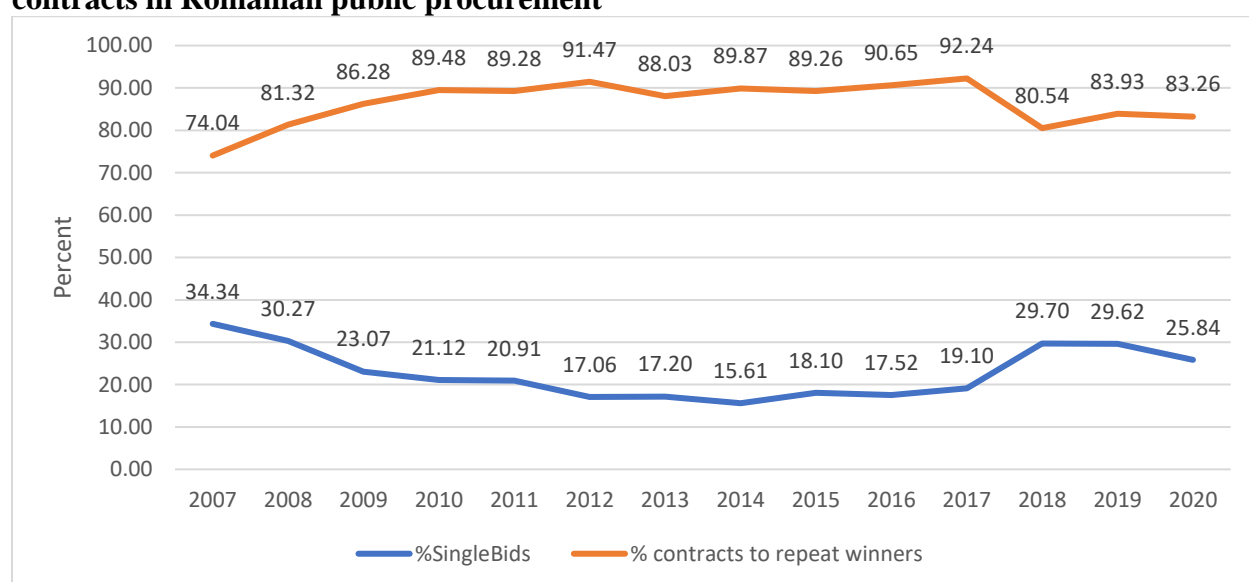
The drop in absolute number of contracts is not random but can be explained by EU financing cycles and by the launch of PNDR 2<sup>16</sup>. Unfortunately, information on what contracts were financed

<sup>16</sup> The interval captures 2 EU financing cycles (2007-2013 and 2014-2020). Money is typically awarded at the start of a cycle so the number of contracts declines toward the end.

through PNDL is not available in any centralized form, so an accurate test of its effects on single bidding is not possible.

The idea of a quota of contracts that go to client companies can also be seen in the relationship between the share of repeat winners and the share of single bidding, as presented in the graph below:

**Graph 8: Share of companies that have won two or more public tenders and single bidder contracts in Romanian public procurement**



Source: SEAP data available on [data.gov.ro](http://data.gov.ro)

After 2007, we see that although more companies competed in procurement, the winners were by and large the same. One explanation for this is that client companies may want to preserve the impression of fair and competitive tenders by having other competitors submit bogus bids. In some areas, particularly communes and small towns, politically connected firms might be the only ones on the market, so there is incentive to fake competition in order to avoid raising suspicion. A common practice in Romanian procurement is winning by rotation, wherein all of the tendering companies agree ahead of time how much each will bid to ensure that all of them offer above-market prices and that all of them take turns winning tenders. Therefore, even when more than one

company takes part in the procurement process, it is still possible for there to be no genuine competition. This is especially possible when genuine competitors are barred from tendering, given that a genuine competitor would offer better prices than the rotation. In-depth analyses are required in order to uncover cases of rotation, capture or dependence upon one company, as well as to identify the means by which genuine competitors were prevented from participating in tenders. Such an analysis is carried out in Chapter 4.

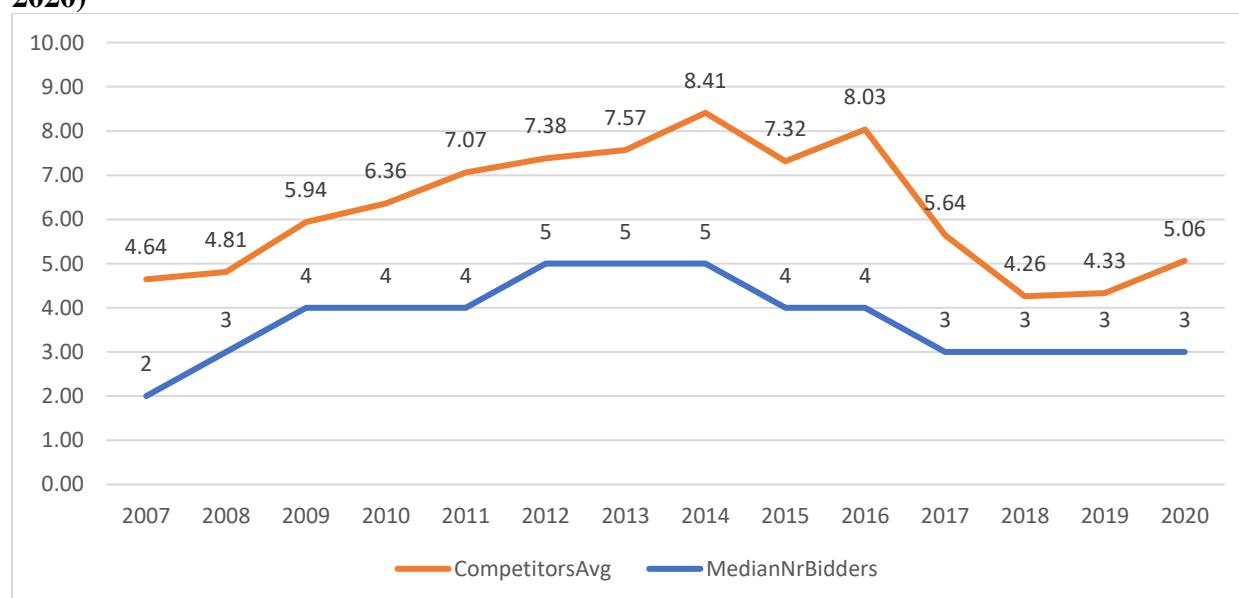
The drop in the share of repeat winners after 2017 can be explained by PNDL 2. The implementation of PNDL 2 allowed local authorities to award large non-competitive tenders to companies who would then not compete in other procurements, since there simply were none. An example of such a practice can be found in Neamț county, who received over 200 million Ron (~40 million EUR) from the PSD Government in 2019, through PNDL 2, for consolidation work of over 45 roads and bridges in the county. The County Council, presided by Ionel Arsene (also PSD), combined all 45 objectives into one large procurement procedure, for which only one bidder submitted a tender – an association of eight companies that included Darcons SRL. The latter, as part of the contract, rehabilitated a bridge near Luțca commune, which collapsed shortly after being reopened, in June 2022, injuring two drivers who were traversing, and making national headlines. Darcons SRL has won over 100 public contracts over the past 15 years, most of them after 2016, when Alexandru Rotaru, son of Romică Rotaru, the owner of Darcons, was in Parliament and Ionel Arsene was President of the Neamț County Council (A. Ionescu 2022). In April 2022, months before the bridge collapse, Ionel Arsene had been sentenced by the first court to 8 years in prison for influence peddling. Worth noting is that the engineer for Darcons SRL who oversaw the consolidation works on the Luțca bridge was Emanuel Bulai, a PSD member and local councilor

in Tămășeni, Neamț County, who also ran for mayor and was personally endorsed by Ionel Arsene (*What Lies Behind This Pile of Rubble* 2022).

Such examples highlight the type of corruption networks found at local level. They also exemplify how discretionary allocation of central funding can help to increase the power of county bosses, by granting them monopoly over resources, which they then feed into their corruption networks. Therefore, there is less incentive to engage in petty acts of corruption if one can be rewarded for their service through public contracts.

Overall, competition in public procurement in Romania seems to have declined over the previous years. The average number of competitors per contract was low in 2008 but grew steadily and consistently until 2014, despite the economic crisis that affected Romania between 2009 and 2011. This can be explained by companies desperately looking for income during a time of hardship and submitting public tenders, which explains why single bidding also declined consistently throughout the interval.

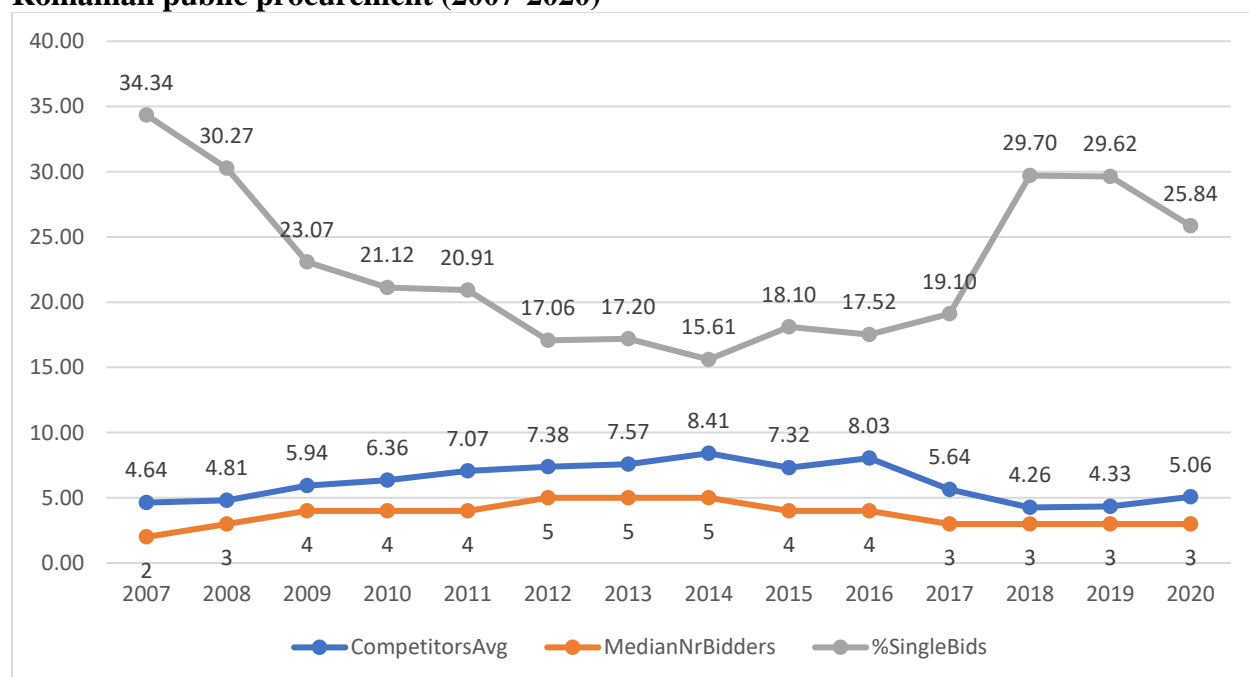
**Graph 9: Mean and median number of competitors in Romanian public procurement (2007-2020)**



Source: SEAP data available on [data.gov.ro](http://data.gov.ro)

In 2007, when both the average and the median number of competitors per contract were among the lowest in the interval, over one third of all public contracts were awarded to single bidders. The number of bankruptcies and austerity measures that followed 2008 did not seem to discourage bidders from submitting public tenders. On the contrary, financial problems seem to have driven surviving companies to submit more bids and be more competitive.

**Graph 10: Percentage of single bidding, average and median number of competitors in Romanian public procurement (2007-2020)**

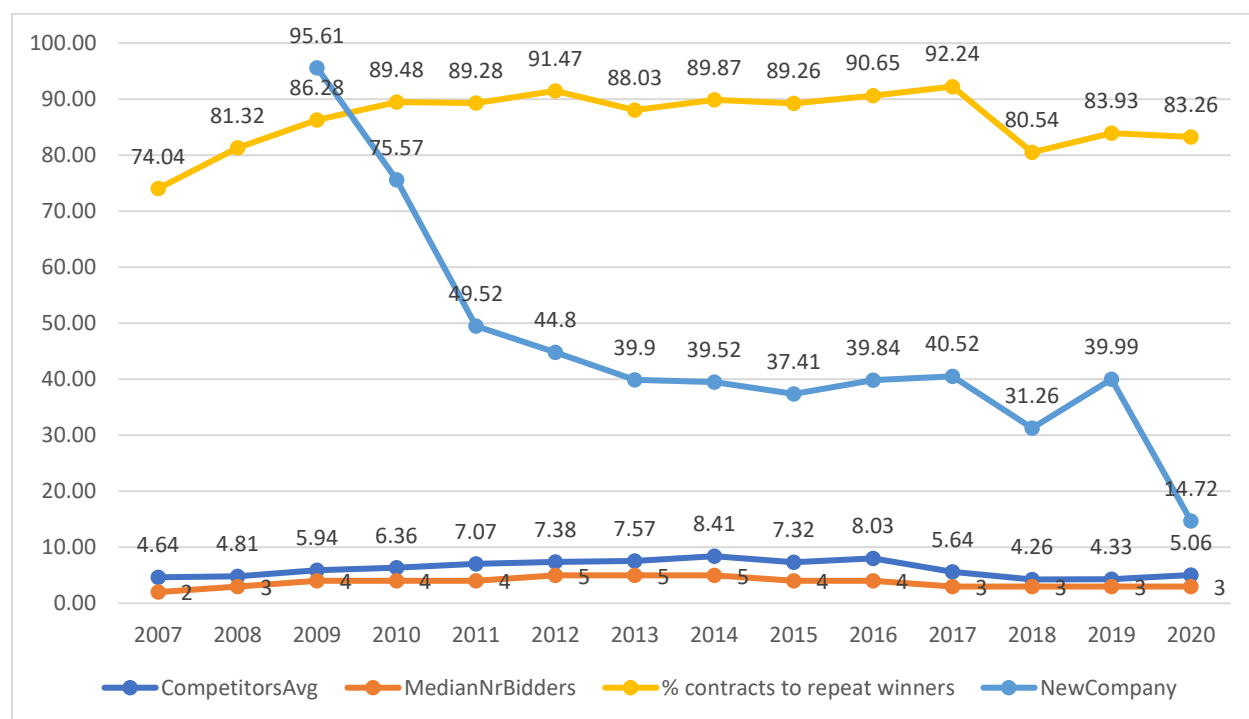


Source: SEAP data available on [data.gov.ro](http://data.gov.ro), author's calculations

As can be expected, more competition in procurement implies fewer single bidder contracts. However, this did not mean that more companies also won public tenders. In spite of more companies competing for contracts, the ratio of contracts going to repeated winners actually increased, from 74% in 2007 to nearly 91.5% in 2012, a sign that the same companies won over and over in spite of having more competition. The decline in new companies that won public contracts also supports this view. In 2009, at the start of the economic crisis, over 95% of companies that won at least one public tender were less than a year old at the time of bidding. This

is likely due to European accession and the appeal of EU funds that encouraged the appearance of new firms. The share of new companies declined rapidly over the crisis years, reaching 49.5% in 2011 and eventually dropping to 14.72% in 2020. The companies that won tenders in their first year on the market in 2009 seem to have continued to win. This scenario can be interpreted as a sign that companies that won contracts early in the interval accumulated experience that enabled them to out-perform the competition, but it also presents the possibility that one-time winners managed to attract more contracts via political influence or that companies were set up specifically as political clients to take advantage of EU funds.

**Graph 11: Percentage of companies that won a public tender in their first year of existence, percentage of single bidding, average and median number of competitors in Romanian public procurement (2007-2020)**



Source: OpenTender, SEAP data available on data.gov.ro, author's calculations

The number of competitors and the increase in repeat winners is more telling when the total number of public contracts per year is considered. The crisis years saw a reduction in the number of contracts awarded. The national policy was officially to cut back on public spending, which is

reflected in the total number of contracts as well as in the value of procurement per year during the crisis being smaller than in subsequent years. Public authorities signed fewer contracts and for less money, which might explain why competition also grew.

The period after the crisis years is relatively stable on all measured indicators. There were no trends of improvement or worsening when it came to red flags or transparency in procurement. The status quo could be indicative either of equilibrium on the market, or of a political consensus regarding procurement. Stability in and of itself does not necessarily mean that all was well, and that there was no corruption in procurement. Rather, it indicates that the degree of corruption remained largely the same, or that changes in degree are not captured by the indicators presented here.

After 2016 we again see dramatic changes. The median number of competitors in public tenders decreased to three, and this was accompanied by a sharp decrease in the average number of bidders overall (from 8 in 2016 to around 5 in 2020). The share of repeat winners also declined, from 92.24% of contracts going to firms that had won another bid before in that same year, down to around 83% in 2020. This indicates that a larger share of companies won only one public contract each year. Intuitively, this could mean that competition for contracts had increased, yet other indicators such as single bidding seem to suggest that other types of arrangements were at play.

One of the problems of public procurement in Romania has to do with how technical specifications are drafted. An issue that emerged while cleaning the dataset is that a large number of contracts include very diverse bundles of products or services, that few companies can provide. One concrete example refers to procurement of school lunches.

By law, primary schools and middle schools are required to provide students with daily lunches consisting of pastry, milk and apples. SEAP data shows that oftentimes all three products are

bundled-up in the same call for tender. This makes it difficult for specialized producers, whose prices might be lowest, to compete. Identifying such cases is tedious, as the information provided in official sources does not always include a detailed description of the tender or CPV codes. As a result of bundling, few companies are able to submit tender offers, and the issue is particularly problematic in rural areas, where there is a lower density of firms. This creates opportunities for state capture, as decisionmakers and entrepreneurs can negotiate what the technical requirements of a procurement are going to be in order to ensure that the right offer wins. This is one of the ways in which the underhand of public procurement manages to remain hidden in spite of transparency measures meant to prevent it or bring it to the surface and is another example of how discretionary allocation of resources can substitute speed money.

In addition, there is no fixed rule regarding who can organize procurements. In the case of school lunches, these are sometimes organized by county authorities, sometimes by local authorities and sometimes by the schools themselves. There are economic and bureaucratic arguments for each, such as it might be cheaper to buy from a local producer rather than have goods shipped out from another town, or that some institutions might want to avoid numerous and sometimes complicated procedures, yet such arguments might not always make sense. For example, schools in urban areas have similar needs and might benefit from having local authorities organize a common tender. Seeing each school organizing their own procedure might, therefore, be a red flag of corruption. Identifying those circumstances and separating a legitimate need from a desire to reward political clients is perhaps the most challenging part of ensuring public integrity.

The next section discusses the findings more in-depth, looking at their real-world implications, and examines possible reasons for the sharp increase in the ratio of single bidder contracts, as well as the drop in data published on SEAP.



## Discussion

Given that the mean and median number of competitors for public tenders increased both during the crisis as well as during the recovery that followed, the drop in recent years can best be explained by political factors such as the newly appointed government granting preferential access to public resources to client firms through programs such as PNDL. During the crisis, firms might have flocked to public tenders out of desperation, yet they continued to submit public bids even after the economy had started to recover and private-sector clients became available again.

In 2016, a new law on public procurement came into effect, allowing contracts to be split into lots and relaxing some provisions of reporting in procurement procedures. These were in theory meant to aid small and medium enterprises (SMOs) by enabling them to more successfully compete in public tenders. In spite of this, the average number of competitors per contract dropped starting with 2017. This means that even contracts that had been attractive and awarded competitively in previous years were attracting fewer bidders, a possible sign that the bids had been captured, so fair competitors did not even bother to submit tender offers.

Possible alternate explanations for the decrease in competition over recent years do not hold up to closer scrutiny. One such example is human error. Small towns, communes and some institutions often lack adequate expertise needed to properly fill in SEAP entries. Errors uncovered while cleaning the dataset include confusion regarding decimal symbols and value separators, missing values, including in the field for number of offers received, and bogus answers. However, it seems implausible that human error was widespread enough to alter the median number of reported bidders so much and so consistently. Moreover, in time one can expect the frequency of human error to decrease, as civil servants become more familiar with SEAP. The fact that more recent

datasets contained fewer junk entries than older ones supports the claim that human error cannot explain the drop in competition noticed since 2016.

A second alternative explanation that needs to be ruled out is economic problems, such as those that affected competition in 2009-2011. This is unlikely to have caused the drop in competition, given that GDP per capita increased in Romania from 9548 USD in 2016 to 12919 USD in 2019, and growth rates were consistently above 4% according to the World Bank, so the economic sector was expanding rather than contracting. Even if development did not affect all regions the same, given that regional disparities have increased over time (“Country Report Romania 2020” 2020), even slower-growing regions did experience growth and should thus still experience increased competition in procurement if access to tenders is open. Economic problems do not therefore adequately explain why competition in public procurement has declined.

A third possible explanation that needs to be ruled out is electoral contests. Changes in procurement behavior might be explained by proximity to elections. There are four years in the studied interval when local and general elections took place (2008, 2012, 2016, and 2020). If elections influenced the mean and the median number of bidders in public procurement, it does not explain why the number of bidders does not return to values similar to pre-election levels. Changes noticed around elections seem to carry on for the entire term. This points to a reshuffling of political arrangements that goes beyond rotation of decisionmakers. Rather, new elites come with new clients and new mechanisms for extracting rents, which change the overall patterns until the next rotation.

Changes noticed around electoral years persist until the ruling party or coalition is replaced. In the studied interval, such turnover occurred in 2008, 2012, late 2015, late 2016 and 2020. These intervals coincide with changes of patterns to procurement trends, implying that political factors

such as the party in power, the leadership of the ruling party or coalition, as well as the political affiliation of mayors influences competitiveness of public tender. Such a view is consistent with the idea of competitive particularism, as the new powerholders bring their client-firms to replace those of the previous.

A fourth possible explanation has to do with the cyclical nature of EU funds. Financing cycles are linked to the EU budget, so money tends to be awarded for national projects at the start of a budget cycle. Toward the end of a financing period there are typically few new contracts awarded, as emphasis is placed on completing projects already started. While this may explain some of the decline in the number of contracts signed in certain years, it does not explain why competition seems to have improved throughout the course of the first cycle captured by the analysis (2007-2013) and then steadily declined throughout the course of the second (2014-2020). As such, it seems that the decline in competition is more linked to domestic than to European factors.

The increase in average number of competitors per contract between 2011 and 2014 has translated to a higher median value, meaning that contracts were more competitive overall and across different sectors. A growth of the mean number of competitors but without a change in the median could indicate that some sectors of the economy became more competitive than others, a sign that some contracts or sectors of the economy are more vulnerable to state capture and corruption (Doroftei and Dimulescu 2015). In 2016, the average number of competitors per contract grew to over 8 (the second highest in the interval) but the median remained unchanged. This is, however, more of an exception, as generally the trend is for changes in the median to accompany similar changes in the mean, pointing to no significant differences across economic sectors.

Regarding sectorial differences, work carried out by Doroftei and Dimulescu (2015) shows that areas more vulnerable to corruption such as construction are also prioritized in terms of public

spending. It is unclear whether more money spent on construction also incentivizes corruption to manifest there or the prevalence and ease of corruption in the construction sector encourages decisionmakers to continue funneling money toward it. Likely, the relationship is mutually reinforcing. In either case, competition suffers as a result of procurement that is not fair and honest. Companies that participate in public bids and suspect underhanded arrangements might refrain from submitting bids in the future. ‘Fair’ tenders attract more competitors, whereas tenders perceived as unfair see less participation. The fact that almost one third of procurement contracts since 2017 had exactly one bidder (far higher than the EU average) and at least half had three bidders or fewer despite years of consistent economic growth points to widespread political meddling and state capture.

An argument can be made that administrative issues can also limit competition, not just corruption. Changes to documentation required or to procedures necessary to compete in public tenders might limit the capacity of private companies to submit valid bids. In this case, however, the number of recorded bids would be higher than the number of valid bids, since invalidation would occur after counting the received tender offers, therefore the number of competitors would appear higher. Administrative issues might limit submission of tenders, yet this too is indicative of corruption, as such issues would be addressed and corrected otherwise. As seen, however, the problem seems to have gotten worse in recent years.

Worth noting at this point is that shining a light on procurement is not enough to increase competition or to make the process more honest. One reason for this has to do with the stakeholders themselves. There are no groups or organizations that monitor the tens of thousands of procurement procedures that are carried out each year, so corrupt practices can be hidden in plain sight. Aggregate data does not tell the story of how individual procurements happen and where

preferential treatment can hide, so an observer can easily miss such instances if focusing on macro-level data. Companies that submit bids are oftentimes the only stakeholders that can notice and draw attention to potential breaches of public integrity, yet they are either unwilling to do so or lack the training to detect more subtle corruption mechanisms. In either case, the societal reaction that could change behavior inside institutions does not occur. As such, even though it is well established that corruption occurs in procurement, individual cases frequently go unreported or unnoticed. Would-be bidders are discouraged from actively participating in spite of increased access to information, signaling that access to the procurement market is still restricted and politically controlled. As previously seen, competition has declined since 2017, signaling that the problem is getting worse despite increased access to information. Therefore, transparency is either ineffective at breaking the monopoly over access to public funds, or the proper tools and mechanisms that make transparency effective are not used. As the case of school lunches demonstrates, having data in the open might not be enough to identify and discourage individual acts of corruption or to challenge the particularistic system.

Existing regulation states what must be published on SEAP, but there is sufficient discretion allowed to enable contracting authorities to skip over relevant information or even to leave fields blank. The year 2019 stands out as most transparent, with only 8.22% of values missing from SEAP. This, however, did not translate into a lower share of single bidder contracts that year, with over one quarter of contracts being awarded to single bidders.

As a final point, it is worth mentioning that the threshold for direct procurement has been raised a number of times throughout the interval of study, meaning that larger contracts could be awarded through direct procurement or other non-competitive procedures. This increases the amount of money that can be awarded in a discretionary manner, so one would expect that single bidding

would decline as a result. If political clients can get contracts through direct procurement, there is no reason to bid in competitive procedures. This, we have seen, is not the case, so the drop in competitiveness one can argue is even sharper than the data reveals.

## Chapter conclusions

Romania's efforts toward transparency and anticorruption since becoming an EU member-state have been remarkable yet the results from over a decade of struggle do not seem to point in the direction of systemic improvement. On the contrary, over the recent years there have been more red flags of corruption in public procurement despite more access to information than ever before and despite years of sustained economic growth.

Findings thus far reveal an increase in red flags of corruption starting in 2017, which coincides with power turnover and the start of PNDL 2, even as transparency continued to improve. However, although the overall amount of missing data declined steadily, we see that the type of data missing changed, with the values of contracts becoming harder to find, especially in machine-readable format. Trends observed during the Ponta cabinets (PSD, 2012-2015) are similar to those of the previous administration under Emil Boc (PDL, 2009-2011) and very different from those noticed under the other PSD governments of the period (2017-2020). Changes to the type of available information as well as to the type of available funding point to differences in the type of corruption one can expect to find in a given field at a given time. The prevalence of red flags of corruption seems to depend on the person or the faction in power rather than the party.

Institutional safeguards against corruption in public procurement are still lacking, particularly given the limited oversight of spending through PNDL. The year 2016 stands out as one of the most competitive on the procurement market, as well as one of the most transparent, coinciding with the peak of DNA indictments and the mandate of the technocratic government lead by Dacian

Cioloş. Having no party networks, the technocrats were not bound to networks of clients demanding their slice of the public resource pie. They also had no available pool of political figures from where they could make appointments to office and thus recruited from civil society organizations and cooperated with them intensely. However, the technocrats lacked the time or the parliamentary support to push through significant systemic changes. As such, institutions retain sufficient discretionary power or are sufficiently free from oversight to conceal crucial details regarding public tenders without fear of reprimand, as well as to allocate resources in a discretionary manner.

Data drawn from official sources points to a gradual erosion of competition in public tenders, particularly since 2017, whose causes seem to be tighter political control over access to public funds. PNDL 2 especially gave central government extra discretionary powers when it came to allocation of public funds to local officials, arguably increasing political control of corruption by increasing the capacity of local officials to reward and expand their corrupt networks if they chose. This occurred despite increased access to information, signaling that transparency did not generate the necessary changes of behavior within institutions, likely because available data does not capture the mechanisms by which corruption can occur. More data does not necessarily mean that the information is relevant to anticorruption efforts.

As such, we are witnessing not only fluctuations in how much corruption there seems to be in public procurement, but also changes to the type of corruption. While recent studies have focused on identifying and measuring less subjective indicators of corruption, much more research is needed to identify how the mechanisms and the locus of corruption changes and evolves over time and in reaction to external or internal factors (elections, prosecution, anticorruption policies, network defectors, etc.).

This chapter has presented a general overlook of public procurement at national level overall. Finding that red flags of corruption are more common in recent years indicates that the improvement noticed in measurements presented in the previous chapter comes from a reduction in some forms of corruption (speed money or corruption that citizens come into direct contact with) but not others (access to resources). This is in line with the expectation that the partisan nature of corruption leads to county-level differences, and that corruption has become more politically organized in Romania in recent years.



## Chapter 4: IT sector procurement – in depth analysis

This chapter builds on previous findings of discretionary allocation of public resources and identifies cross-county differences in procurement patterns and corruption red flags, proposing a multipolar and layered model by which corruption networks operate at county level. It highlights how political affiliation, electoral performance, and government incumbency affect allocation of public contracts at county level.

### Chapter overview

Government favoritism is defined as “allocation and performance of public contracts by bending universalistic rules of open and fair access to government contracts in order to benefit a closed network while denying access to all others.”(Cingolani, Toth, and Fazekas 2016). This process of rule bending is conceptualized as “access money” (Ang 2020), wherein public money can be obtained legally through processes such as public procurement where politicians control access to the market. As gatekeepers of the procurement market, they retain discretion when deciding what and how to buy and can therefore filter out unwanted competition for their client firms through a variety of means such as product specifications, procedure length or, as seen in previous sections, product or service bundling, without technically breaking the law. Captured markets are therefore not very competitive, which is why single bidding and market concentration are used as proxy indicators of corruption, although they are not enough by themselves (Dávid-Barrett and Fazekas 2020).

Existing literature on state capture focuses on government favoritism, typically comparing procurement patterns across different governments and/or countries (Doroftei and Dimulescu 2015; Pustan 2019; Fazekas and Kocsis 2020). National-level comparisons are relevant, as they reveal patterns of systematic favoritism such as low to moderate levels of state capture (Pustan

2019), as well as differences between countries. However, while such studies contribute much to the understanding of favoritism and public procurement, one drawback is that they use data aggregated at national level, meaning that procurements are analyzed based on who was in government at the time. This is problematic in a country like Romania, where there is a high degree of executive instability, so it is never clear how long parties can hope to be in government. Moreover, the political landscape in Romania has seen coalitions of every major political party, making it difficult to disentangle party favorites. Ministers from certain parties and even directors or heads of government agencies can organize tenders favoring their own client-firms, irrespective of the political affiliation of the prime-minister.

Volintiru (2016) shows that clientelist and corrupt networks are maintained using public resources, either by appointments to public office (including positions within the civil service) or by allocation of public funds (including via public procurement) and use these networks to secure votes when political mass mobilization is low. However, political clients and corrupt networks demand benefits for their continued support even when the party does not perform well enough to be in government. In such cases, as mentioned in previous sections, the party relies on resources from local and county levels. As previously shown, the poles of Romanian corruption appear to be at county level rather than at the very top. Government instability might be a strong incentive for incumbents to make the most of their time in the Executive to award as many contracts as possible to client firms, but it also means that parties likely have to rely on counties and mayors as a more stable and consistent source of long-term rents and kickbacks, particularly when their party is in opposition. This struggle for public resources between competing (clientelist) networks also appears in Chapter 5. As such, a sub-national analysis of public procurement is necessary to shed

light on how corruption works and changes at local level, and for unraveling the complex relationships that exist between mayors, county bosses and the Government.

This section uses the same SEAP procurement data as previously, with procurement contracts bundled according to the contracting authority. Included are all procurement contracts in the IT sector between the local elections of 2008 and those of 2020, to cover three full electoral cycles. The IT sector was selected because digitizing public services has been a recurring theme throughout the interval, both at national and at local level. Justifying procurement in IT is easy because there is demand for modern digital services, and the area is technically complex enough that few people are able to assess the required specifications in calls for tender, so it is easier to get away with rigged tendering procedures, making IT particularly vulnerable to corruption. Mayors of county capitals often launch different digital tools and discontinue those of their predecessors, resulting in frequent changes of direction and vision. One example is changing the institution's website, particularly to highlight achievements of the incumbent while hiding work of their predecessors. As a result, the same institution can undergo the same digitization process over and over, signing multiple contracts for basically the same thing without any continuity between platforms or applications and oftentimes without any integration or interoperability between them<sup>17</sup>.

### National data

The number of people employed in IT in Romania grew 70% between 2008 and 2021, reaching 220.000 or 4% of the entire labor force (Mihai 2021). This was accompanied by a growth in new

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<sup>17</sup> One consequence of this lack of integration and interoperability is that information does not travel between institutions, and much less to the public. It is unclear to what degree this situation is the result of poor procurement planning or intent to keep institutions insulated and in total control over their information, as well as to maintain the need for further investment.

IT companies throughout the interval, reaching 17.000 in 2019 (Voiculescu 2017; Neagu 2019), and generating over 14 billion euro in 2021 or around 7% of the country's GDP. Such growth is made possible by measures such as exemption from income tax for IT employees, to keep their wages high and thus discourage migration.

Out of the 25 highest earning IT companies in the country (accounting for one third of revenue in the field), only one is domestically owned. Despite this, more than 95% of contracts in IT procurement are awarded to Romanian companies. The IT market is therefore dominated by domestic firms more than the construction sector, where international firms made up 16% of winners (Doroftei and Dimulescu 2015) as compared to 10.7% (188 out of 10.718 total winners) in IT.

In total, there are 9815 procurement contracts in the IT sector (CPV codes 48 and 72) in the interval July 2008 and October 2020, with an average value of 1.070.000 Ron or 238.000 Eur. This includes all contracting authorities from central and local levels. The average number of bids per tender is 2.56, and the median is 1. In fact, 57% of contracts were signed following single bidding despite all tendering procedures being competitive. Although, as mentioned, such little competition may be the result of highly specific requirements, it is unlikely that so few tech firms, who specialize in digital services, would be able to offer the equipment or services needed. A more likely explanation is that requirements and procedures are made to ensure that the right companies win, to the point that other competitors do not even bother to submit bids<sup>18</sup>.

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<sup>18</sup> This has also been confirmed during informal talks by people handling procurement for one of the companies mentioned in this work.

Most IT contracts (71.3%) are signed by national government authorities, meaning that overall data cannot be used to draw conclusions about local and county-level procurement.

## County-level analysis

### Aggregate data

At county level, there have been 786 IT contracts, plus 13 framework contracts for which no money was paid. These include procurement done by the County Councils or authorities subordinate to them, such as county hospitals, public companies, social service directorates etc. whose leadership is appointed by the County Council. Of these, 412 were signed while the incumbent party was also in government (~51%), so it does not seem that incumbency plays a role in deciding whether or not to tender. However, the value of contracts signed during incumbency is almost double that of contracts signed while in opposition (62% of total spending on IT contracts occurred while in government), which is consistent the view that governments direct more resources to friendly counties. It is unclear whether contracts awarded while the incumbent is also in government are inflated artificially or whether allocations from the center encourage larger investment.

The distribution of total resources based on incumbency and electoral performance is described below, where counties where the ruling party in a county has not changed in the three local electoral cycles covered are considered “party strongholds”:

| <b>IT SPENDING AT COUNTY LEVEL BASED ON PARTY PERFORMANCE AND GOVERNMENT INCUMBENCY</b> |                  |                      |
|---|------------------|----------------------|
|   | IS IN GOVERNMENT | IS NOT IN GOVERNMENT |
| <b>IS PARTY STRONGHOLD</b>  | 37%              | 18%                  |
| <b>IS NOT PARTY STRONGHOLD</b>  | 25.16%           | 19.84%               |

*Source: Own calculations based on SEAP data*

Incumbent bias is particularly visible in party strongholds, meaning that the emphasis falls on rewarding electoral performance rather than on consolidating the party's hold on more competitive counties. This indicates that the seat of party power is at county level rather than at the level of government, and points to the locus of political corruption also being at county level because political clients appear to take precedence over development needs. If a party is not in power, its strongholds appear to spend less on IT, probably as a result of receiving less money from the government.

At county level, IT tenders are even less competitive than the national average, the mean number of competitors being just over 2 per contract. Over 63% of tenders are awarded to single bidders, corresponding to 41.2% of the total amounts spent. This means that, surprisingly, larger contracts tend to be more competitive than smaller ones.

The legislation on public procurement was changed in 2016 specifically to regulate breaking down large investments into smaller lots in order to give smaller companies a chance to compete. In the IT sector this effect is not observed at county level. On the contrary, the interval with the largest contracts on average and the most money spent on IT procurement (2012-2016) also had the least share of total IT expenditure going to single bidder contracts, as seen in the table below. The mean number of competitors per contract remained largely the same throughout the interval.

**Table 5: IT spending on single bidding procurement (raw amount and share of total) per electoral cycle**

| <b>INTERVAL</b>                                     | <b>2008-2012</b> | <b>2012-2016</b> | <b>2016-2020</b> |
|---|------------------|------------------|------------------|
| <b>SINGLE BIDDING SHARE OF TOTAL IT EXPENDITURE</b> | 51.5%            | 30%              | 62.9%            |
| <b>SINGLE BIDDING ABSOLUTE AMOUNTS (MIL. RON)</b>   | 65.8             | 87.7             | 56               |

*Source: Own calculations based on SEAP data*

As described in Chapter 3, the decline of competition in procurement after 2016 can be explained by the new National Program for Local Development (PNDL 2) which featured vast sums awarded from the central budget to local officials with minimum oversight as to how that money is spent. While it did allow mayors to complete necessary investments, PNDL 2 was also a way to reward political clients (Eremia and Zachmann 2017). This, combined with decriminalization of certain deeds and a decline in DNA activity, explains the widely reported instances of corruption associated with it (Caprescu 2017; Hojda 2021; Recorder 2019).

In spite of legislative changes, the interval following 2016 saw the largest share of IT expenditures going to single bidder contracts, even though the absolute amounts were smaller than in the previous intervals. As seen previously, 2012-2016 was the peak of the DNA's anticorruption struggle, yet to argue that there was less corruption in IT in this interval would be misleading considering the absolute amount of money that single bidding received. Moreover, more competition does not necessarily mean more diverse winners. As seen below, the apparently most competitive interval actually had the fewest number of winning companies.

**Table 6: Number of winning companies in IT procurement by electoral cycle**

| INTERVAL                    | 2008-2012 | 2012-2016 | 2016-2020 |
|-----------------------------|-----------|-----------|-----------|
| NUMBER OF WINNING COMPANIES | 128       | 86        | 103       |

*Source: Own calculations based on SEAP data*

This means that even though more companies were bidding, contracts were still awarded to the same small number of winners. Illustrative in this sense is the most competitive tender in the dataset, organized by the Hospital for Infectious Disease in Galați for “Maintenance work”, which received 29 tender offers and was won by a company ranking second in terms of overall number of tenders won at county level. Of its 33 contracts, 28 were won through single bidding. The company with most contracts overall (136 or 17% of all) won all but 3 of them through single

bidding across 17 counties. The highest earning company received close to 10% of the total amount spent on IT at county level (almost twice as much as the next highest earner), winning 24 contracts overall, of which 14 through single bidding. In all of the aforementioned examples, there seems to be no difference across party lines. The top earners win contracts irrespective of political allegiance at county level, with little observable bias.

The four-year intervals coincide with one local electoral cycle, to capture the behavior of local officials for the duration of their term. While some mandates were terminated ahead of time (such as when a County Council president was indicted for corruption), the overall power structure by and large remained the same. Another advantage of intervals is that they aggregate contracts over a longer period of time. Some counties, such as Alba, Ialomița, Mehedinți, Covasna or Caraș-Severin, have signed fewer than 5 IT contracts over the period studied, whereas others like Iași, Brașov, Constanța or Mureș have over 40. These differences, however, do not necessarily outline the largest spenders. Teleorman is the fifth largest spender despite having signed only 9 contracts, while Iași and Brașov are not even in the top 10 of amounts spent.

Economic disparities between counties might explain some of the differences seen in spending, although in a perhaps counterintuitive way. The top spender on IT was Dolj, an average county in terms of development, followed by Constanța (one of the most developed), Giurgiu, Olt, and Teleorman. At the start of the interval, the latter three were regularly mentioned as some of the least developed areas in the country in terms of GDP per capita, particularly Teleorman. The fact that poorer areas seem to have invested more in digital services than more developed counties could mean that digitization was seen as crucial to development or that more developed areas did not need IT services as much. The latter point is unlikely though, because the overall level of development in Romania, particularly in terms of digital services remained low throughout the



period of study. Moreover, although less developed areas may genuinely need more investment, there is little evidence that the extra spending on IT products or services made any difference in terms of development. The Index of Public Integrity, for example, found that Romania consistently ranked last in the EU in terms of E-Citizenship between 2015 and 2019, its score remaining basically the same. As such, investment was needed throughout the country. A more likely explanation for the differences in spending is that some less developed areas used the promise of development through IT investments to justify grand procurement contracts, which were then used to reward political clients. This is supported by four of the top five spenders being party strongholds (of PSD) who, we have seen, receive more government transfers and spend more on IT contracts.

### Market concentration

In a competitive procurement setting, one can expect to see companies bidding wherever there are opportunities, including at national level and across counties, irrespective of the political incumbents. In such a setting there would be few instances of single bidding (Doroftei and Dimulescu 2015) and few (if any) companies that only win when no other competitors bid. Moreover, given the performance of the IT sector, one can expect to see a large number of winning companies and low market concentration. By contrast, a small number of winners overall is indicative of IT sector capture, as is the degree of market concentration. According to the Herfindahl–Hirschman Index (HHI), a value of 1500 or lower signifies a highly competitive market, while a value of 2500 or greater corresponds to a concentrated market, with 10.000 representing a monopoly. Market concentration is a useful indicator because it enables a more nuanced approach to procurement. As seen, even if the majority of contracts are competitive, the winner might be the same, and even if there are several winners in a county, one might still receive

the lion's share of public money by consistently winning either the biggest contracts or a multitude of smaller contracts that amount to dominant market positions. Market concentration allows a look at such situations by considering the market share of each winner per each interval.

When calculated across counties for the period studied, the average HHI value per county is 6046.81, revealing very high market concentration across the board. Even when removing situations where a monopoly is inevitable because only one tender was organized per electoral cycle, the average across counties is still over 5300 and still contains monopolies, meaning that the same company won every tender in a county. Revealing in this case are Galați in 2008-2012 and Vrancea in 2012-2016, who organized some of the most competitive tender procedures overall, yet the same company won them all.

Over the period, there is no county with an average HHI lower than 1500, and the only average lower than 2500 is in Constanța. Its lowest score of just under 1400 was recorded in the 2016-2020 interval. The next best score was in Dolj in 2012-2016 (1778) but this grew over the next cycle to over 2800 despite more contracts and more competition, meaning that fewer firms won larger shares of overall expenditure. The average HHI score in Dolj is over 3000 but it is still one of the better performers. Assessing the worst performer is difficult because of the low number of contracts signed, resulting in a number of apparent monopolies. Overall, the HHI reveals high market concentration, with clear monopolistic tendencies in the IT procurement sector.

In total, over the three electoral cycles studied, there have been 29 instances when a ruling party was replaced at county level (in 2012 compared to 2008 and in 2016 compared to 2012). In 15 of these instances the HHI score increased compared to the previous electoral cycle, and in 3 instances there was no change. In 6 of the cases when the HHI score grew after power turnover, the average number of bidders also increased, signaling that, at least in some counties, a change of ruling party

encouraged more IT firms to bid but did not lead to more winners. This is, however, more of an exception, given that in most counties the HHI increase can be explained by reduced competition.

Being in opposition puts more strain on party resources than being in power, so the increase in scores after power turnover can be explained by the new incumbents making greater efforts to reward supporters and pay off campaign debts, essentially behaving like “roving bandits” (Olson 2000). This explanation is supported by the fact that in party strongholds, where there was no change of incumbents, there are more competitive bids and a lower average HHI score, as seen in the table below, although the differences are too small to be substantively significant.

**Table 7: HHI scores and average number of bidders by electoral performance of county**

| COUNTY                     | AVERAGE NUMBER OF<br>BIDDERS | AVERAGE HHI |
|----------------------------|------------------------------|-------------|
| IS PARTY STRONGHOLD        | 2.29                         | 6282        |
| IS NOT PARTY<br>STRONGHOLD | 2.10                         | 5830        |

*Source: Own calculations based on SEAP data*

Overall, the IT procurement sector remains highly uncompetitive, which is indicative that the sector is captured. Awarding contracts to political clients explains why few IT companies bid for public tenders and why even fewer win. It also explains why digital services in the public sector remain underdeveloped despite a growing and competent IT sector. Honest companies avoid bidding in tenders they consider rigged or face barriers that only the pre-determined winner can pass.

An informal talk with an employee for one of the largest companies mentioned in this work confirmed that procurement departments within companies typically know which procedures are fair and which are best avoided. Some institutions, they mentioned, are avoided entirely. One way to judge if a procedure is fair is to allow it to expire. If no bids are submitted, it is a sign that there

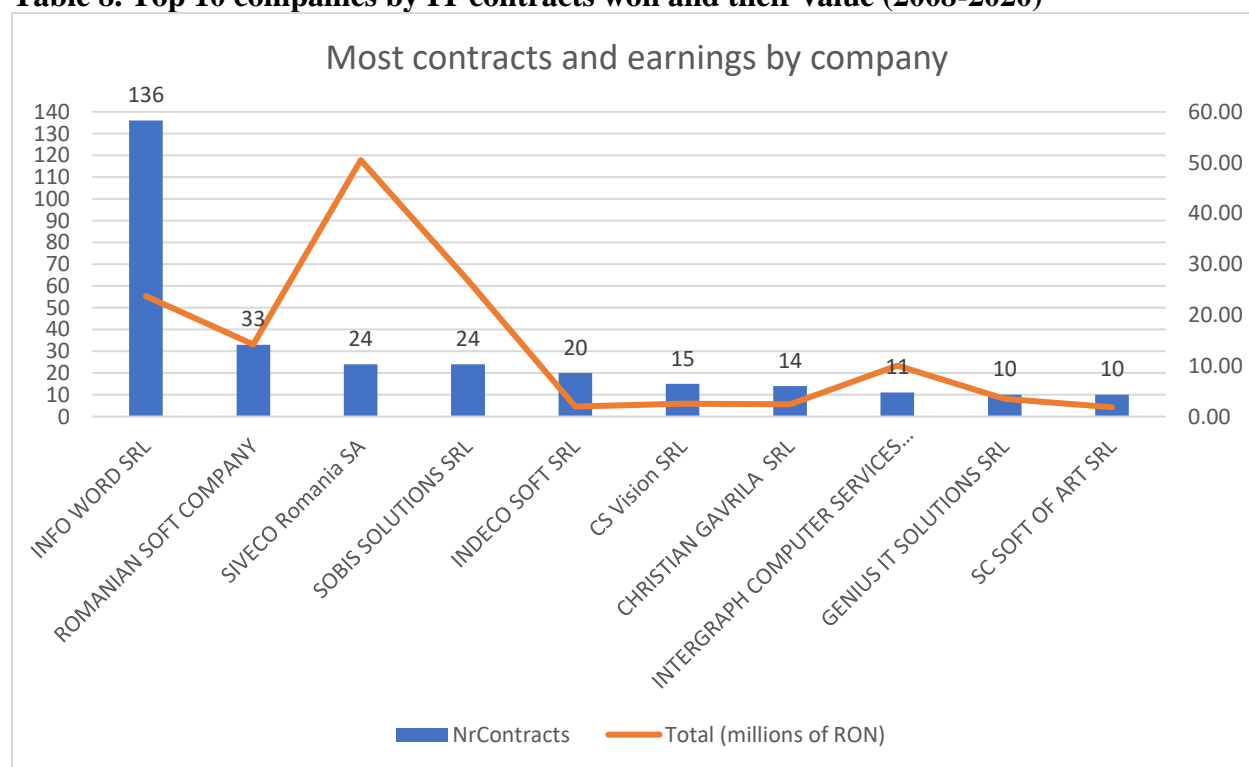
was no pre-determined winner, so it is safe to tender once the procedure is restarted. There is, unfortunately, no official record of procedures that expire without any offers.

To get a full picture of what goes on in the IT procurement sector, an in-depth look at who the winners is required.

### Analysis by company and party

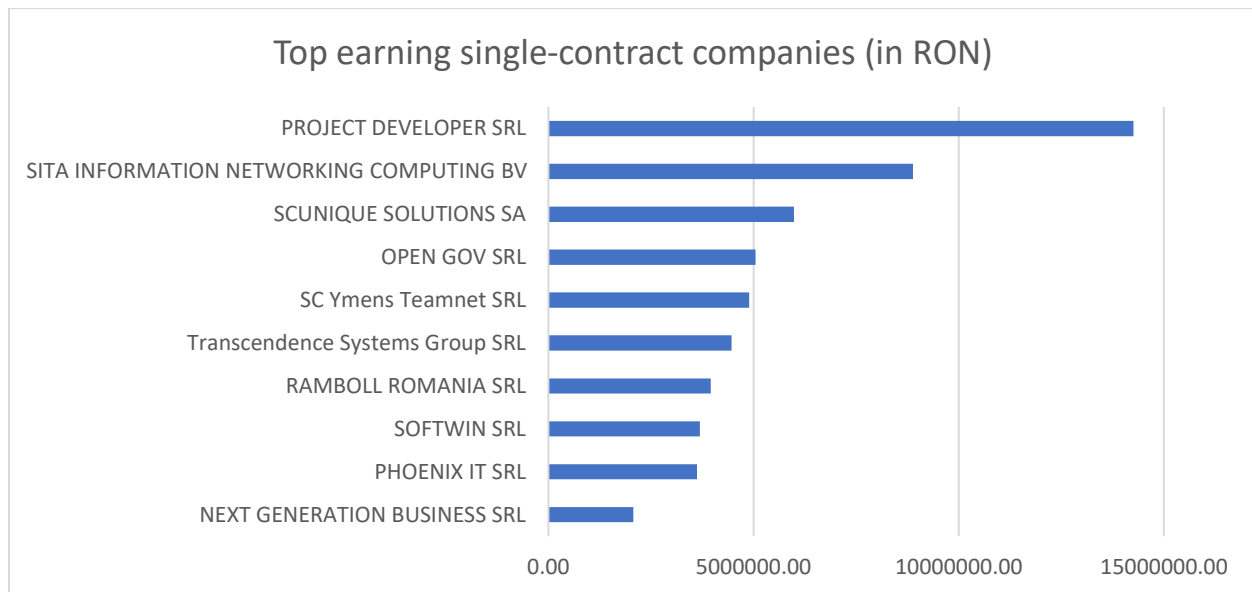
Available data reveals that the biggest winners of IT contracts face the least competition. Of the 243 companies that won procurement bids, ten have won 10 or more contracts and 141 (58%) have won a single bid at county level. The top ten faced on average a competition of 1.4, meaning that the vast majority of their contracts were won through single bidding. The top 10 highest earners faced some more competition (2.18 bidders per contract), but only 3 of them won contracts in bids averaging more than 2 offers.

**Table 8. Top 10 companies by IT contracts won and their value (2008-2020)**



Source: SEAP data

By contrast, competition for the top ten highest earners among companies that won only one contract was higher, with 2.6 bidders on average. The two highest earning single-contract companies stand out as also the only two cases of single bidding in the top 10.



As can be seen, the top two contracts are also much larger than the others - 14 million and 8.8 million Ron respectively, while the third largest is 5.9 million, and the difference between the other winners is not as great.

The picture thus far is that, although larger contracts are more competitive (as highlighted earlier), companies that win most often face less competition than those that win once. This is consistent with how favoritism works. Tenders for large contracts that are supposed to go to political clients are such that competition is discouraged whereas ‘fair’ contracts are more competitive. However, large contracts also attract more attention, meaning the risk of public scrutiny is also greater. As such, repeatedly winning smaller bids is also a viable strategy. The lack of integration and interoperability of digital tools serves to make contracting authorities fully reliant upon the developers, as maintaining and changing digital tools is beyond the capacity of most institutions.

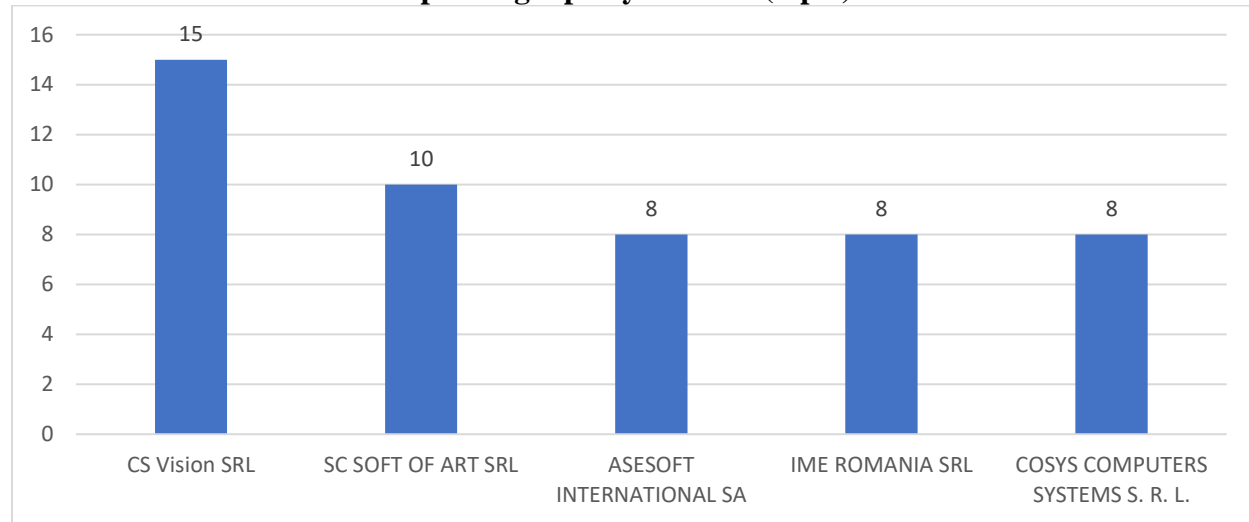
Therefore, contracting authorities might have little choice but to contract the same firm over and over. In such a scenario only the first bid, in which the digital tool was developed, needs to be rigged so the right company wins, as later bids would have technical specifications that only they can address. A famous example in this sense is the government public procurement platform from which the data for this study was gathered (SEAP), which is still maintained by the private IT company that developed it, which has known political ties and was the only bidder for the contract (Dumitrache 2021).

The biggest winners of IT contracts win irrespective of the political color of the county. In total, over 21% of companies that have won tenders have done so under multiple parties. Notably, four of the top five largest earners and of the companies with most contracts have won bids from all three of the major parties throughout the interval. While this may signal trans-party connections, it is also what can be expected in contexts of free and competitive markets, therefore evidence of political clientelism and capture is best sought among companies with clear party bias, such as those who sign contracts only with authorities controlled by a specific party.

Of the 243 winner companies in total, 58% have won only a single bid so they appear as single-party companies by default and are removed from the analysis, and 21% (50 companies in total) have won multiple contracts from only one party<sup>19</sup>.

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<sup>19</sup> This is without considering the merger between PDL and PNL. Including these would increase the numbers even more.

**Table 9. Number of contracts per single-party winners (top 5)**

Source: SEAP data

The stand-out case is CS Vision SRL, who won the most contracts from a single party, all but one in Braşov county (PNL stronghold). The one contract signed outside of Braşov, in Hunedoara, who was at the time also controlled by PNL, is also the most competitive contract won by the company, having received 6 offers. Of the 14 contracts signed in Braşov, only one had more than one bidder, which is surprising considering that Braşov has one of the largest IT sectors in the country in terms of number of companies and revenue. CS Vision SRL is considered one of the companies controlled by the long-serving PNL county president, Aristotel Căncescu (Petcu 2015).

The situation is similar in other single-party winners. SC Soft of Art SRL won all of its 10 contracts in Constanţa (PSD stronghold), all through single bidding, and all for the same contracting authority. Cosys Computers won all of its contracts in Harghita (UDMR stronghold), although most of them had two bidders rather than one. An interesting case is Asesoft International SA, who won 7 contracts in Prahova (PSD stronghold) through single bidding and one in Olt, which was the most competitive bid, receiving 3 offers. Most of Asesoft's contracts were signed in 2008-2012, before their owner, Sebastian Ghiţă, was elected to the Chamber of Deputies for PSD. Ghiţă

became one of the most well-known political figures of the time, for his part in scandals involving DNA chief prosecutor Kovesi and general of the Romanian Information Service (SRI) Florin Codlea, as well as for several charges of corruption, money laundering, blackmail, etc. In December 2016, he fled to Serbia and requested political asylum to escape arrest.

Further evidence of clientelism can be found by looking at the companies that have never won a competitive bid despite signing 3 or more public contracts. These include names that have already been mentioned such as Soft of Art.

**Table 10. Companies that have only won IT tenders through single bidding**

| COMPANY   | NUMBER OF CONTRACTS | TOTAL VALUE OF CONTRACTS (RON) | SINGLE PARTY | SINGLE COUNTY | NATIONAL CONTRACTS |
|---|---------------------|--------------------------------|--------------|---------------|--------------------|
| SC SOFT OF ART SRL                                  | 10                  | 1833216.61                     | YES          | YES           | NO                 |
| IME ROMANIA SRL                                     | 8                   | 1982670.01                     | YES          | NO            | YES                |
| SC IT LAURENTIU SRL                                 | 8                   | 49856.68                       | YES          | YES           | NO                 |
| SC INFO D&P SRL                                     | 6                   | 167407.92                      | YES          | YES           | NO                 |
| CENTRUL TERITORIAL DE CALCUL ELECTRONIC SA          | 5                   | 1502540.00                     | NO           | NO            | YES                |
| SC COSARA SRL                                       | 5                   | 348682.91                      | YES          | YES           | NO                 |
| EXTRANET SRL  | 4                   | 672000.00                      | YES          | YES           | YES                |
| SAN SOFTWARE SRL                                    | 4                   | 434592.56                      | YES          | YES           | NO                 |
| DIVERGENT SOLUTIONS SYSTEMS                         | 3                   | 3598750.00                     | YES          | NO            | YES                |
| EXPERTISSA HQ SRL                                   | 3                   | 819264.14                      | NO           | NO            | YES                |
| CENTRUL PENTRU MANAGEMENTUL SERVICIILOR DE SANATATE | 3                   | 172000.00                      | NO           | NO            | YES                |

*Source: SEAP data*

A pattern can be seen in the above table. Companies that win only through single bidding are divided into those that win in only one county, under one party and do not win national contracts (with one exception); and those that win contracts over multiple counties under several parties and



at national level. In both cases, the fact that the companies were only able to win tenders when there were no competitors raises suspicion over the fairness of the procurement process.

An argument can be made that small companies might not have the capacity to undertake a national project or to compete in tenders outside of their home counties. This, however, does not explain how small companies could handle large contracts such as those above (the largest of which was worth around 700.000 euro), or why the large contracts did not attract more bidders, even from other counties.

Another argument is that these companies perhaps competed in other public tenders and lost, yet this too raises integrity questions. How fair is a procurement procedure if companies that can only win when there is no competition still manage to win repeatedly in the same place and under the same party?

A more likely explanation is that capture and political ties explain the patterns observed. The high level of complexity of the IT sector makes it possible for a company to implement a technical solution that only they are later able to maintain or update. In such a situation, they would win a number of contracts for maintenance work as the only bidder, since other companies are not able to address that specific need. In practice, this is a situation of state capture, even if decisionmakers receive no benefits from the contractor, because the institution is dependent on a company and must supply them with contracts. However, if the contract for implementing the original IT solution is also won without competition, then the state capture is likely doubled by political clientelism.

### A model of IT corruption

The pattern so far seems to be that companies win many non-competitive contracts in party strongholds but face stiffer competition if branching out, signaling political ties that do not exceed county boundaries. Public contracts are used to propel local political clients to higher positions, including Parliament and Government office, from where larger contracts can be awarded. Such a pattern implies party-level agreements for offices to be handed out based on services (or resources) brought to the party, as well as based on geographical spread. Local barons all want a seat at the table in government, to ensure money from the center keeps coming. In fact, one of the main criticisms brought to Liviu Dragnea by fellow PSD leaders was that he prioritized appointing people from Teleorman to government offices and positions (Buhociu 2018), which indicates that other political clients were displeased at having been snubbed or that local PSD leaders felt they were losing influence over the center by not having their people appointed to higher office. As previously seen, Dragnea's claim to power was built on offering protection from prosecution, so local leaders supported him despite his disregard for previous internal arrangements.

Such examples point to a model of multipolar and layered corruption where politicians control access to procurement markets on different layers and islands. Client companies are connected to local and county politicians, and function in insular markets at the level of their connections. Gaining access to larger markets requires connections to upper levels, either by promotion or election to higher office, or by somehow forming new ties to the top. These ties can take on the form of 'access money', where access to procurement contracts is purchased with money or favors, but they can also be built upon existing personal ties between owners and decisionmakers, as well as through mechanisms of kickbacks which entail no upfront payment (when the company had proven it can be counted upon to respect the arrangement). Purchasing access to the procurement

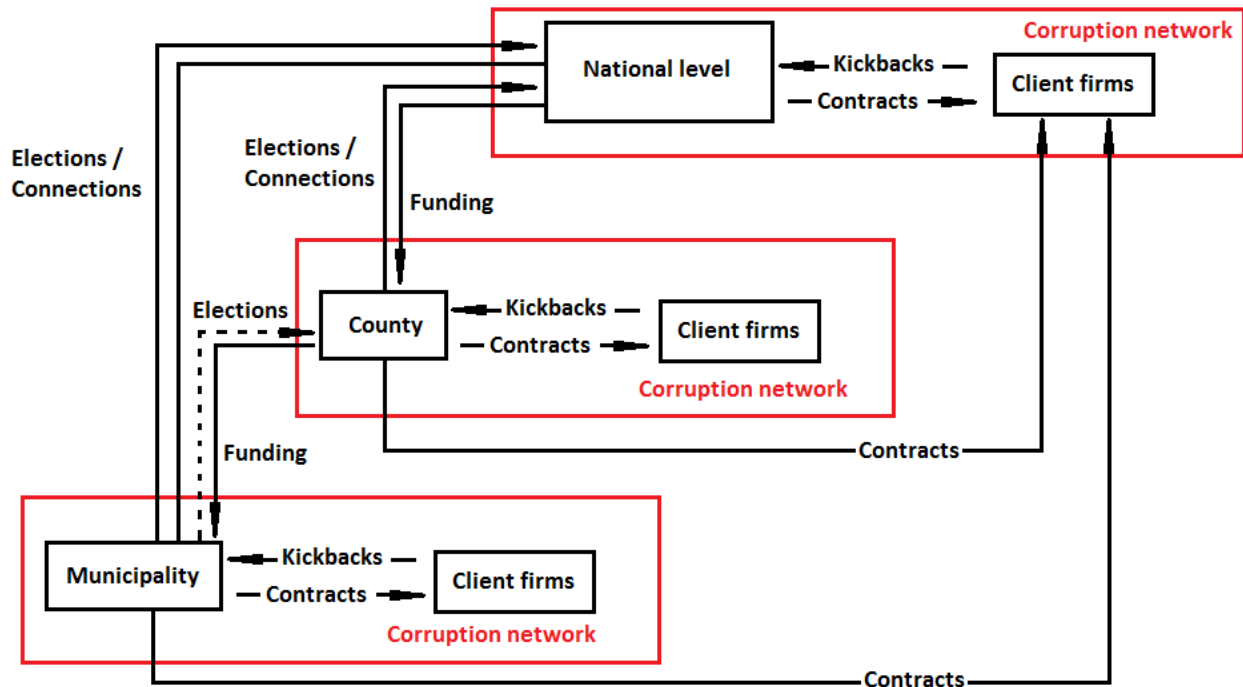
market might explain why Asesoft International donated 80.000 RON (around 20.000 EUR) to PDL in 2009<sup>20</sup>, despite its close ties to PSD. The company went on to receive 15 public contracts totaling over 25 million EUR from national authorities over the next 3 years, while PDL was in government and PSD in opposition. This model is also supported by the fact that other companies such as CS Vision and Cosys also had contracts with central authorities despite not being able to easily breach markets in other counties.

A graphical representation of the model can be seen below. As noted, corruption networks at each level as a rule do not intersect. There is little overlap between companies that win contracts at county level and those that win at municipal level. The way to access more resources is to have connections in higher places such as allies in government. Connections at the very top are key to securing national contracts but also serve for opening doors to other counties where access is otherwise barred.

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<sup>20</sup> According to the database of party donors centralized by Expert Forum, available at: <https://www.banipartide.ro/donatori-persoane-juridice>

Model of insular and layered corruption in IT procurement in Romania



Worth noting is that there are few examples of mayors becoming county bosses or vice-versa, likely because such positions are seldom vacant and highly coveted. Local and county bosses who perform well for the party are usually promoted to positions in central administration or find themselves on lists for Parliament and return to their original level once their mandate is done. Examples of this process can be seen in the political career of Emil Boc, who served as mayor of Cluj-Napoca, was appointed Prime-Minister, and later successfully ran once again for mayor, or Olguța Vasilescu, who was elected into Parliament, then became mayor of Craiova, resigned in order to serve as minister in the Grindeanu cabinet before returning to win another term as mayor in 2020. Government positions, while rewarding, are temporary and uncertain, whereas county bosses can remain in office for decades if reelected.

At the level of Parliament and Government, battles for control over counties stand in contrast to the relative consensus over election of mayors. The Constitution does not specify how County

Council presidents should be elected, so in 2008 and 2012 they were elected directly, using a first past the post system (FPTP), whereas in 2004 and 2016 they were elected by County Council members. In 2011, a PDL initiative extended FPTP to the election of mayors, stating explicitly that this was to mirror the process at county level<sup>21</sup>. PSD and PNL took advantage of this change to dominate the 2012 elections, and neither have since made serious attempts to return to a two rounds system. However, when it came to election of county Council presidents, they went so far as to engage in Constitutional battles. As recently as 2019, the Dăncilă government (PSD) issued an emergency ordinance (OUG 40/2019) to reinstate direct elections for county bosses as of 2020. The Orban cabinet (PNL) which succeeded Dăncilă tried to return to indirect elections before the electoral contest, arguing that FTPT does not guarantee representativeness, and that direct elections in general transform county bosses into “super-mayors” who essentially control the county despite not being classified as a public authority by the Constitution. This initiative was blocked by the Minister of Justice and the Permanent Electoral Authority (Vulcan 2020), but the debate illustrates the special role and importance that County Council presidents have on the political stage.

The model explains why companies that started at local level found it hard to break into other counties despite signing large contracts with national authorities, while former national companies such as Romtelecom (currently Telekom after privatization) managed to win contracts at national level and in a variety of counties. Romtelecom already had a vast national infrastructure and network of clients, so it started with national contracts and worked its way down to county level. It was large enough from the start to be a big player on the national stage, unlike companies that

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<sup>21</sup> In 2008, PDL had won the first round in most localities, so the initiative was likely a move to capitalize on similar performances in 2012.

start small and have to make higher and higher connections. Based on this, corruption in Romania seems to be layered, with each administrative level having its own gatekeepers and clients. Those connected to one county do not encroach on the market of another unless granted access from higher up.

### Types of capture

Despite a competitive and growing IT sector, few companies compete in public procurement, and even fewer win. At county level, in 2016-2020 only 0.6% of all IT companies in Romania had won at least one public contract, despite legislative changes to help small and medium enterprises compete in public tenders. Part of this low participation can be explained by reluctance to take on public projects. Institutions are sometimes demanding and slow to make payments, and the procurement process itself is lengthy and complicated, which discourages participation. Moreover, it is common for bidders to contest procedures in court, which sometimes causes competitors to withdraw bids and avoid the hassle.

However, prices in public procurement are also higher than market value, in order to compensate the extra time and effort that tendering involves<sup>22</sup>, particularly if there are few competitors. One company that tenders in the city of Craiova described how bogus companies, set up by city hall, would submit tenders in order to artificially increase competition and compel other bidders to lower their prices. Bogus tenders would then be rejected in later stages of the procedure. Such tactics show that authorities are aware that bidders increase prices and try to counter the practice. They also reveal that companies have ways of compensating for the extra trouble that public procurement entails, so the low number of winners cannot be attributed to tendering reluctance.

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<sup>22</sup> This was revealed to me by experts and employees in charge of public procurement. Companies that bid know it can take long to receive payment, so prices offered to public authorities are adjusted.

The combination of low competition, market concentration and single bidding points to capture of the IT sector. As previously mentioned, capture may include political ties or not. Some companies win fairly, others win because the institution is dependent on them to maintain or change existing IT tools while others win because of their political connections. The characteristics of each type of situation are presented in the table below.

**Table 11. Types of capture in public procurement**

|                                | <i>No capture/Fair<br/>procurement</i> | <i>Capture by<br/>dependence</i> | <i>Capture by political<br/>ties</i> |
|--------------------------------|--|----------------------------------|--------------------------------------|
| <i>Market concentration</i>    | Low                                    | High                             | High                                 |
| <i>Number of winners</i>       | High                                   | Low                              | Low                                  |
| <i>Competition</i>             | High                                   | Low                              | Low                                  |
| <i>Single bidding</i>          | Low                                    | High                             | High                                 |
| <i>Relevance of incumbency</i> | Low/None                               | <b>Low</b>                       | <b>High</b>                          |

Capture by dependence is a type of bottom-up state capture as described by Magyar and Madlovics (2020a) but differs from their typology in that coercion need not be used to secure contracts. Contracting authorities often have undersized procurement departments, especially at local levels, so the same small group of people organizes all procurement procedures and performs technical assessment of offers even if they lack expertise in the respective field. IT is particularly vulnerable to this, given the complexity of technical solutions. As such, IT companies are able to make themselves indispensable, effectively capturing an institution, without breaking any laws or coercing any decisionmakers. Institutions such as hospitals would be unable to function without digital systems or equipment from a specific provider, and the cost of changing providers would be too great. In this scenario, the captor receives contracts irrespective of the political affiliation of decisionmakers. This type of capture, one can argue, is possible because of poor capacity of institutions to properly understand the services or products they are procuring, as well as lack of

strategic planning. Informal networks of the type described by Klima (2020) not necessary for capture, but they are sufficient.

A report on public procurement in Romania during the state of emergency in 2020 describes capture by dependence in hospitals (Abdou et al. 2021). It mentions that hospitals sometimes rent or receive donations of equipment that is otherwise expensive to buy, but that requires consumables that only the supplier or donor can provide. These consumables are sold at three to ten times the market price and, over the long term, cost more than purchasing the actual equipment. Hospitals thus become dependent on one supplier. The risk of capture is compounded by the low number of companies that can provide medical supplies. Similar capture can occur in the IT sector, as described.

Worth noting is that the same contracting authority can, at the same time, organize procurement procedures that fall into either of the three types of capture. The problem in such scenarios is that rigged procedures discourage honest competitors from bidding in the honest tender, especially if honesty is not the norm.

## Chapter conclusions

At county level, IT procurement data points to a highly concentrated market with few winners and widespread political ties, which is consistent with state capture. Companies with proven political ties win contracts in the county where they have connections but do not encroach upon the territory of another local boss. Rather, they require access to higher-level decisionmakers in order to receive national contracts. The few companies that have an already established infrastructure and network of connections at national level manage to secure both national contracts and win bids across multiple counties, irrespective of political ties. Most other firms are territorially and politically constrained, which explains both the low number of public procurement winners and the low



competition and prevalence of single bidding. It also explains why some companies only win bids in counties controlled by a single party.

In this context, elections change not just the decisionmakers, but also the network of clients that accompany them. In terms of both public procurement and allocations from the center, rewarding political clients seems to take precedence over development needs.

County bosses are the backbone of political parties, owing to their stability in office, their influence over mayors and their access to resources. Having connections at the top, in government, opens doors at lower-levels but having connections at county level does not guarantee access to the top, as only powerful county bosses such as those heading party strongholds can sway the gatekeepers of national contracts and propel their favorites to higher offices or attract government funding.

Procurement in the IT sector reveals not just patterns of political clientelism, but also a type of state capture that does not necessarily have political ties. Low institutional capacity, lack of strategic planning and of expertise in IT means that certain companies can become indispensable to the working of an institution, creating a dependence that transcends party lines.

## Chapter 5: Anticorruption and adaptation – DNA and county-level corruption

### Chapter overview

Existing work on anticorruption supports a view that prosecution alone is not enough to reduce systemic corruption (Persson, Rothstein, and Teorell 2013; Mungiu-Pippidi 2015b). Indeed, some authors have tested the relationship between prosecution and corruption empirically (Stefani 2019) and found no significant deterrent effect of convictions on public procurement red flags, despite widely acknowledged fear of the prosecution agency. Such fear is not without cause, as DNA boasted a very high conviction rate (V. Ionescu 2016) and was frequently accused of surpassing the boundaries of due process and rule of law, resulting in what has been called an “aberration from the fair trial” (Mendelski 2019). However, findings in Chapter 3 revealed a significant negative relationship between DNA indictments and single bidding in public procurement, suggesting that the prosecution agency did have a deterrent effect.

This chapter explores the relationship between political parties and DNA, seeking patterns that indicate adaptation to anticorruption policies and prosecution and may help to building a theory of local-level corruption and adaptation. The main argument is that **parties and politicians reacted differently to DNA’s activity based on their electoral performance, type of office, and government incumbency**, in some cases employing the threat of prosecution and denouncement for political gains. A key indicator of political organization of corruption is the crackdown on speed money, while measures were taken to protect and expand the discretionary allocation of resources. Evidence of the latter was presented in previous chapters, so this chapter focuses on the

anticorruption efforts themselves, searching for clues as to what factors have an effect on the number of convictions for corruption.

### Main assumptions and concepts

The underlying assumption in this work is that corruption is equally likely in each party, meaning that a member of party A is as likely to engage in corrupt dealings as a member of party B. In 2012, two of the three largest parties in Romania, the National Liberal Party (PNL) and the Social Democrats (PSD) ran together in elections as an alliance, so individual mayors appear in official sources as members of the alliance, with no reference to their party. Moreover, the alliance dissolved in 2014, and mayors were permitted to switch sides without losing their mandate, which over 17% of them did. Unfortunately, there is no public record of how many mayors each party had after this event, as official data only contains election results<sup>23</sup>. The elections of 2012 also signaled the end of the Democrat-Liberal Party (PDL), formerly the second largest in the country, which merged with PNL also in 2014. Moreover, party switching in Romania is common even without such exceptional events, so accurately measuring how many mayors each party had and how many of them were convicted for corruption is extremely difficult, also owing to the lack of available public data on party membership.

However, the very fact that party switching is so common is reason to suspect that the level of integrity is similar across parties. Former mayor of Craiova, Antonie Solomon, switched parties from PSD to PDL in 2008, and was convicted for corruption in 2013 for deeds committed as a member of PSD. Jumping from party A to party B does not change how corrupt a person is, and the three largest parties usually do not deny membership or offices to indicted defectors, although

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<sup>23</sup> The parties themselves could not be contacted for the information, despite repeated attempts.

in case of a past conviction they typically do withdraw support. This makes it possible for people with multiple ongoing trials to occupy key positions, as is the case of PNL senator and former mayor of Cungea, Liviu Voiculescu, who was indicted in 2013 for blackmail, tax evasion, abuse of office, organized crime and others, the case of Robert Negoită (PSD), elected mayor of Sector 3 in Bucharest despite being indicted for tax evasion, the case of Mircea Muntean, former PNL mayor of Deva who defected to PSD and was elected into Parliament shortly before his definitive conviction in 2013, and many others.

A quantitative test of the assumption that corruption is equally likely in each party is not possible, however, given the complicated state of affairs in local politics. As seen previously, one useful indicator is the number of convictions for corruption, as these refer to proven cases for which there is a definitive sentencing. However, more convictions in a given area do not necessarily mean that there is more corruption, but that more corruption cases are prosecuted and legally sanctioned. As such, noticing fewer convictions means that fewer cases are prosecuted, which can indicate either that there is genuinely less corruption in a given area or that corruption is prosecuted less.

In concrete terms, local and central authorities can offer some measure of protection to corrupt officials by not denouncing their corrupt deeds, essentially ‘shielding’ them from prosecutors, and this protection incentivizes officials to continue engaging in corrupt acts. As such, despite widespread fear of DNA and despite high chances of being convicted if indicted, corruption is still rampant because the chances of getting caught depend (at least in some degree) on the willingness of authorities such as county bosses to denounce known or suspected corruption deeds. The result is a system where anticorruption is instrumentalized for political gain, which is consistent with the main theses of this work.

Shielding implies remaining silent on the corruption perpetrated by one's own network, while denouncing implies notifying authorities of such deeds. As such, **the expectation is that more consolidated corruption networks display fewer proven cases of corruption.** Consolidation implies a higher degree of political control, as decisionmakers dictate not only who should be denounced but also who should be shielded. As such, consolidation is measured across two dimensions: incumbency in government of the party ruling a county, meaning that oversight institutions such as prefects are controlled by the same party; and electoral performance, meaning that a party has the electoral support to control the same county for a long time, and is thus likely to have more mayors and more loyal civil servant as part of their networks. Incumbency is relevant because it points to changes of behavior within the same county, ruled by the same people, but under different conditions (more or less consolidated and shielded from denouncement), whereas electoral support allows comparisons within the same party under different conditions (more or less at risk of losing power).

Political protection from legal consequences is risky, as it can incur at least electoral costs to the party, so the benefits of offering protection must outweigh the risks involved. As such, uncovering changes to DNA indictment patterns that point to certain categories or offices being somehow protected from prosecution would be an indicator of political organization of corruption.

A second assumption made in this work is that the justice system is not politically biased, meaning that magistrates investigate and judge cases without considering the political affiliation of the accused. Despite the fact that DNA is not under the direct control of any party, the narrative that it acted as political police in the service of president Traian Băsescu was widely claimed in the interval studied, especially by members of PSD. This chapter therefore includes an empirical look at the activity of DNA in order to test if there is any weight behind the claim of political bias.

## A brief history of DNA

Over the past 15 years, Romania has fought an intense battle against corruption, with some spectacular arrests and convictions, including, famously, a former Prime-Minister. At the forefront of this struggle, the DNA became more than a prosecution agency, as it developed into one of the most trusted institutions in Romania. A 2015 survey by INSCOP showed 61% of people trusted DNA at its height, ranking it third most trusted behind the army and the gendarmes, while only 35.4% of respondents trusted their mayor, 24.6% the Government, 18.6% the County Council, 11.3% the Parliament and only 7.1% trusted the political parties.

At its founding in 2002, the agency was called the National Anticorruption Prosecution Office (PNA) and was set up to mirror similar agencies in Spain and Belgium, in preparation for Romania's accession to the European Union. In its first few years, PNA was a discrete presence on the political scene. It investigated mostly low-level crimes associated with transition and a weakening of institutions, focusing on petty bribes to customs agents and non-commissioned officers (NCOs) within the Ministry of Internal Affairs (MAI). While this was explicitly meant to consolidate institutions up to EU standards, the agency highlighted the need to investigate grand corruption as a priority, while also admitting to being short-staffed and underfunded even for its tasks at the time.

In 2004, a surprise electoral win brought the Justice and Truth Alliance to power, spearheaded by a campaign of future President Traian Băsescu to “impale” corrupt politicians in Victoria Square. This was the start of Romania's battle against high-level corruption, in an effort that has often been compared to Italy's ‘Mani Pulite’. Over the next few years, PNA was reformed into an autonomous structure, with its own budget as of 2005. Renamed DNA, the new structure employed more prosecutors and saw its competence narrowed to focus on grand corruption, while the legislation

itself changed to align to European standards, broadening the scope of what constituted corrupt deeds. By the end of 2006, the first high-profile politicians had been indicted. The institution's annual report stated that:

*"If, up to one year ago, the political sphere seemed intangible to prosecution and judicial action, with a series of corruption scandals at the time being reported in the media without any consequence, in 2006, with the investigations undertaken by DNA, things have begun to change. Proof of this change stands in the investigation and indictment by anticorruption prosecutors of an unprecedented number of current and former members of Parliament, ministers and secretaries of state, irrespective of their political affiliation, of heads of government structures, high civil servants in local public administration, magistrates etc. for committing crimes of corruption or amounting to corruption. With regard to institutional framework, for DNA 2006 represents the end of reform for the state and its functions, the assessment being that its structure, competences and powers allow it the framework necessary to efficiently carry out its mission of fighting against high-level corruption. The process was not without difficulty however."* (DNA 2006 annual report, own translation).

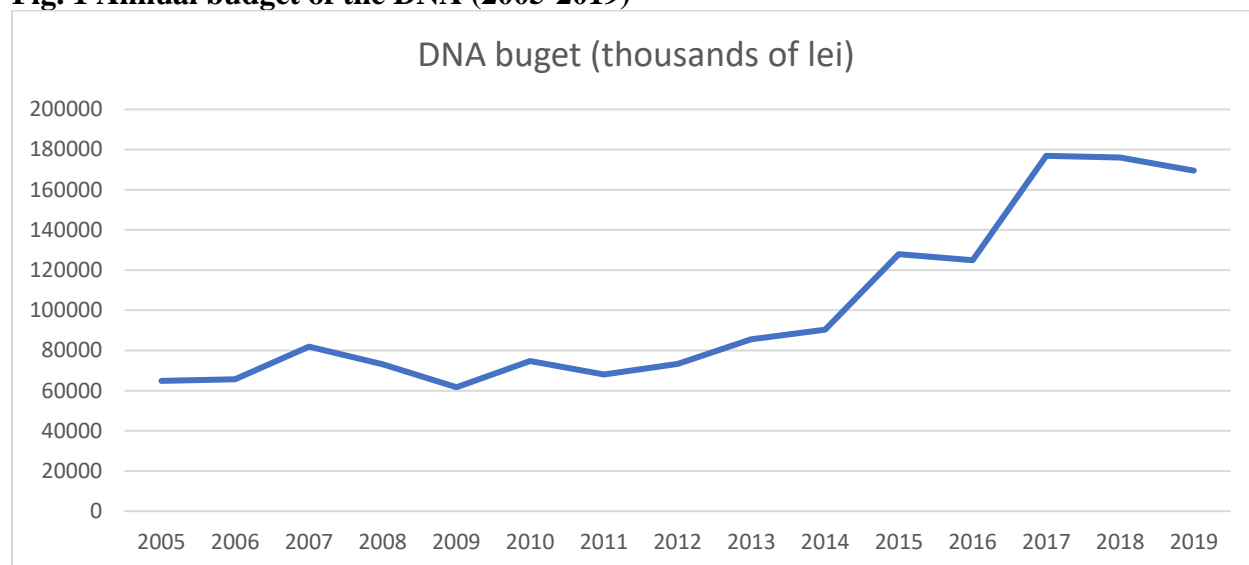
The 'unprecedented number' referred to one deputy and former Prime-Minister, one former deputy, and one senator and former minister. These figures would repeatedly be dwarfed in subsequent years but represented a crucial milestone in 2006.

It would be another four years until further milestones would be reached, as the cases built against official figures drew to a close. One of the people indicted in 2006, mayor of Râmnicu-Vâlcea, Mircea Gutău, was definitively sentenced to three years in prison in January 2010. At the time, he was the highest ranking Romanian public official ever to serve time in prison for corruption. Significantly, he was also a member of the ruling party.

The most spectacular episode of Romania's anticorruption struggle thus far happened in June 2012. On the 1st of the month, senator Cătălin Voicu was sentenced (not definitively) to five years for influence peddling, and later that same month, former Prime Minister Adrian Năstase was definitively sentenced to three years in prison. His attempted suicide upon hearing the news made headlines around the world.

The period between 2011 and 2016 can perhaps be called the ‘golden age’ of anticorruption. During this time, DNA’s budget grew by 84% (Fig.1), leading to employment of new staff, including prosecutors, and to expansion of regional and central offices to handle additional workload.

**Fig. 1 Annual budget of the DNA (2005-2019)**



*Source: DNA annual reports*

Surprising about this graph is that PSD, the party most supporting the narrative of DNA as political police, was also the ruling party increasing DNA’s budget year after year. One possible explanation for this is that Prime-Minister Victor Ponta, a former prosecutor himself, believed in an independent judiciary. Throughout his term, there is no evidence that the government intervened with the judicial branch, despite charges brought against his colleagues, members of his close circle, and even himself. Pressures from the European Commission and a desire to see the Cooperation and Verification Mechanism lifted may have also contributed to Ponta’s stance. However, the timing of OUG 55/2014 and the promise of protection for defectors also point to a strategy meant to deliver votes to Victor Ponta in the upcoming presidential elections held in late 2014. Using the looming menace of DNA to scare local officials, PSD managed to attract 436



mayors to its ranks, all of which were expected to bring in votes. The elections were lost, however, partially because of outrage over the long queues in the diaspora that prevented many from voting, and partially because the people that mayors mobilized for the ballot could not be relied upon to vote for a PSD candidate. It is therefore possible that the people mobilized by defectors were not PSD supporters and instead voted for the eventual winner, Klaus Iohannis from PNL.

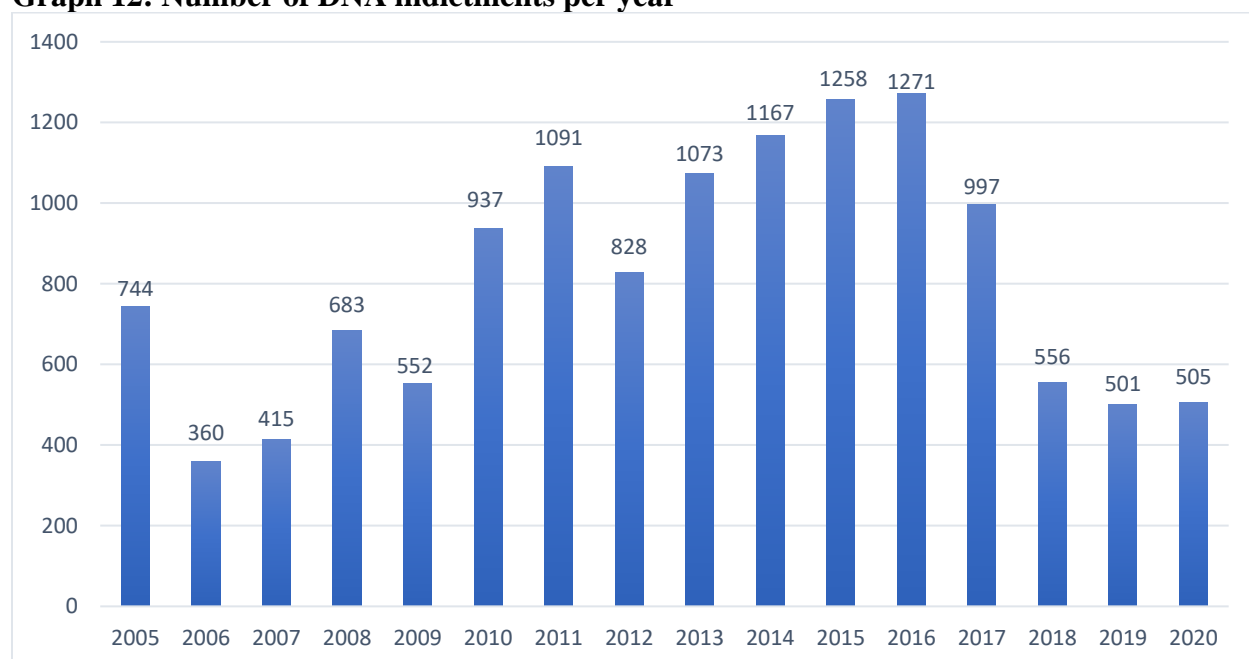
In July 2015, following a DNA investigation, Ponta resigned as president of PSD but remained chief of the Executive. He was accused of forgery under private signature, complicity to tax evasion and money laundering for allegedly drawing up 17 fictitious invoices between 2007 and 2008 for services that were never rendered while under contract with a law firm owned by Dan Șova. The fact that Ponta later appointed Șova as Minister Delegate for Infrastructure Projects of National Interest and Foreign Investment also prompted charges of conflict of interests.

Liviu Dragnea, one of the loudest voices against DNA, first took over as interim, and later ran as sole candidate to the presidency of the party. His clear victory as interim, as well as his tight control over the party later on, was evidence of a split between his supporters and those of Victor Ponta, so the apparent paradox of attacking DNA while increasing its budget can be explained by a conflict between factions inside PSD. Ponta's attitude toward DNA was not shared by members of his party, which enabled Liviu Dragnea to rise to prominence on the promise of protection from prosecutors, a theme that would shape political events to come over the following years.

The number of people indicted in the 6-year interval of the 'golden age' was 81% higher than in the previous 6 years (since DNA was reformed), while the number of high-ranking officials grew 72%. These included ministers, members of parliament, secretaries of state, mayors, prefects, as well as county council presidents, sometimes called 'local barons' by Romanian media. The graph below shows the total number of DNA indictments per year, as mentioned in their annual reports.

The numbers and positions of those indicted by the DNA seemed to indicate how seriously Romania was taking its battle against corruption, yet even as the ‘golden age’ was unravelling, questions began to appear as to the effectiveness of its predominantly punitive approach, as well as to the impartiality of the agency itself.

**Graph 12: Number of DNA indictments per year**



*Source: DNA annual reports*

Following the elections of 2016, there is a sharp drop in number of indictments overall, as well as a decline in ratio of elected officials indicted, even though the institution’s budget has remained largely the same. Following the replacement of Laura Codruța Kovesi in 2018, indictment figures dropped to nearly half of what they had been the previous year (556 in 2018 compared to 997 in 2017 and 1271 in 2016 – the peak year). A look at the type of charges of corruption that lead to indictment can shed more light on the changing priorities of DNA, and on how corruption in Romania adapted to the anticorruption prosecution efforts.

A dataset collected by the Romanian Academic Society, which centralized information issued in official press releases by the DNA, found that 9 former ministers, 13 members of Parliament, 18

local and county councilors (including 3 county council presidents) and 67 mayors were found guilty of various corruption charges between 2010 and 2015 (Dimulescu et al. 2015). The DNA itself took pride in the high rate of convictions resulting from its investigations. This fact, in conjunction with the high number of arrests, created a wave of discontent among public officials, compounded by the fact that high-profile arrests sometimes aired on primetime news. Indicted officials in handcuffs repeatedly made headlines, to the point that the head of the National Union of County Councils, himself on trial for abuse of office at the time, called for such images to be banned on air as a means to ensure due process, and preserve the presumption of innocence (M. 2014). He was later acquitted of all charges in 2015. The following year, the European Court of Human Rights ruled that displaying a person in handcuffs before the press constitutes degrading treatment and is in violation of Article 3 of the European Convention on Human Rights (Judgment *Popovi V. Bulgaria - Highly Publicised Arrest of Former Secretary General of the Ministry of Finance* 2016).

Discontent was not manifested only towards the media. Fear of prosecution lead to a phenomenon of “administrative paralysis”, wherein civil servants and officials no longer took responsibility for decisions. During a 2016 conference, former technocratic PM Dacian Cioloș argued that official documents should carry no more than two signatures, as a sign that decision-makers are not trying to flee responsibility (Macsut 2016). Victor Boștinaru, a member of the European Parliament, also commented that official documents were not being signed in Bucharest for fear that DNA might launch investigations (Marinescu 2018).

Fear of prosecution eventually became a coherent narrative, as their discretionary power grew more contested, and their impartiality questioned. One famous case involved a Constitutional Court justice, who was put under investigation in January 2015 for influence peddling, commercial

activities (that his status as a judge prohibited), and other charges. A journalist revealed that the prosecutor in charge of his case was blackmailed by other prosecutors, who were investigating his brother (Bolojan 2018). The judge resigned from office in February 2015 and was acquitted of all charges in May 2018. The brother received a suspended sentence of 18 months in 2017.

What made this case special was the fact that the respective judge had been key in rejecting several ‘Big Brother’ laws as unconstitutional. The ‘Big Brother’ laws were a set of legislative proposals, voted into law by Parliament, which would allow greater monitoring power to the secret services (one obliged telephone companies to collect and store technical data such as time and place of the call, the second called for personal data that allowed identification to be collected from people accessing public wi-fi networks or purchasing prepaid phones, while the third obliged companies who owned “cyber networks” to have them secured, at their own expense, by companies authorized by the Romanian Information Service (SRI), who would gain almost unrestricted access to those networks, without a warrant). The head of SRI resigned in January 2015, claiming the main reason was the Constitutional Court’s rejection of the laws, which left a legislative void wherein the secret services could not even access billing information already collected (Vasilache 2015). This fueled suspicion that the judge’s entire trial (which began the same month) was set up specifically to force their removal from office. Indeed, following their replacement, the Constitutional Court voted in favor of a revised law on data collection, albeit one in which greater protection was granted the common citizen by requiring agencies access information only with a warrant (Boiciuc 2015).

This episode might be an example of institutional checks and balances at work, given that some bad proposals were eventually blocked from entry into force and later improved, yet it also reveals some potential systemic problems present in Romania. Assuming that the indictment of the judge was independent of their ruling on the ‘Big Brother’ laws, one is left with the reported blackmailing

of a prosecutor by peers and the head of their institution, a three-year investigation that lead to an acquittal, and testimonies of the prosecutor's brother (himself head of the Antifraud Office), with nobody held accountable. This was the first major story about discretionary powers of the prosecution.

With the elections in late 2016, a new government was formed, and a new chapter began in the story of Romania's anticorruption. Days into the cabinet's term, an emergency ordinance (OUG 13/2017) was passed, which made changes to the Criminal Code, including decriminalizing negligence, decriminalizing instances when family members favor the offender, decriminalizing abuse of office if the accused was unaware they were committing abuse or if their actions caused damages not exceeding 200.000 RON (around 42.000 euro), establishing that a crime needs to be denounced within 6 months of having been committed, establishing that using one's office to secure benefits for third parties with which they have labor or commercial ties no longer constitutes conflict of interests, and other such changes. As previously mentioned, emergency ordinances are Government bills that come into effect as soon as they are published in the Official Gazette, bypassing Parliament. After they are enacted, they still require a positive vote in Parliament in order to remain in effect, but a negative vote does not undo events that already occurred, meaning that criminal cases that were dropped as a result of the ordinance had to be restarted.

Decriminalization implied that offences in question would fall under civil rather than criminal law, meaning that the case would not be handled by a prosecutor by default, but would require the damaged party to initiate a civil lawsuit in order to recover damages. In practice, this meant that a town hall would have to sue the mayor if they committed abuse, something that was not guaranteed to happen. Even in the case of criminal offences, restitution of damages is not guaranteed even if the accused is found guilty. There are abundant reports of institutions that did not sue to recover

damages, to the point that the Chief Prosecutor of DNA commented in November 2017 that “They are thus validating abuse as acceptable behavior”<sup>24</sup>.

In 2016, DNA took pride in a conviction rate of over 90% (Ionescu 2016) and claimed this as a testament to their effectiveness and professionalism. The fact that indictments usually led to convictions meant that the law had indeed been breached in cases brought before a judge. By 2019, however, conviction rate had dropped to less than 50%. According to DNA’s 2019 annual report, 52.3% of indictments ended in acquittal. There are many possible explanations for this. The narrative supported by former PSD leader Liviu Dragnea and others is that a large part of indictments were politically motivated, meant to scare, blackmail or remove political rivals, and that DNA was a type of political police set up and controlled by the Presidency. As such, this narrative claimed that once the head of DNA, Laura Codruța Kovesi, who was accused of taking directions from President Iohannis, was removed from office the justice system was finally free and independent of political will. The reality is much more nuanced, as Kovesi was not responsible for what verdicts the courts issued. Those brought to trial were found guilty, and there is no evidence to suggest trials were not impartial. Rather, evidence of bias appears in the timing of trials and indictments, as is detailed later in the chapter, and this apparent bias gave weight to the anti-DNA narrative.

Another explanation for the drastic change in rate of conviction is that of changes to legislation. Throughout 2018, one of the topics that made headlines was the secret protocols between the General Parquet and the Romanian Intelligence Service (SRI). Two such protocols existed, one from 2009 and one from 2016, and their goal was to allow prosecution agencies to use means of

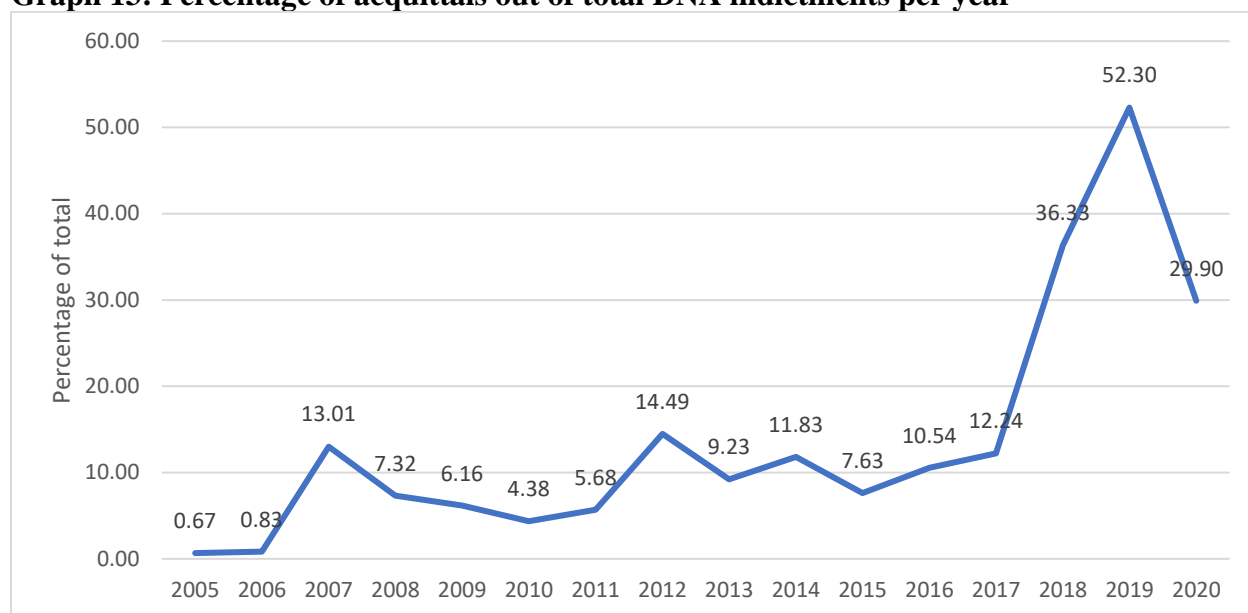
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<sup>24</sup> The full speech is available in Romanian on the DNA official website, here: <https://www.pna.ro/comunicat.xhtml?id=8701>

surveillance available only to secret services for evidence gathering when constructing a case. Although classified, the 2016 protocol was published in 2018 on social media by Darius Vâlcov, an adviser to then Prime Minister Viorica Dăncilă. Vâlcov was put under judicial control soon after for divulging classified information but prosecutors dropped the charges in 2020 invoking lack of public interest.

On January 16, 2019, the Romanian Constitutional Court (CCR) ruled that the protocol of 2009 was unconstitutional and the one from 2016 was partially unconstitutional, following an intimation from the President of the Chamber of Deputies, Liviu Dragnea, signed by the vice-president Florin Iordache. The ruling was passed by a 6-3 majority and established that there had been a conflict of constitutional nature between the General Parquet on the one side and the Parliament, High Court of Cassation and Justice, and the other courts on the other. The ruling gave weight to the narrative that the Parquet (and, by extension, DNA) had overstepped their bounds and that the protocol turned SRI into a prosecution body. As a result of the ruling, evidence gathered through the protocol was no longer admissible in court, so indictments that relied on phone tapping and other information obtained by covert means ended in acquittal for lack of evidence. The ruling did not affect cases where a definitive sentence had already been issued but it did affect cases where only the first court had issued a sentencing. In total, 66 people were acquitted as a result of the ruling (44 in 2019 and 22 in 2020). The total percentage of acquittals per year is shown in the following graph:

**Graph 13: Percentage of acquittals out of total DNA indictments per year**



*Source: DNA annual reports*

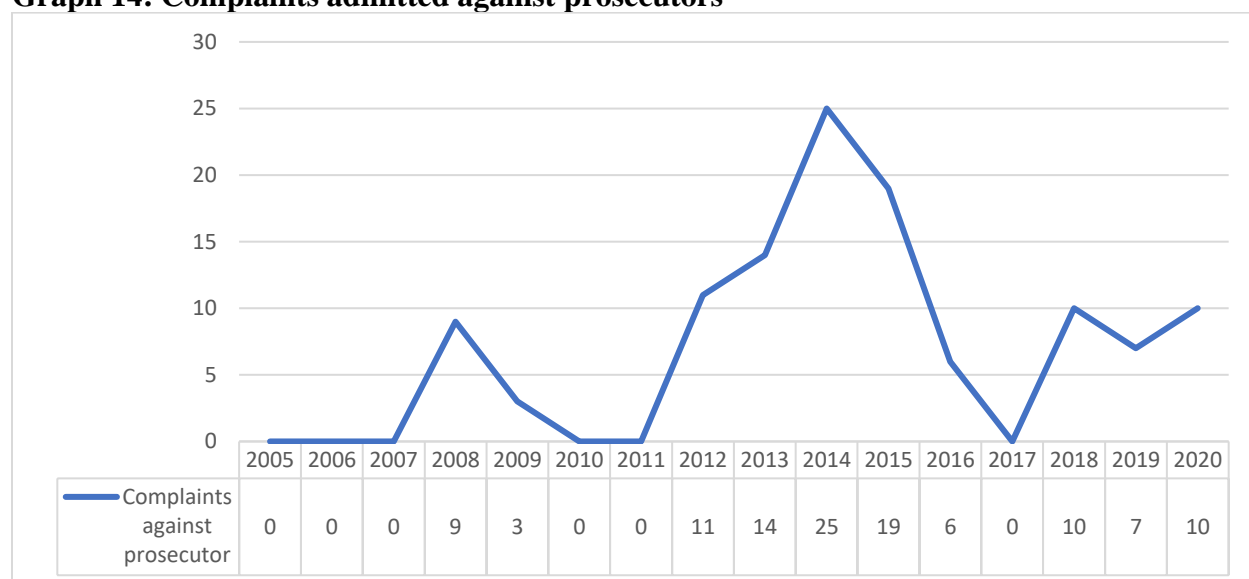
As can be seen, the share of acquittals remained relatively stable for most of the interval covered. The spike in 2007 was explained in the annual report as being due to new European legislation coming into force, that decriminalized some deeds. The spike in 2012 had no notable explanations in the report, as there were no significant changes to legislation or to procedures. The near doubling of number of people acquitted in 2012 as compared to 2011 could be accidental, as a result of cases with more indictments being dismissed, or it could be connected to the local and general elections held that year. As later sections reveal, the political affiliation of a County Council, seems to be connected to number of indictments in the respective county, so it is possible that political affiliation also matters in acquittals even as courts remain impartial. For example, witnesses with political ties might change their testimonies following some political agreement with the accused. Alternatively, the spike in acquittals could be a sign that denouncement was made in an electoral year for political purposes but was then revealed to be unsubstantiated. This view, however, is less likely, considering that cases only make it to court if there is reasonable evidence to suspect misdoing. A similar logic can explain the lesser spike in 2014, when political migration while in



office was allowed through emergency ordinance. Mayors and other locally elected officials were enticed, lured or even threatened to switch parties, so it is possible that witness testimonies in court were also changed as part of a political deal to have the accused acquitted in exchange for switching sides. Such a scenario is consistent with the use of denouncement to the authorities (and anticorruption policies in general) as tools to settle political scores.

In 2012, 7 cases of acquittal may be imputable to the prosecutor, as per the DNA's annual report, which is a sizable increase from previous years (there were 3 such cases in 2008 and 2009, 2 in 2010 and only 1 in 2011). In 2013, the figure rose to 9 cases and declined to 0 in 2014. Data in annual reports is inconsistent, and indicators concerning activity of prosecutors is not always reported, but it is possible to look at the number of complaints received and declared admissible. The first such figure was published in 2008, when 9 complaints against the prosecutors were admitted. A break-down of complaints can be seen in the graph below.

**Graph 14: Complaints admitted against prosecutors**



*Source: DNA annual reports*

Note that entries of 0 are actually values not known, as there is no mention of admitted complaints against prosecutors. Key values such as those from years immediately preceding 2012 are missing,

as is the crucial year 2017, which was defined by government pushback against DNA. The peak year seems to be 2014, when the presidential elections took place, as well as the break-down of the government coalition and the ordinance that allowed elected officials to switch parties without losing their mandates. In the struggle for political control of local administration, when officials were enticed with promises of political protection, it makes sense that the number of complaints against prosecutors would increase. Support and protection can take the form of legal counsel that would otherwise not have been provided under different circumstances. As such, valid complaints that would otherwise not have been filed could have been made. This could explain why the number of admitted complaints increased.

OUG 13/2017 was passed late at night between January 31st and February 1st, with its contents largely unknown to the public. The information that did exist, along with the secretive manner of its issue prompted the largest street protests in Romania ever at the time (Marinas and Ilie 2017). Pressure mounted from NGOs and public institutions alike (DNA, the Presidency, the High Court of Cassation and Justice, the Public Prosecutor's Office, the Superior Council of the Magistracy etc.), as well as the streets. On February 5th, the Government issued a new emergency ordinance (OUG 14/2017), repelling the previous one. That same evening, people gathered for an even larger protest meeting (exceeding half a million participants by some accounts<sup>25</sup>).

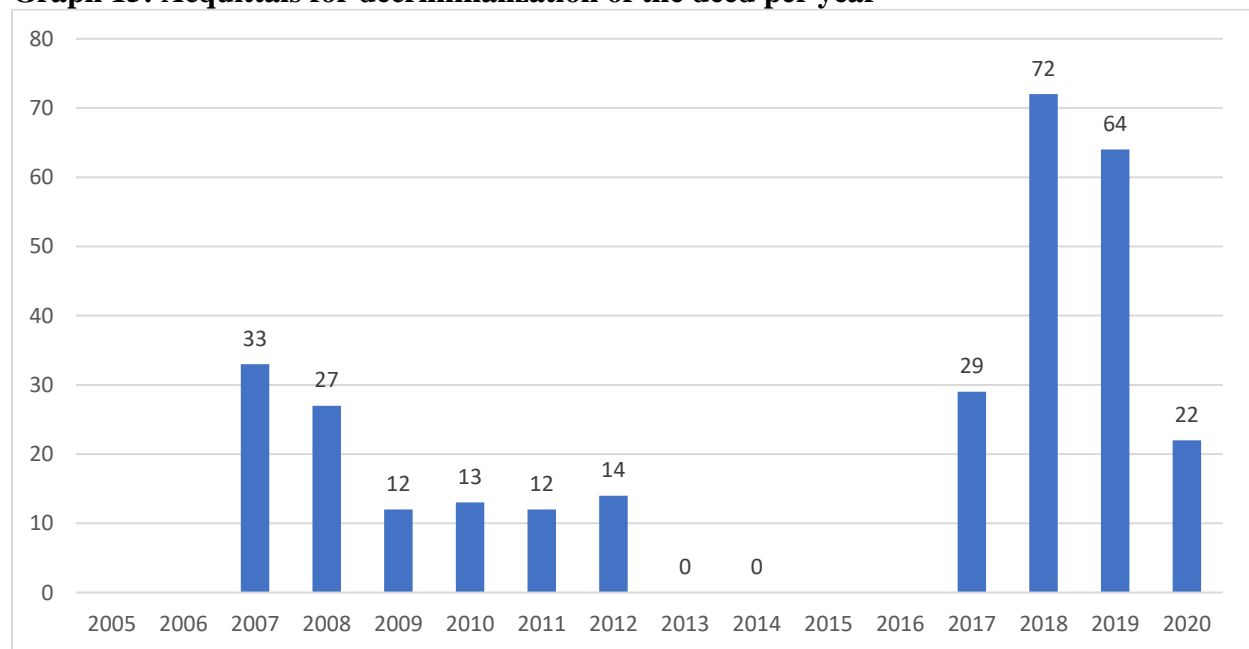
After 2016, the number and ratio of acquittals grew sharply. Many of these came as a result of a Constitutional Court decision that changed the meaning of abuse of office from ‘incorrectly

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<sup>25</sup> Deutsche Welle (DW) reported around 250 thousand people in Bucharest and similar numbers in other towns and cities (<https://www.dw.com/ro/cele-mai-ample-proteste-in-istoria-romaniei/a-37424552>), while Europa FM mentioned over 500 thousand people across the country (<https://www.europafm.ro/doi-ani-de-la-cele-mai-mari-proteste-de-strada-din-romania-de-dupa-caderea-lui-nicolae-ceaurescu-video/>). The largest figures were reported by news station Digi24, who mentions 600 thousand people in the streets in early February 2017 (<https://www.digi24.ro/stiri/actualitate/justitie/legea-gratierii/cel-mai-mare-protest-fata-de-oug-13-anuntat-pentru-duminica-in-capitala-663703>).

performing one's duties' to 'performing duties in breach of the law' (Ruling 405 15/06/2016 2016). The Court found that the original interpretation of abuse of office left too much room for discretion in terms of what constituted abuse or the 'incorrect' way of performing one's official duties. The narrative against DNA argued that prosecutors had made use of this ambiguity to detain innocent people and invent charges out of thin air. Following the elections in late 2016, several more changes to criminal legislation were enacted, prompting not only protests, but a wave of acquittals for decriminalization of deeds committed, as well as for lack of evidence due to denunciation of protocols with the secret services. Here too, data is missing from DNA reports from 2015 and 2016, so a complete picture is lacking.

**Graph 15: Acquittals for decriminalization of the deed per year**



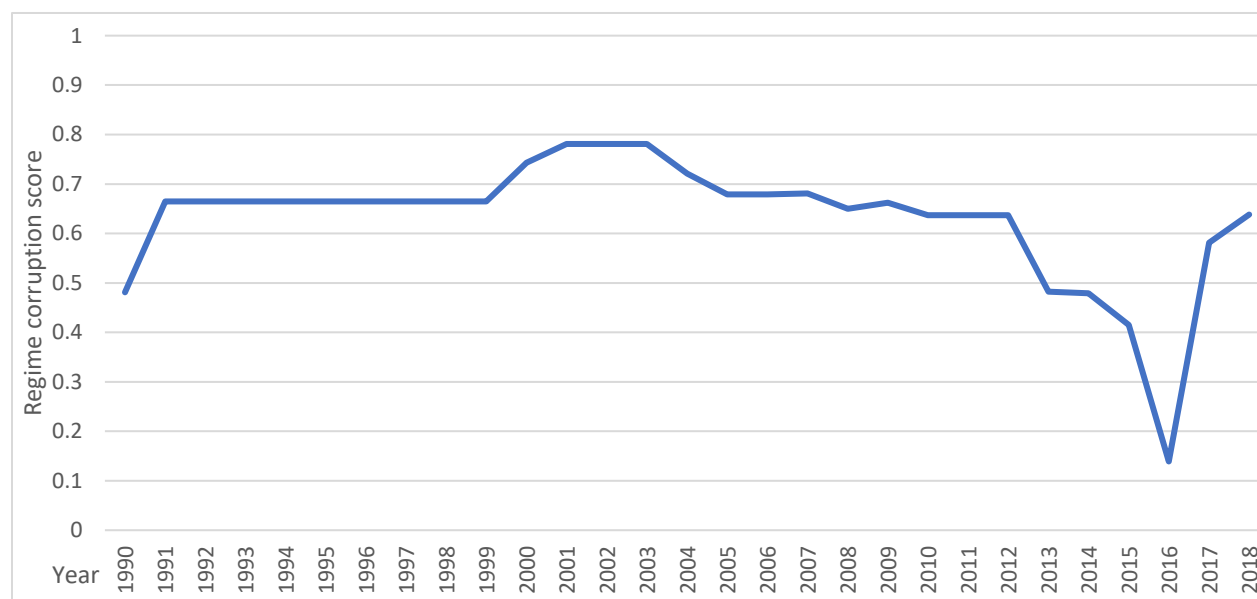
*Source: DNA annual reports*

The years 2017 and 2018 were particularly tumultuous on the Romanian political landscape, with several novelties such as a ruling party initiating a vote of no confidence against their own government. The period saw justice reform as the dominant theme on the public agenda, with several bills being passed through Parliament concerning so-called “justice laws”. These were

three bits of legislation passed in 2004 (before the general elections), and extensively amended in 2005, referring to magisterial appointments and accountability, the Superior Council of the Magistracy, and other issues concerning organization of the judiciary. In addition to these, several changes were made (or attempted) to the Criminal Code and the Criminal Procedure Code, officially motivated by violations to due process for which Romania oftentimes faced sanctions from the ECHR.

Romania's anticorruption struggle had some impact on perceived levels of corruption, starting in 2003 when PNA was set up, and gradually improving until 2016, as measured by indicators such as Transparency International's Corruption Perception Index (CPI) or V-Dem's regime corruption indicator (Graph 16). As seen in previous sections, the years following 2016 saw an increase in red flags of corruption and a worsening of both availability of information and of competition on the public procurement market, which is also reflected in a worsening of perception scores.

**Graph 16: Measure of regime corruption in Romania per year (0 lowest to 1 highest)**



*Source: V-Dem data*

The system of institutional control in Romania is still predominantly focused on punishing deviations, with few safeguards in place to ensure prevention of corrupt behavior, yet the National

Anticorruption Strategy (NAS) elaborated and adopted by the Ministry of Justice in 2016 and that of 2020 stressed the need for more prevention and administrative reform. NAS 2016 places heavy emphasis on transparency and availability of information, establishing platforms with centralized data in procurement, education and healthcare. The strategy also included integrity training for public officials, including in pantouflage or the practice of ‘revolving doors’<sup>26</sup>, ethics, and whistleblower protection (Costache 2016). The reaction to such measures, and to the activity of DNA which came early in 2017 was built upon a narrative of undue process and fear of prosecution. The ruling coalition enacted laws to bypass or eliminate judicial accountability, and this is just one of the mechanisms by which corruption adapts to anticorruption policies.

One of the problems of NAS 2016 and previous policies was that it emphasized building integrity and accountability among civil servants and career bureaucrats yet did little to address political leaders and parties, who are often the main beneficiaries as well as the source of institutional corruptions. The political heads of institutions would thus only be held accountable by the DNA or other prosecution offices. In some cases, the legal department of an institution would interpret the law one way, the DNA a different way, and the judge ruling over the case would have an entirely different interpretation of the same law<sup>27</sup>. Having no institutional channels or mechanisms to harmonize such interpretations meant that mayors or other heads of institutions could face prosecution for anything they signed. This was one of the recurring themes of a pro-government rally in 2018. Speakers at the rally mentioned fear of (unjust) prosecution, as well as arbitrary or

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<sup>26</sup> Pantouflage or ‘revolving doors’ is the practice wherein a public official, at the end of their term goes to work for a private entity that they supported (through policy or other means) while in office. In Romania, this is seen as a conflict of interests from a legal standpoint but is rarely enforced.

<sup>27</sup> The different interpretations of the law emerged as one of the conclusions of a study conducted by the Ministry for Development, Public Works and Administration as part of the process to draft the Code of Administrative Procedures, and was mentioned also during the drafting of the Administrative Code. The conclusions of the study are available (in Romanian) here: <https://www.mdipa.ro/userfiles/livrablesipoca59/livrabil1/4.pdf>

political trials as their main concern, and as the reasons for institutional paralysis. The leader of the ruling Social-Democratic Party (PSD) – Liviu Dragnea – who could not serve as prime-minister due to an ongoing legal investigation, promised solutions to these fears. Some mayors confessed to disliking or even despising Dragnea but stood behind him nonetheless because he promised protection from prosecutors. Whether this refers to protection from unjust prosecution and arbitrary indictments or from any prosecution at all is unclear, but the legislative changes adopted in 2017 and 2018 point to an attempt by the ruling coalition to gain control over the prosecution rather than to close the windows of possible abuse.

The dismissal of Chief Prosecutor of DNA – Laura Codruța Kovesi – in July 2018, began a new era for the organization. The dismissal itself was marred with scandal, as a constitutional battle emerged between President Klaus Iohannis and minister of justice Tudorel Toader over the process. Toader formally requested Kovesi’s removal from office, which the President announced he would decline. The issue was settled by the Constitutional Court, who ruled that the President did not have the right to decline the dismissal and was obliged to sign the revocation decree. Following the dismissal, both the number and the profile of DNA indictments declined, leading to concern about the future of Romanian anticorruption.

### Regional disparities in DNA activity – facts and data

A dataset published in 2015 by the Romanian Academic Society contained county level data on corruption cases that had received a definitive sentencing. Using information from official DNA press releases, this dataset centralized information made public on the people convicted for corruption acts, as well as details of the crime committed. The original version, which can still be found online (Dimulescu et al. 2015), contained data for 3131 people convicted between 2010 when press releases first began providing information, and 2014. Data was structured per person

per conviction, meaning that the same person could appear multiple times in the dataset for different deeds, and that each person convicted in a case appeared in a separate entry.

The original version contained 14 fields including name of the person convicted, the office or position they held, whether they worked in the public or private sector, their institutional affiliation, whether they held a decision making position or not, the county where the deed for which they were sentenced was committed, whether the sentence was suspended or not, whether the deed was connected to European funds or not, the length of sentence expressed in months, the date of indictment, the date of sentencing, the total length of the trial (how many months passed between indictment and conviction), the number of the court's decision for identification purposes and the URL to the press release. Later versions added sentences given in 2015-2017, and expanded on the categories to include gender, whether the person has been rehabilitated or not, the court and county who issued the definitive conviction, the territorial center of DNA who investigated the deed, the crimes committed, whether the crimes involved public procurement, whether a fine in solidarity was issued, the amounts needed to be recovered from the perpetrators as compensation (in Romanian lei and Euro), the beneficiaries of compensation, whether the court issued confiscation of either money or goods, amounts confiscated (in RON, EUR and USD), number of days of community service, the name of companies involved in the deed and their identification number, as well as the political affiliation of the person involved<sup>28</sup>.

The expanded database paints a more detailed picture of where and how corruption happens, whom it affects, who is more involved and where and how anticorruption prosecution efforts are better or need improvement. While most of the indicators have been updated, some fields such as political

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<sup>28</sup> These later versions are not available online but were obtained by request from the Romanian Academic Society think-tank, whose members, particularly Valentina Dimulescu, made the effort of updating them.

allegiance were harder to fill in, as they require information not mentioned in the standard format of DNA press releases. Nevertheless, the dataset has 4828 entries corresponding to 1692 cases capturing the bulk of convictions over a timespan covering the peak of DNA activity. Information on political affiliation, where it exists, was collected by me from electoral registries, as well as local media sources, who do a better job at capturing the common practice of switching parties. Information is therefore unlikely to be fully accurate but was nonetheless the best available at the time. As mentioned, some of the limitations of the dataset are that not all convictions were announced through press releases, so there are some differences between figures aggregated in the dataset and those that appear in DNA annual reports.

Analysis of the dataset reveals an increase in the number of indictments per year (as seen in previous sections). Reviewing the number of convictions per county (and their geographical distribution) reveals some significant regional disparities. By sheer number of people convicted, Bucharest is the clear leader, followed by Bacău county and Argeş. This is not surprising, as Bucharest is the capital and seat of central institutions, and Bacău has had one case involving 95 indictments for fraud of a Baccalaureate exam. Worth noting is that in 118 cases, involving 320 convicted persons, the county where the deed was committed could not be identified. The graph in Annex 2 shows a breakdown of convictions per 100.000 inhabitants for each county in the interval studied. It should not be interpreted as a ranking of counties most corrupt but as a snapshot of where most people were found guilty of corruption.

The situation remains by and large the same even when referring to number of cases rather than convictions. The top of the list changes slightly, Bucharest retaining the top but only by a small margin, and some counties with few cases of corruption involving large numbers of people, such as Bacău, no longer appearing in the top 5. Such rankings show that there are some regional



disparities in conviction figures but should not be used to draw conclusions about overall corruption levels in each county. Rather, the regional disparities point to political factors affecting indictment chances, as the next section details.

### Political organization of corruption – empirical findings

The claim that the partisan nature of corruption leads to county-level differences can be tested by comparing patterns across multiple counties, parties, and electoral cycles. The first part of the analysis looks at the differences in patterns of convictions and indictments for corruption between electoral cycles at national level. The second part focuses on differences in conviction patterns across parties according to the kind of office held (decisionmaker versus lower-level civil servant), while in the third and fourth parts the units of analysis are counties and parties respectively.

Testing this claim is done using data on corruption convictions at county level between 2010-2017. Assuming that corruption is equally likely in each party and that prosecutors are impartial in the cases they investigate, we can expect to see no significant differences between the number of convictions based on government incumbency, party affiliation, the type of office held (decisionmaker or lower-level civil servant), or the electoral performance of a party in a specific county.

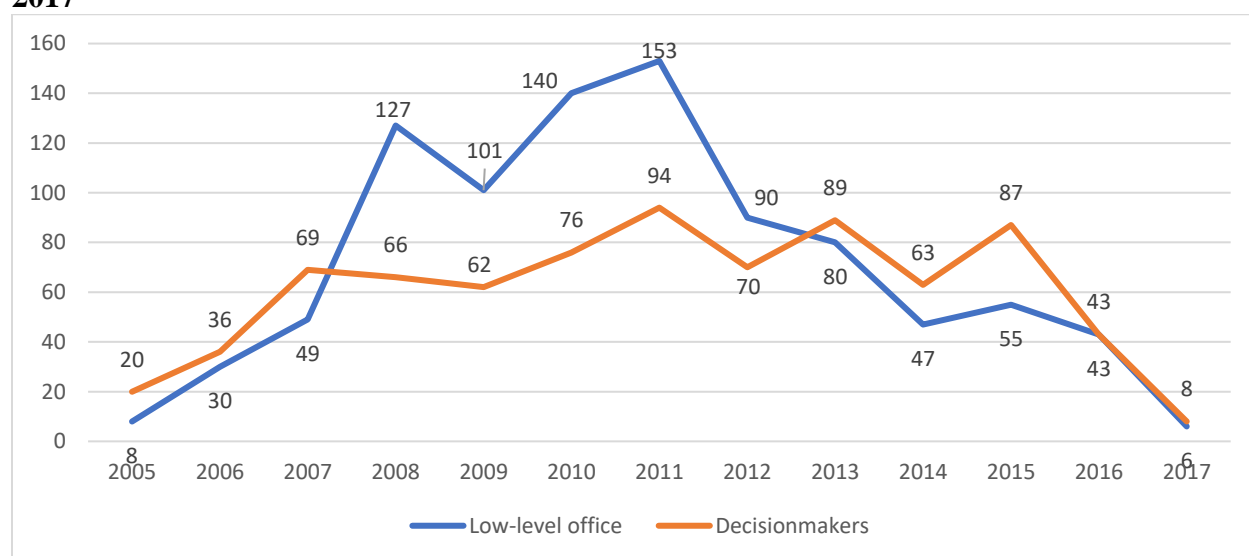
### Context and national figures

The graph below shows the number of public officials indicted per year by type of office held. Note that the graph only captures cases that have ended in conviction between 2010 and 2017, so indictments in ongoing trials do not appear, which is why there is a dip toward the end of the interval. The closer we get to the present day the fewer trials have ended. Assuming that the length of trial is arbitrary and that the same trial can involve both decisionmakers and lower-level offices, then it is likely that the number of ongoing trials by office type is proportional to the number of

trials concluded, therefore we can expect the proportions in this graph to be a fairly accurate representation of the overall picture.

The graph contains the indictments of officeholders that were found guilty of corruption, so indictments that lead to acquittals or other outcomes are not included. However, these would not significantly change the situation, given the high rate of conviction that DNA boasted before 2018.

**Graph 17: Number of indictments for cases that have ended in conviction between 2010 and 2017**



Source: DNA annual reports

In order to make sense of the above graph, some information is needed regarding who was in power over the interval studied. The table below presents the governing coalitions that were in power for the majority of each year. Note that most coalitions ended their term either in the first or the last couple of months in the year, with the exception of the first Ponta cabinet in 2012, which assumed power in May. Also relevant is that local elections are held a few months before general elections in Romania and are considered indicative of the future political configuration in Parliament. Whoever performs well locally can expect to perform well in legislative elections, and this has always been the case for the three major parties in the interval. As such, the ruling coalition typically also had control of the most mayors and County Council Presidents in the respective year.

The period preceding local elections is usually marked by local scandals and conflicts, as candidates try to smear each other and secure votes, so denouncement to the DNA is also common. In case of significant turnover of power at local level there is a period, leading up to general elections, where new mayors and county bosses might be largely opposed to the ruling coalition, anticipating a new majority to emerge in Parliament too. This period is relevant because the difference between who controls the government and who controls the counties and mayors can explain some of the patterns noticed in the graph above.

**Table 12: Ruling coalitions in Romania (2004-2020)**

| <i>Year</i> | <i>Ruling coalition</i>  | <i>Prime-Minister(s)</i>   |
|-------------|--------------------------|--|
| 2004-2006   | PNL, PDL, PUR/PC, UDMR   | Călin Popescu-Tăriceanu (PNL)                                    |
| 2007-2008   | PNL, UDMR                | Călin Popescu-Tăriceanu (PNL)                                    |
| 2009        | PDL, PSD, PC             | Emil Boc (PDL)   |
| 2010-2011   | PDL, UDMR, UNPR          | Emil Boc (PDL), Mihai Răzvan Ungureanu (Ind.)                    |
| 2012-2013   | PSD, PNL, PC, UNPR       | Victor Ponta (PSD)   |
| 2014        | PSD, UNPR, PC, PLR, UDMR | Victor Ponta (PSD)   |
| 2015        | PSD, UNPR, ALDE          | Victor Ponta (PSD)   |
| 2016        | Ind.                     | Dacian Cioloș (Ind.)   |
| 2017-2019   | PSD, ALDE                | Sorin Grindeanu (PSD), Mihai Tudose (PSD), Viorica Dăncilă (PSD) |
| 2020        | PNL                      | Ludovic Orban (PNL)  |

We see that the number of indicted decisionmakers has slightly grown since EU accession in 2007, whereas the number of lower-level civil servants grew sharply in 2008 but then dipped after 2011. The period coincides with an electoral cycle, yet not of the Legislative, since general elections were held in November 2008 and December 2012. Rather, the timing of indictments overlaps the cycle of local elections when PDL emerged as the clear winner. Although it did not control the most mayors or counties, it did secure the most votes (33,54% after the second round) and its growth since the previous elections was spectacular, nearly tripling both the counties it controlled (14 in 2008, up from 5 in 2004) and the number of mayors (909 in 2004, up from 380 in 2004).

The success in securing control over new counties and localities came mostly at the expense of PSD, who PDL campaigned specifically against and portrayed as corrupt. The fact that PDL and PSD formed a coalition in the aftermath of elections was therefore widely perceived as a betrayal by PDL supporters. The coalition itself proved dysfunctional from the start, and relations at local level were openly hostile.

Of the 127 indictments of lower-level civil servants in 2008, only 19 (15%) happened before the second leg of elections (the first leg was held on June 1<sup>st</sup>, the second on June 15<sup>th</sup>, with 3 indictments happening in between). Of the 69 indictments of decisionmakers, 25 happened in the first part of the year. The trend of indicting more decisionmakers therefore lasted from 2005 to June 2008 and was almost instantly reversed following the local elections, suggesting that indictments and electoral outcome are linked<sup>29</sup>.

As can be seen in Annex 5, there appears to be no significant difference in the type of office holders indicted and later convicted based on what party ruled at county level. The spike in indictments of lower-level civil servants noticed between 2008 and 2012 did not come from extra indictments in only PDL controlled counties, but from extra indictments across the board. As such, local elections and power turnover resulted in more indictments even in counties where PDL did not control the County Council. Worth noting, however, is that PDL gained a number of mayors even in counties they did not control, including county capitals like Craiova, Ploiești, Brașov or Târgu Mureș, so it is possible that the increase in indictments came as a result of denouncement from the new

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<sup>29</sup> During an informal talk, a former Romanian deputy and leader of a county branch of the Save Romania Union (USR) party explained that some prosecutors gather evidence on many politicians but move to indict based on who wins elections, which would account for the abrupt shift in patterns observed. Although it is legally possible for this to occur, there is, unfortunately, no publicly available evidence to either confirm or reject this explanation.

localities controlled. Therefore, there are three possible explanations for the pattern noticed between 2008 and 2012.

The first is that PDL was genuinely more concerned with reducing petty corruption and speed money than the other major parties. PDL decisionmakers may have wanted to “clean-up” the institutions and remove the old corrupt civil servants that the other major parties had harbored or ignored. Given the behavior of PDL elected officials over the next few years, it seems that such a desire for integrity did not extend beyond the lower-level civil servants and onto the decisionmakers themselves. Corrupt civil servants were denounced, monitored with cameras, and indicted, yet PDL mayors, as is presented later on, seem no less corrupt than those of other parties. Also, as previously mentioned, integrity may have been a preoccupation for some of the PDL leadership, but it did not extend to every decisionmaker in the party. As such, local and county bosses may have taken advantage of the party’s tough stance on corruption to advance their own autonomous agenda.

The second explanation is that PDL decisionmakers wanted to reduce the autonomy for corruption of the civil service but were free to be corrupt themselves and either lacked the power or the will to expand their networks. In this case, mayors and other high-ranking officials had autonomy to practice individual corruption and were tolerated so long as the civil service was not involved. This can be interpreted as a crack-down on “speed money”, while integrity in access to public resources that the decisionmakers had monopoly over was left alone. Such an approach to corruption requires that honest civil servants do not denounce a corrupt decisionmaker, which can explain why PDL did little to improve legislation on whistleblowing and transparency. In this scenario, decisionmakers do not rely on civil servants to collect bribe but instead extract rents by some other means that do not require bureaucratic participation. Civil servants might suspect

something is wrong or might have concrete evidence but are discouraged from taking action by lack of protection mechanisms, greater surveillance, legal ‘grey areas’ or the threat of sanctions for past mistakes that the leadership had previously decided to overlook. In this case, there is no political organization of corruption, as civil servants are not co-opted but corruption is limited to individual acts committed by the decisionmakers themselves.

The third possible explanation is that PDL decisionmakers wanted to remove civil servants loyal to other parties from office and replace them with their own loyal network members. In this case, the new bureaucrats are just as corrupt as the old, the only difference being loyalty to the new establishment and the power that decisionmakers had to expand their networks. As such, “speed money” is not excluded from rent-extraction, and the civil service becomes an accomplice to corruption rather than a bystander. Civil servants know what is going on but do not report it and would not denounce the leadership even if adequate protection mechanisms were in place because they are beneficiaries of the rents extracted. In such a case, corruption would be politically organized, as political decisionmakers would take charge of a network of corruption and would guide and organize its efforts to extract rents, essentially becoming local barons.

Given the complex relationships found in local level politics, it is possible that all explanations are true to some degree, in the sense that some elected PDL officials were honest and genuinely concerned with combatting speed money, while others took advantage of the party’s anticorruption stance to replace established networks with their own, or simply did not care about the issue at all. What seems clear from the data is that a crackdown on corruption among lower-level civil servants occurred after the 2008 local elections and declined immediately after the 2012 elections. It is unlikely that corruption in the civil service truly declined as suddenly as the data shows, so a more

likely explanation is that the returning PSD and PNL went back to the status quo, meaning that they either tolerated corruption or embraced the corruption networks still loyal to them.

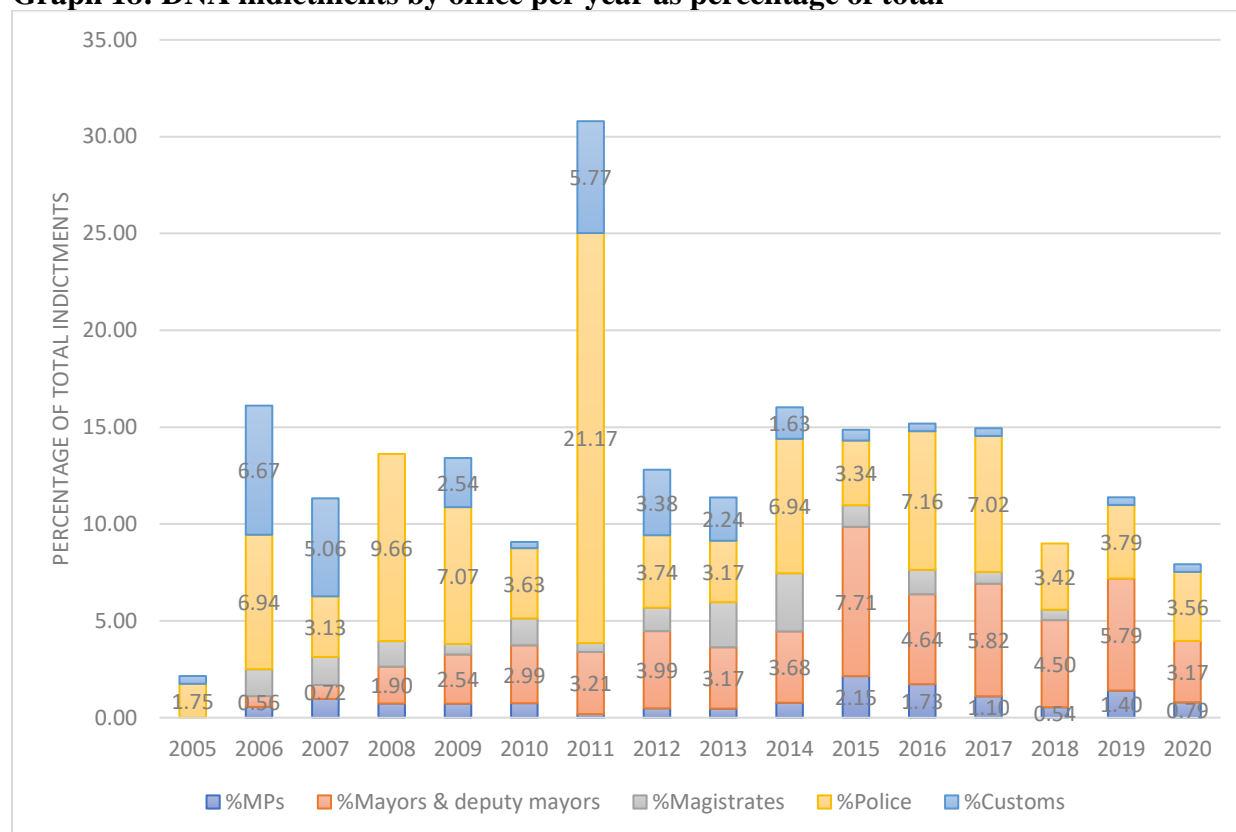
The tables in Annex 4 show no significant relationship between the number of indictments for corruption and whether or not the party controlling the county was also in government. Incumbency in central government, therefore, does not appear to have an effect how many people are indicted and later convicted for corruption. This finding, and the fact that changes in indictment patterns in Romania appear immediately after local elections, while the local and county bosses are opposed to the governing coalition, points to local officials having autonomy to become the demanders of corruption and having the power to draw others into their networks or shield them from prosecution. Those who cooperate and even show initiative are promoted to higher positions, perpetuating the system of rents and contributing to the vicious cycle of systemic corruption. Autonomy is revealed by the fact that local bosses do not wait for the government to also change, signaling that approval from the top is not necessary.

One observation to be made here is that 2009 is the year when PDL and PSD governed together, despite campaigning against each other, which might explain the dip noticed in proven corruption cases. While PDL was seeking to denounce and indict civil servants and decisionmakers from other parties, PSD was using its leverage in the coalition to protect them.

Starting in 2010, after PSD had left the governing coalition, indictments went up across the board, a sign that even local agreements to overlook some corruption deeds had fallen apart. Moreover, decisionmakers and high public offices also began to take a steadily larger share of the total number of convictions per year. Until 2010, only one mayor had been convicted for corruption (in 2007) and no Members of Parliament. The focus had been on prosecuting corruption within law enforcement (police forces and magistrates) and customs. These made up between 21% and 37%

of all convictions. In other words, the priority of the time was to consolidate institutions and secure the borders in anticipation of EU accession. This is particularly visible when it came to customs employees, who made up the second-most prosecuted group behind members of the police in the early years of DNA.

**Graph 18: DNA indictments by office per year as percentage of total**



Source: DNA annual reports

The portrait of indictments seen above is the result of interplay between the independent activity of DNA, who had its own institutional objectives and made investigations of its own initiative in their pursuit, and the activity of political parties, who wanted to protect their clients from DNA or use it as a tool to remove political rivals or disloyal civil servants, in addition to consolidating state institutions. The focus on customs agents and police forces is therefore not the result of one factor. Parties in government established what the objectives of DNA are and aligned those objectives with their own political needs. In concrete terms, parties (or at least PDL) understood the

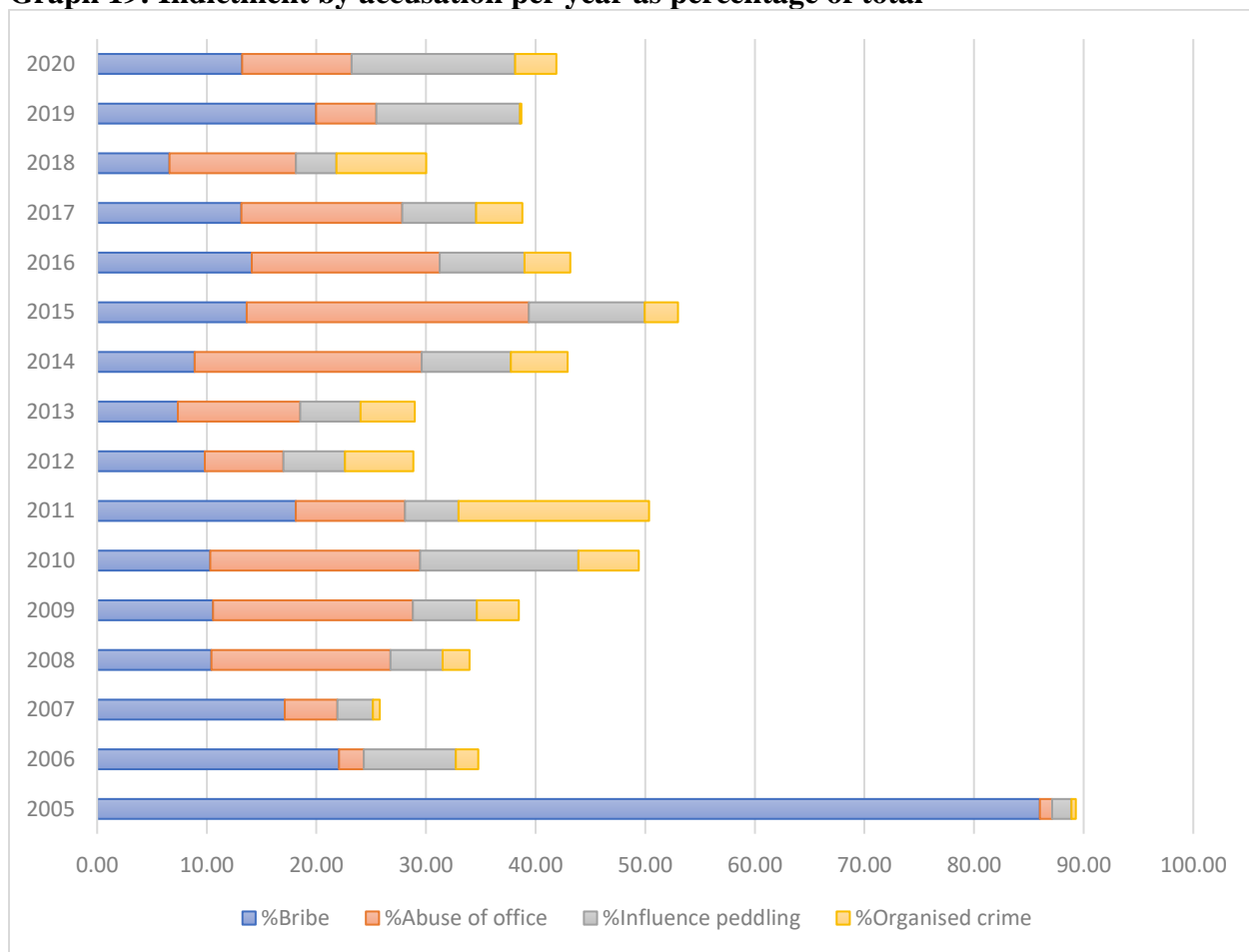


importance of combatting disorganized corruption and reducing the number of autonomous actors on the corruption stage but they also took advantage of DNA to eliminate rival decisionmakers and purge institutions of civil servants loyal to other parties. The two phenomena coexisted, at least in the early days of DNA, when civil servants that did not aspire to higher office saw little need to join political corruption networks and share the spoils.

The year 2010 is a turning-point in several regards. Firstly, it saw the conviction on May 5<sup>th</sup> of senator Vasile Duță (PRM, PSD and later independent) to 5 years in prison for influence peddling, along with seizing of certain assets. Five years after the National Anticorruption Parquet had been reorganized into the DNA, the first high-profile conviction had happened, opening the way for more indictments of higher offices and more convictions in the following years. Also, in 2010 several mayors were convicted for corruption, including Mircia Gutău (PDL), mayor of Râmnicu Vâlcea, the seat of Vâlcea county, who received 3 years and 6 months in prison for receiving bribe.

The early work of DNA seems to have focused on combatting speed money, as the graph below shows. The prevalence of indictments for petty bribes in the first years could be interpreted as a sign of disorganized corruption, or as an indication that prosecutors would not follow the money higher up the hierarchy. The latter interpretation seems unlikely, given the early indictments of elected officials and the political consensus that Romania should join the European Union, which required a reduction in overall corruption levels. More likely, corruption was more disorganized as there was little incentive for civil servants to join corrupt networks. In time, DNA reduced the autonomy for corruption of lower-ranking civil servants, making protection from powerful figures necessary. The sharp drop in indictments of lower-level civil servants starting with 2012 is therefore a sign of the protection from prosecution coming from the new local officials.

Networks of corruption certainly existed throughout the studied interval, particularly among civil servants who aspired to higher offices. The absence of high-profile convictions in the early years made it seem as if the decisionmakers were safe, whereas investigations of corruption cases not connected to a powerful network did lead to convictions. After 2008, the main charge brought against the indicted became abuse of office (replacing bribe), which is typically associated with decisionmakers, as lower-ranking officials have less capacity and less power to abuse. This might have to do with the ambiguity that initially surrounded the term “abuse” but could also indicate that prosecutors increasingly targeted networks as opposed to isolated cases of corruption. Charges of influence peddling, another crime typically associated with decisionmakers, also increased over time, as did accusations of organized crime, which peaked in 2011. The sharp increase in indictments of lower-level civil servants coupled with the increase in charges associated with decision-making power indicate that DNA was investigating networks with a few demanders of corruption and many more suppliers. In this sense, the promises of political protection from prosecution can be interpreted as attempts to politically organize corruption, and link small or local corruption networks to powerful barons.

**Graph 19: Indictment by accusation per year as percentage of total**

Source: DNA annual reports

As the table above shows, charges for organized crime or association to commit crime are very few until 2010 (less than 4% of total charges brought). After that, organized crime accounted for around 5% of charges each year, going as high as 17.38% in 2011. Considering that the number of indictments and of cases overall also grew, the change in proportion is all the more impressive, and can be explained by a combination of increased capacity of prosecutors to investigate organized corruption networks and increased efforts by corrupt officials and civil servants to seek protection from higher-ups.

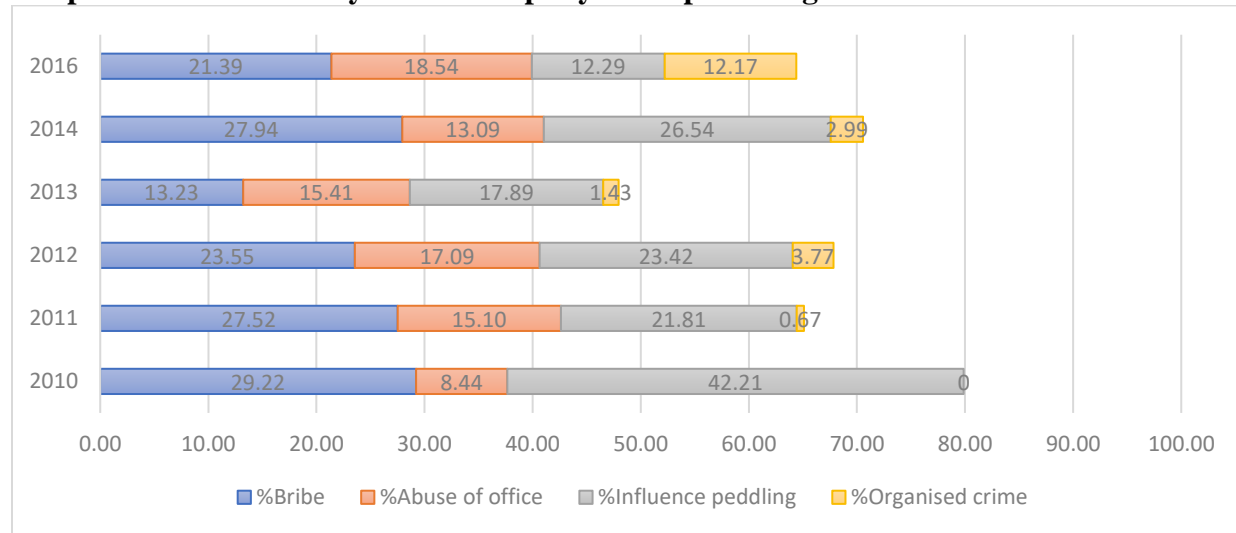
Cases from 2011 reveal some merit to this interpretation. The largest corruption networks uncovered that year had been set up in the latter half of 2010<sup>30</sup>, after the first major convictions in DNA cases made headlines, and involved officers of the border police, including decisionmakers within the institution. Indictments and convictions of customs workers in 2005-2007 had largely been made on charges of petty bribes, not organized crime as was the case in 2011, so there is reason to believe that corruption within the border police and at the level of customs workers became more organized and in 2011 as opposed to 2005 or even 2009. Another possibility is that the lower-level workers began to denounce higher level officers in exchange for lighter sentences, yet this too supports the idea of increased political organization, given that decisionmakers had more incentives to consolidate their networks in order to prevent denouncements. Tighter political control over corruption networks means reduced autonomy for corruption among the lower-levels, which in turn allows higher offices to extract rents in a safer manner.

In 2012, the highlighted case of organized crime involved a senator facing charges for assembling a corruption network starting with May 2010, the same month that Vasile Duță was convicted. Before 2010, being convicted for corruption did not seem to be a serious risk to the top decisionmakers. After 2010, as the risk materialized into a legitimate threat, there is reason to believe that decisionmakers in institutions responded to prosecution efforts by taking steps to politically organize corruption. By 2016, as the graph below shows, 12% of all proven cases of corruptions involved charges of organized crime or association to commit crime, as opposed to 0% in 2010 and 0.67% in 2011.

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<sup>30</sup> According to details gathered from DNA press releases about the crimes investigated.

**Graph 20: Convictions by accusation per year as percentage of total**



*Source: DNA data on convictions for corruption*

After the peak in 2011, the share of indictments for organized crime remained fairly constant at around 4% of the total, nearly double what it had been before. This gives weight to the claim that public officials reacted to the convictions in 2010 by becoming more organized. However, more data on actual convictions is needed to draw accurate conclusions. Most of those indicted in 2011 (largely police and customs workers) were convicted in 2015 and 2016, so the increase in conviction rates for organized crime in those years might be the result of one spike year. This, however, does not change the fact that a noticeable increase in proven cases of organized crime occurred before 2015 as well.

Elected officials were indicted as early as 2006, and their share of total indictments grew year by year until 2012, which points increasing capacity to investigate decisionmakers and greater willingness to prioritize them. In the absence of an anticorruption agency or any real threat of getting caught, lower-ranking officials had little incentive to join networks of corruption and share the spoils but could be rewarded for individual acts of bribery. In this sense, one of the first effects of DNA was to indirectly provide incentives for lower-ranking officials or civil servants to either

cease corrupt acts altogether or join a corruption network and seek political protection from prosecution. Improvements in regime corruption scores between 2009 and 2016 can be explained by this phenomenon.

In 2012, The National Liberal Party (PNL) and the Social-Democratic Party (PSD) ran in elections together, along with the Conservative Party (PC) and the National Union for the Progress of Romania (UNPR) in a coalition named the Social Liberal Union (USL), for local and general elections held the same year. The coalition won by a landslide and lasted until February 25, 2014, when PNL left government and joined the opposition.

As a result of USL's dissolution, on September 2<sup>nd</sup>, 2014, ahead of the presidential elections, the Ponta government passed emergency ordinance 55/2014, which allowed local officials 45 days to switch parties without losing their mandates, as the law normally stipulates. Hundreds of local councilors, mayors and county councilors changed parties, the vast majority going to PSD, leading to a de facto reshuffling of the 2012 electoral results. The ordinance was written by Liviu Dragnea, who was Deputy Prime-Minister at the time. Notable transfers include County Council president of Buzău, who went from PNL to PSD, the majority in the General Council of Bucharest, and dozens of mayors in Vaslui, Olt, Neamț, Mehedinți, Maramureș, Dâmbovița, Cluj, Caraș-Severin, Botoșani, Bistrița-Năsăud, Bacău and Argeș, along with hundreds of local and county councilors. Most notably, over 80% of mayors in Giurgiu (44 out of 54) transferred to PSD.

Interestingly, 52 out of the 84 people convicted for corruption in Giurgiu received their sentencing in the period between the dissolution of USL and the expiration date of ordinance 55/2014. After the ordinance, nobody was convicted in Giurgiu until 2016 when PSD had been ousted from the Government. This may be a coincidence, as there is no available evidence to suggest political meddling in the sentencing, yet it likely contributed to the massive number of transfers, and

strengthened the belief that those who switch sides will be protected whereas the others face prosecution.

After the ordinance, there were no more convictions at all in Arad, Olt, Mehedinți, Bistrița-Năsăud, Botoșani, Maramureș, Sălaj and Vrancea until at least the government change in late 2015. There was also a reduction in overall convictions of decisionmakers or important offices within the town halls from the day the ordinance expired until the government change of 2015. In the year preceding OUG 55/2014, 33 people holding important offices within town halls had been convicted, compared to 22 in the year that followed it, and 37 in 2016. Such figures supported the belief that the government, and Liviu Dragnea in particular, could and would offer protection from prosecution.

Liviu Dragnea had been County Council president in Teleorman, and his county had some of the fewest convictions for corruption in the country. Others, such as Sălaj or Bistrița-Năsăud have been controlled by PSD for a long time and are also among the counties with fewest corruption convictions. By contrast, Cluj and Giurgiu, where the numbers of convictions overall are among the highest, were controlled by PNL. At least in some areas therefore, counties controlled by the main government party (PSD) experienced fewer convictions for corruption than those controlled by other parties, even if under jurisdiction of the same DNA territorial bureau. This is likely due to consolidated corruption networks where nobody denounces anybody. As the county-level analysis also argues, counties that have been controlled by the same party for a long time see fewer indictments and experience different corruption patterns than counties where power turnover happens.

Events taking place after the period captured in our dataset add more evidence in support of the idea that corruption is politically organized. On May 27<sup>th</sup>, 2019, Liviu Dragnea was sentenced to

three years and six months in prison (Digi24 2019), just one day after elections for the European Parliament, in which PSD came third – which was considered a humiliating defeat for the party still controlling the government and the parliamentary majority. The timing prompted rumors that the judges handling the case had purposefully delayed their ruling until after the elections to avoid influencing the outcome. He was found guilty of using civil servants employed by the County Council under his presidency to perform work for the party, a sign that corruption did affect Teleorman despite it having almost no indictments. Dragnea's downfall coincided with a period of poor electoral results for PSD, who lost the presidential elections of 2019 by a wide margin, lost control of the Government in November 2019, and lost in the local elections, as well as the parliamentary majority in 2020. Following the change of government, the head of Mehedinți County Council was found guilty of corruption in February 2020 (G4Media 2020) and the Head of Botoșani County Council was found guilty of influence peddling and money laundering in January 2020 (AGERPRES 2020).

The threat of prosecution and the effectiveness shown by DNA in its early years seems to have triggered a series of political reactions to the prosecution-driven approach. Whether these reactions were aimed at crippling prosecution capacity and protecting political clientele or, as the narrative goes, were intended to curb abuse of the prosecutors requires a scrupulous look at the effects it generated, but this is a topic for another research.

Higher-profile convictions in Romania were spectacular also because they covered the entire range of the political spectrum, although supporters of the anti-DNA narrative claimed bias in how cases were handled, accusing DNA of prioritizing cases against political adversaries of the President, while dragging on or neglecting cases against his allies and close supporters. There is, unfortunately, no easy way to find the political allegiance of most decisionmakers, so the analysis



of high-level offices will focus on mayors and locally elected officials whose affiliations are known.

### Analysis of convicted mayors

#### *Incumbency bias*

DNA data shows that 120 mayors were convicted on various corruption charges between 2010 and 2017. Of these, 55 (45.8%) were indicted while their party was in government, and 43 (35.8%) were indicted while their party controlled the county where the corrupt deed took place. Assuming that mayors are equally likely to be corrupt whether their party is in power or in opposition, and irrespective of what political party they belong to, we can expect to see no significant difference in the frequency of their indictments. A chi-square test of independence examined the relation between indictments for corruption deeds and incumbency at national level. The relationship was not significant ( $p = .51$ ). Mayors whose party is in government are indicted and convicted as much as mayors whose party is in opposition. A similar test was conducted between indictments for corruption deeds and incumbency at county level. The relation between these variables was significant,  $X^2 (df = 1, N = 120) = 9.63, p = .026$ . Mayors whose party holds power in the county are indicted less than opposition mayors.

However, the likelihood of being indicted and convicted for corruption depends, at least in part, on who conducts the investigation. Of the 120 mayors convicted for corruption, 48 were convicted on charges relating to EU funds. Considering that such crimes are investigated with the help of EU institutions such as the European Anti-Fraud Office (OLAF), which are independent of Romanian political bias, we can expect to see no difference in the frequency with which incumbent and opposition mayors are indicted. This is indeed the case, as 19 of the mayors convicted for corruption involving EU funds were from parties holding power in the county (38.8%) and 23

from parties in government at the time of their indictment (47.9%). A chi-square analysis of independence performed on the 48 mayors charged with corruption involving EU funds revealed that we cannot reject the idea that there is no difference in the frequency with which incumbent and opposition mayors are indicted ( $p = .3$ ). When it comes to EU funds, mayors belonging to an incumbent party (at both national and county level) are indicted as frequently as those of the opposition. This is the situation one can expect to see when there is no political bias in the denouncement and investigation of corruption deeds, and it supports the view that mayors are equally likely to be corrupt irrespective of party affiliation or incumbency.

Finding no incumbency bias in the investigation and conviction of corruption involving EU funds also supports the assumption that the justice system is impartial. Neither OLAF nor its Romanian counterpart DLAF (the Department for the Fight Against Fraud) can prosecute or issue sanctions themselves but only monitor and investigate the spending of EU funds, forwarding suspicious cases to national authorities. As such, it is national authorities who prosecute and convict in proven cases. In case of EU funds we therefore see no bias in terms of convicting members of an incumbent party or of the opposition.

When only corruption deeds that did not involve EU institutions are considered, we see a different situation. Of the 72 mayors convicted for corruption not involving EU funds, 24 (33%) belonged to a party holding power in the county and 32 (44.4%) to a party in government at the time of indictment. Running the same chi-square test of independence reveals a significant relationship between indictments and county incumbency,  $X^2$  ( $df = 1$ ,  $N = 72$ ) = 7.34,  $p = .0067$ , but no significant relationship between indictments and national incumbency ( $p = .4$ ). While there is indeed political bias in favor of the mayors whose parties are in government, the relationship is not statistically significant, therefore we cannot rule out the possibility that the bias is due to

chance. This is counterintuitive considering that central authorities allocate crucial resources both to the counties and to the mayors directly, as well as appoint the prefects, whose attributes include checking the legality of norms and decisions adopted at local and county levels, so a deeper discussion is warranted.

Prefects in Romania play a crucial role in county and local politics, as they can block or reject local decisions as well as make denouncements to the DNA or other authorities. Therefore, mayors and county bosses especially have an interest in being on good terms with them. A fault of the statistical analysis above is that it assumes that prefects appointed by a government will treat all coalition members equally. This is not necessarily the case. While in theory prefects should check the legality of all local acts, in practice these are often selected at random or preference is given to acts of mayors from rival parties, even if they are coalition members. As such, political bias is in practice more pronounced than the analysis reveals. This viewpoint was supported by Codru Vrabie, a well-known activist and expert on local governance in Romania, during an interview conducted over the phone in February 2022. He explained that one of the mechanisms encountered at local level in the interval studied was a three-way friendship between the mayor, the prefect and the secretary of the locality, whose job it is to certify the legality of local decisions before they are sent to the prefect. The secretary is appointed by the local council, which in practice is oftentimes an extension of the mayor. The friendship can allow decisions that are not entirely legal to pass or go unnoticed and unchecked, while the absence of such a friendship subjects mayor to increased scrutiny and increases the likelihood of denouncement to the DNA.

Negotiations for who and where gets to appoint prefects are always part of coalition forming processes. Before 2021, prefects were drawn from a pool of senior civil servants. These professional bureaucrats were forbidden by law from being party members, yet in practice many

had political backgrounds and close ties to one party or another (Vrabie 2022). Prefects are oftentimes appointed from the ranks of elected county officials, and former prefects also run for County Council President, sometimes resigning their office to do so, as was the case in Brăila in 2020. In 2021, the status of prefects was changed from senior civil servants to public dignitaries, meaning that government could appoint party members to the position, opening the way for overt partisanship. As a result, an agreement was reached in 2021 between the parties of the ruling coalition that who controls the county should also appoint the prefect (M. Dinu 2021). Such agreements highlight the importance of prefects being from the same party as county bosses.

Governing together, however, does not mean that the parties of a coalition necessarily cooperate. This is especially true at local level, where rivalries and animosities have a life of their own and cannot be easily put aside. Moreover, even within parties there are factions and rivalries, so county bosses themselves have a say in who should be appointed prefect. Although information on the political allegiance of prefects is sparse, owing to high turnover and lack of public institutional records, there are some documented cases of political interference and bottom-up pressure to secure the office of prefect for a favorite candidate. One example, from 2018, concerns the position in Mureș County, which was vacant for five months. Former deputy Marius Pașcan describes that although PSD controlled the government, pressure came from UDMR (who was in opposition at the time but controlled the county) to appoint the County Council President's chief of staff to the position (Pașcan 2018). Another example, from 2019, concerns the prefect of Maramureș. The ruling PNL had promised the position to the People's Movement Party (PMP), who was in opposition, in exchange for a vote of support. This upset the county branch of PNL, as well as several mayors, who threatened to not mobilize voters for the second leg of the presidential elections if the position does not go to PNL (Avram 2019). County branch presidents are influential

in political parties, as they often run for County Council Presidents or mayors of county capitals. Following the transformation of prefects into public dignitaries, pressures from county bosses became public. The County Council President of Cluj, Alin Tișe (PNL), went as far as to threaten to resign if the Government appointed a prefect from UDMR (F. Dinu 2021).

Given the role of the prefect and the emphasis placed on them being from the same party as the county boss, it seems likely that central incumbency matters more than the data reveals. There is, however, little doubt that incumbency at county level matters, supporting the earlier claim that autonomy for corruption rests at county level. County bosses decide who to denounce and who to protect, exerting pressure both on mayors and on central authorities. This pressure is not limited to appointments, however, but extends to public procurement, as Chapter 4 detailed.

The fact that there appears to be no incumbency bias when it comes to convicting mayors for corruption involving EU funds indicates that incumbents and opposition mayors are just as likely to engage in corrupt dealings and that national prosecutions agencies like DNA and the courts of law are indeed impartial with cases they investigate. As such, the fact that twice as many opposition mayors are convicted for corruption involving national funds implies that mayors of parties who are in government are brought to the attention of prosecutors less than their counterparts in opposition. Since the conviction figures refer to proven cases of corruption, not to fabricated accusations, and we see no incumbency bias when non-partisan institutions investigate suspicious cases, we can infer that there are corrupt acts that go unreported among mayors while their parties are in government. Such an interpretation supports the view that incumbency grants some measure of protection.

### *Partisan bias*

Regarding mayors, there is unfortunately no public data on the number of mayors belonging to each party throughout the interval studied because public records mention only the names of the numerous alliances that were formed and broken over time. Most notably, the Social Liberal Union (USL), which dominated the 2012 elections, was an alliance between two of the three biggest parties (PSD and PNL) and two smaller parties (PC and UNPR). It won 63% of all townships in Romania but the party allegiance of the individual officeholders is not mentioned in official sources. Party affiliation for convicted mayors was pieced together from local media sources, but similar information could not be found for the mayors of all localities in the country, especially small towns and communes. Moreover, some of their elected candidates had not been members of any party, having joined the alliance. As such, even after the ordinance in late 2014 that allowed locally elected officials to switch parties without losing their mandates, the number of mayors belonging to each party is still not mentioned in official records<sup>31</sup>. This makes it impossible to know what percentage of incumbent or opposition mayors were convicted, which might have revealed some county-level patterns. A breakdown of the total number of mayors each party obtained during the electoral cycles covered in this work can be seen in the table below:

**Table 13: Number of mayors from each party per electoral cycle**

|                                   | <i><b>2004</b></i> | <i><b>2008</b></i> | <i><b>2012</b></i> | <i><b>2016</b></i> |
|-----------------------------------|--------------------|--------------------|--------------------|--------------------|
| <i>PDL</i>                        | 387                | 909                | 498                | -                  |
| <i>PNL</i>                        | 447                | 724                | 268                | 1081               |
| <i>PSD</i>                        | 1702               | 1138               | 378                | 1706               |
| <i>USL</i><br><i>(PSD+PNL+PC)</i> | -                  | -                  | 1351               | -                  |

*Source: Romanian Permanent Electoral Authority (AEP)*

<sup>31</sup> None of the major parties that made up USL replied to queries concerning this issue, and institutions like the Permanent Electoral Authority or the Central Electoral Bureau mentioned that all of the information they have is already public on their websites. The data, unfortunately, only contained information from election day.

### *Interpretation of findings*

The finding of incumbency bias does not mean that county bosses control DNA prosecutors. Rather, they have some influence over what deeds get denounced or not. The party that controls a county can monitor mayors, denouncing decisionmakers of other parties while ignoring or covering up corrupt deeds in their own ranks. The bias found is evidence that some corruption deeds went unreported or uninvestigated. This is consistent with political organization of corruption, as it shows that political parties at best ignore corruption in their own ranks, allowing mayors to extract rents at will, and at worst coordinate efforts to conceal corruption deeds or deter denouncement and prosecution (by, for example, poor implementation of whistleblower protection norms or recruitment of loyal civil servants into institutions). Given that corruption does carry some electoral costs, however, it is unlikely that it would be ignored without some kind of compensation such as kickbacks to the party.

Based on findings thus far, we can infer that corruption involving EU funding is investigated impartially, whereas in other kinds of corruption there is a clear and significant bias. Worth mentioning is that denouncement based on political affiliation may explain the higher rate of acquittals noticed in 2012, when PSD and PNL ran together in elections. One can speculate that, in the bid to be the alliance's candidate, members from both parties tried to get rid of rivals from their alliance partner by denouncing them based on evidence that did not hold in court. In other electoral years, alliances were between smaller parties, so the rivalries were less intense.

Findings thus far point to corruption being more politically organized at county level than at the level of government at the very top. Few governments and even parties last in power a full 4 years. In the interval covered by the dataset of indictments (2005-2017), there have been 9 configurations of parties in government, including all permutations between the three biggest parties of the time

(PDL, PSD, and PNL), one technocratic government, one minority government and six Prime-Ministers, two of which were forced out by street protests, and one by vote of no confidence after only three months in office. This is not counting the numerous cabinet reshuffles that occurred over the same time span. Such instability allows the government little time to consolidate either their hold on administration or on networks of corruption.

Rather, the locus of party power seems to be at county level, with the various ministers committing to funneling public resources toward the local level, as a way to reward mayors and county bosses for their support. Policies like the National Program for Local Development (PNDL), whose stated goal is helping poor localities finance crucial local investments, have been criticized specifically for the discretionary way funding is allocated, with little oversight. A report published by Romanian think-tank Expert Forum linked funding through PNDL to electoral performance of mayors (Pârvu 2021, 19), and found that the companies benefitting the most from the program had political ties. In fact, a small number of companies (4-5) obtained 40-70% of the money in each county, which was awarded through less competitive procedures, predominantly involving one or two bidders. This practice explains at least part of the decline in competition observed in Chapter 3.

Investment through PNDL or similar programs is defended as necessary both by the executive and by local authorities. An annual report also published by EFOR in 2013 showed that less than one quarter of localities in Romania could afford to pay their employees' salaries from their own income (Expert Forum 2013), and drew attention to a tug-of-war between central and county authorities for allocation of funds. County councils play a huge part in managing transfers from the center to local authorities, which creates tensions when the county and the government have different political colors. The report states that in such cases it is hard to identify favoritism and



bias, particularly because central government sometimes goes over the heads of county councils to fund mayors directly, such as through PNDL or Reserve Fund<sup>32</sup> spending (Expert Forum 2013, 13–14). Discretionary funding is, therefore, the rule at both national and county levels, and does not differ across parties. In its report, EFOR found that the peak of political clientelism was in 2007-2008, when incumbents were three times more likely to receive funding than members of the opposition. Moreover, independent mayors seem to have benefitted the most from discretionary transfers, a sign that such payments were used to purchase their allegiance and encourage political migration. The local administration of the Democratic Union of Hungarians in Romania (UDMR) is the only other example that received ample discretionary transfers throughout their interval of study (2004-2011) irrespective of government rotation, a sign that every major party wanted to be on good terms with UDMR, who is often a junior coalition partner but whose electoral support is limited to a few counties and thus poses no serious electoral threat. UDMR is unique in a few other ways that are discussed later in the chapter. From the analysis of government transfers, one can see that whoever is in government grants funding to the counties and localities they control, and whoever controls the county council rewards mayors of the same political affiliation or independents they want to attract based on how many votes they deliver in elections. A similar pattern emerged in Chapter 4 when looking at procurement in the IT sector.

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<sup>32</sup> The Reserve Fund is meant for emergencies such as natural disasters or other unforeseen events that require fast allocation of resources to handle. The Executive can make discretionary use of the Reserve Fund and has often done so to cover expenses not related to its intended purpose, such as financing local investments or organizing National Day military parades, as was the case in 2012.

### Analysis of lower-level offices

We have seen that incumbency has some influence over indictments of decisionmakers. The second component of politically organized corruption is denouncing corruption not affiliated with the party network. As such, the next section focuses on lower-level civil servants.

The vast majority of lower-level indictments that occurred in 2008 after the local elections (83 out of 107) happened where the winning party (PDL) either gained control of the County Council (Neamț, Maramureș, Suceava, Cluj) or of key cities such as county capitals (Dolj, Prahova). As is discussed later, the crackdown on civil servants occurring under PDL leadership can be interpreted as either an effort to clean up public institutions or as an attempt to coerce them into submission or replace them with loyal individuals, in order to politically organize local corruption around new party networks. It seems that local bosses, even without government support, began forming or expanding corruption networks, attracting already corrupt civil servants and denouncing those who would not join.

The question of why similar indictments did not happen in other counties where PDL gained control following the 2008 elections, such as Mehedinți, Botoșani or Bistrița-Năsăud can be answered by cross-county differences. Civil servants in those counties might have been willing to join the new corruption networks, eliminating the need for denouncement, or they might have been conveniently sidelined while key positions were filled with trusted party members. It is also possible that the county bosses in such counties simply did not care about petty corruption in their institutions and allowed it to occur.

The trend of indicting lower-level civil servants more than decisionmakers continued until 2012, when PDL suffered crushing defeats in both the local and general elections, after having ceded control of the government earlier in the year. As previously mentioned, there is no reason to believe

that there was genuinely less corruption among the lower-level civil servants after the elections, so the decline in indictments can be explained either by a change in DNA policy or by the winning parties being more tolerant of corruption, and cases going unreported.

The narrative supported by PSD was that DNA, still controlled by President Bănescu, had changed focus to indict their decisionmakers on made-up charges. At the time, they repeatedly claimed that DNA was acting as political police, despite the PSD government of Victor Ponta consistently increasing DNA's budget throughout his time in office, which covered much of the 'golden age' (2012-2015). Therefore, DNA had the resources to pursue more 'big fish' without neglecting lower-level civil servants. Furthermore, while the number of indicted decisionmakers did increase, it did not match the figures from 2011, so it seems unlikely that a change of policy explains the difference in indictment patterns. This is supported by DNA itself, who stressed the need to prosecute grand corruption in its annual reports throughout the interval.

The more plausible explanation is that the new incumbents either did not care about corruption among civil servants or found it easier to connect or reconnect the civil service to their networks, so there were fewer denouncements to the DNA. As mentioned previously, it is unclear whether PDL supported a crack-down and denouncement of civil servants because they were genuinely concerned with battling 'speed money' or because they were intent on constructing their own corruption networks. Data, however, indicates that a change to political organization of corruption occurred after the 2012 local elections. What that change was, and its implications, are discussed in the following sections.

At local level, there are few non-partisan professional bureaucrats. Although their appointment is done by exam, in practice these are oftentimes rigged or have just one participant. Once employed into the system, however, bureaucrats are hard to dismiss. So, even though they might not be party

members per se, low-level civil servants often have strong political ties or sympathies. Close family relations are not uncommon especially in smaller communities, and some bureaucrats become indispensable because only they know how to get certain things done in an institution. Even in large towns it is sometimes difficult to find competent replacements (or any kind of replacements) for professional bureaucrats, so it is not uncommon to see retired civil servants still working in the institution. The same applies to other kinds of public service: schools, hospitals or clinics, police and military, customs, etc. In this context, it often happens that political leadership has to work with bureaucrats employed by or loyal to the former administration. After 2010, the austerity measures imposed by the Boc government also blocked creation of new public sector jobs, so institutions instead hired contract workers to do the job of bureaucrats without being bureaucrats themselves. The local leaders that replaced PDL in 2012 did not need to remove as many bureaucrats from office by denouncing them because they could simply terminate existing contracts and hire their own people. They also likely retained the loyalty of at least some of the bureaucrats that remained in the institution throughout PDL's mandate.

This broad analysis does not cover many of the nuances of local politics however, so a more detailed, county-level analysis is also required, that also considers the particularities of each party.

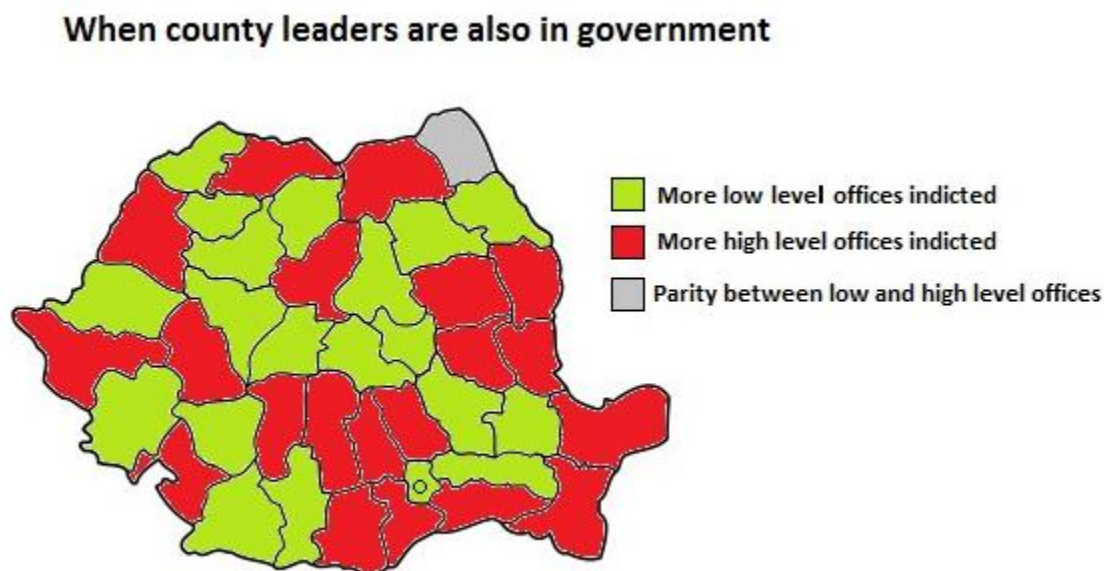
#### County-level analysis: strongholds and incumbency

The map below shows the counties where lower-level civil servants are indicted and convicted more than decisionmakers (in green) when the party controlling the county was also in government. Due to executive instability and power turnover in elections, every county experienced a period when its ruling party was also in government between 2005 (when DNA records began) and 2017 (the latest year for which conviction data was centralized). Extreme cases include Sibiu, whose ruling party was in government only three years in the interval. This is

because, before 2012, the county of Sibiu elected the Democratic Forum of Germans in Romania (FDGR), which is a small party that has not been a part of government coalitions thus far. After 2012, the party elected either PSD or PNL. On the other extreme there are counties such as Maramureş or Neamţ, whose ruling parties have been in government in 10 of the 13 years covered. In most other cases, however, the ruling party at county level has also been in government about half of the time. The map therefore only presents the situation of indictments for proven corruption cases while the party in power at county level was also part of government<sup>33</sup>.

Counties where decisionmakers are indicted and convicted more (in red), and those where there is parity between the two categories of indictments (in grey) are also shown. These account for 37.5% of all indictments gathered from DNA press releases.

**Map 1: Prevalence of indictment for proven corruption cases by office type while the ruling party at county level is also in government (2005-2017)**



*Source: DNA data on convictions for corruption*

<sup>33</sup> Exact ratios are problematic because of years with no indictments, that cause a division by zero, so a dichotomous variable was preferred.

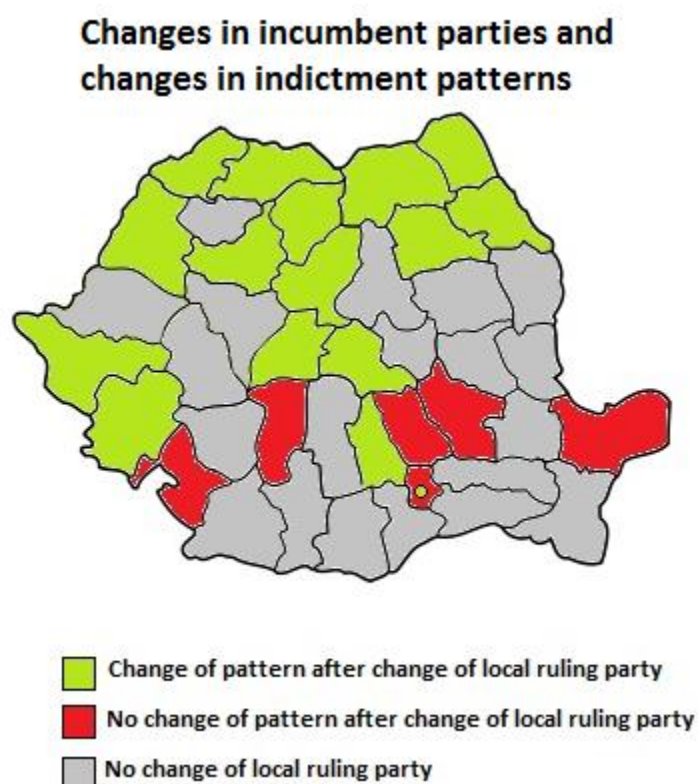
At first glance there seems to be no obvious pattern. There is some concentration of counties where decisionmakers are indicted more, in the south and south-east of the country, whereas counties where lower-level civil servants are indicted more seem to be concentrated in the central part of the country. The map of indictments while the party ruling the county was in opposition at national level is similar, in that no discernable pattern can be seen.

Lower-level civil servants are typically not appointed politically but hired and retained in the institution irrespective of power turnovers, even if the hiring process can be rigged. Long-serving bureaucrats are sometimes indispensable for the institution, as issuing administrative sanctions is notoriously difficult in Romanian law, and finding competent replacements might be even harder, particularly in small towns or rural areas. Therefore, rather than reshuffle or replace them with their own people, the expectation is that party officials try to recruit bureaucrats to their corrupt networks. This can be done using rewards (i.e. a share of the spoils) or threats such as disciplinary action or denouncement to the prosecutors. DNA data reveals that both practices can be found in local public administration. Mayors convicted for corruption often have accomplices among the professional bureaucrats, such as accountants or legal advisors, while the largest share of lower-level civil servants indicted and convicted for corruption had committed individual acts of petty bribery (282 of 625 or 45.12% of civil servants convicted in the interval studied), meaning they were not part of a network of corruption but acted autonomously. Recruiting civil servants not only facilitates corrupt deeds but also ensures greater secrecy, thus reducing the chances of being caught or denounced to prosecutors, so there is an incentive for decisionmakers to co-opt them. Individual acts of corruption, or deeds committed without approval from decisionmakers and without appropriate kickbacks are unlikely to be tolerated in such a setting, as they incur electoral costs by upsetting voters but without the benefit of kickbacks.

However, recruitment of bureaucrats to corrupt networks is not a never-ending process. Counties where the same party has been in power for a long time likely have an already established network, meaning we can expect to see more indictments of decisionmakers than lower-level civil servants, as the latter have by and large been recruited or are firmly under control, while the decisionmakers, as seen prior in the analysis of mayors, are likely to be from opposition parties. Established county bosses are therefore likely to spend their efforts trying to remove political rivals, given that their own position and network is consolidated.

The map below shows counties that have been controlled by the same party for at least three consecutive electoral cycles (since 2008) marked in grey. Counties marked red saw power turnover at least once since 2008 without any changes to indictment patterns (i.e. either decisionmakers or lower-level civil servants represented the majority of indictments both before the turnover and after). Counties marked in green saw both a change in ruling party and a change in indictment patterns following the turnover. Note that the ruling party in two counties, Alba and Arad, did change, but this was the result of a fusion between PDL and PNL in 2014, so the leadership itself stayed the same. Therefore, the counties appear marked in grey. We see that the norm is for indictment patterns to change following power turnover, meaning that the party or the person in power at county level influences or determines whether more decisionmakers are denounced or more civil servants without decision-making power. One can argue, therefore, that elections change not just the party or the person in power at county level but also the type of political organization of corruption.

**Map 2: Changes in indictment patterns following power turnover (2005-2017)**



*Source: DNA data on convictions for corruption, own calculations*

This finding is in line with the results uncovered at national level, but goes further, showing that differences in patterns manifest not just across party lines but also across counties. This again supports the idea that county bosses act as autonomous drivers of corruption. Worth noting is that much of county-level politics cannot be captured in a single model, so the dynamics of party loyalty and of local politics, the competition between factions within parties, as well as de-facto friendships and family ties that transcend party lines at local level might also play a role in who gets indicted and when.

On average, fewer people are convicted in party strongholds than in more competitive counties, where power turnover has occurred more frequently, and this difference is significant, as shown in Annex 6. This may seem surprising considering that previous research found that long-standing incumbents are generally perceived to be more corrupt (Klašnja 2015), however, it is worth noting



that counties that repeatedly vote for the same party do not necessarily vote for the same people, so the incumbents may change even as political allegiances do not. Also, being perceived as more corrupt (and, indeed, being so) does not automatically mean that one will be prosecuted and convicted for it. In party strongholds, officials may be more corrupt but also more protected by the network. Being in a competitive county also implies a greater risk of losing power in the next elections, which may increase preoccupation with integrity in order to avoid the electoral costs of being perceived as more corrupt than political rivals.

The consolidated networks thus appear more cohesive and less willing to denounce corrupt behavior. Moreover, as Annex 7 shows, both decisionmakers and lower-level civil servants are convicted less in party stronghold, meaning that protection from denouncement extends across the network, rather than being limited to certain office types. In the 20 party strongholds, a total of 1200 indictments leading to convictions were issued in the interval studied, including 608 (50.6%) concerning people from the public sector. A breakdown of indictments for each type of office according to incumbency status of the party in power at county level is below:

**Table 14:** Indictments of proven corruption cases in party strongholds by office type and incumbency (2005-2017)

|                   | <b>Decisionmakers</b> | <b>Lower-level civil servants</b> | <b>Total</b> |
|-------------------|-----------------------|-----------------------------------|--------------|
| <b>Incumbent</b>  | 127                   | 122                               | 249          |
| <b>Opposition</b> | 150                   | 209                               | 359          |
| <b>Total</b>      | <b>277</b>            | <b>331</b>                        | <b>608</b>   |

*Source: DNA data on convictions for corruption, own calculations*

As can be seen, there are more indictments across the board while the ruling party at county level is in opposition at national level. This is in line with previous findings concerning mayors. The presence of a prefect from a different party than the county boss can explain part of the difference observed, but also the lack of funding from the center, which incentivizes the choice of becoming a demander of corruption.

A chi-square test of independence between incumbency status and type of office found a significant relationship  $X^2 (df = 1, N = 608) = 5.0405, p = .024$ . More lower-level civil servants than decisionmakers are indicted in party strongholds while the party ruling the county is in opposition at national level. At first glance, this finding runs counter to the expectation that networks in strongholds are more consolidated and thus shielded from prosecution. However, the situation makes sense if we consider that, overall, there are more convictions among both decisionmakers and lower-level civil servants while the party ruling the county is in opposition, so we can say that incumbency in government does grant some measure of protection from prosecution. This is also supported by the analysis in Annex 8, which shows that, while in government, both decisionmakers and lower-level civil servants are indicted more in competitive counties than in strongholds. It also reveals that decisionmakers in competitive counties who are in opposition are indicted more than decisionmakers in strongholds of the opposition. All of these findings indicate that both incumbency and electoral performance matter when it comes to the number of indictments. Being in a party stronghold (as a member of the ruling party) and in government ensures greatest safety from prosecution for corruption, while being in neither grants the least protection.

When the ruling party at county level is in opposition, its decisionmakers, which in a party stronghold are typically more numerous than those of the county opposition, face more scrutiny from central authorities, including the prefects, which is reflected in the larger number of decisionmakers indicted. Moreover, corruption networks are likely to also be larger in party strongholds, meaning that when decisionmakers of the party controlling the county are indicted, a larger number of lower-level civil servants are also indicted with them as accomplices. Another factor to consider is that, while in opposition, the county receives less money from the center,

which may cause some civil servants to resort to petty bribes as a way to maintain higher revenues, essentially reverting to a more disorganized form of corruption, which may also trigger hostile response from the county incumbent.

#### *Analysis of local development*

At this point, the question of economic development of the counties emerges. The table in Annex 3 shows that the majority of party strongholds (12 of 20) are in the bottom half of the ranking of corruption indictments, and the same holds true when ranking indictments by office type. Some of the poorest areas in Romania are well known party strongholds (Teleorman, Vaslui, Călărași, Harghita, etc.) who also rank low on total number of indictments, while other strongholds are among the more developed (Arad, Alba, Constanța, etc.) and are in the mid and upper parts of the indictment ranking. As can be seen in Annex 9, there are significant differences in GDP per capita among counties where certain parties are in power. PNL ruled over more developed counties while PSD ruled over less developed, with no significant difference between PDL and PSD. Perhaps surprisingly, other parties ruled in the poorest counties in Romania, which might be explained by underdevelopment in UDMR strongholds like Covasna or Harghita, as well as by higher political fragmentation in the first electoral cycle covered (2004-2008), when the country was much poorer overall than in subsequent years.

It is unclear whether more resources provide more incentive for corruption or, on the contrary, if people see corruption as a legitimate means to accumulate resources in a context of poverty. It is also unclear whether slower development is a cause or an effect of corruption, although a strong argument stemming from the work of Mungiu-Pippidi and Johnston (2017) is that corruption is the ‘default state’ in a system of governance, and that controlling corruption and limiting its destructive effects allows development to occur. As such, corruption is assumed to exist

everywhere, unless there are effective mechanisms in place to stop it. Where the ‘virtuous cycle’ does not occur, poverty and corruption mutually reinforce each other. In other words, being a party stronghold might have limited the counties’ development and exacerbated their corruption problems. This view is supported by data presented in Annex 10, which finds that there is a significant difference in GDP per capita between counties where parties have ruled for a long time as opposed to counties where there is more frequent power turnover. Strongholds of both PSD and PNL are significantly less developed than non-strongholds where these parties have been in power. It is still unclear whether counties remain poor because they are strongholds or they become strongholds because they are poor, but one can argue that both situations create incentives for parties to avoid serious attempts at development in order to remain in power. We saw in Chapter 4 that some of the biggest spenders on IT procurement were some of the poorest counties. As such, public investment is a tool both for development and for re-election, which is why development of the private sector can harm re-election chances by creating resources that the political decisionmakers do not control, and which can be used to support the opposition.

The analysis in Annex 10 shows no significant difference in development between PDL strongholds and non-strongholds, and the same is true of other parties (UDMR, PC/PUR, PRM, FDGR, and UNPR). Unlike PSD, whose social-democratic message and ideology addresses the poorer, rural segments of society, or PNL, whose right-wing liberal agenda appeals to entrepreneurs and urban areas, PDL attempted to be a catch-all party, which ran on an anticorruption platform, whereas PC/PUR, PRM, and UNPR did not exist long enough or compete well enough in elections to have strongholds. UDMR, the largest party in the “other” category is an interesting case study because it consistently wins by large margins in its strongholds even

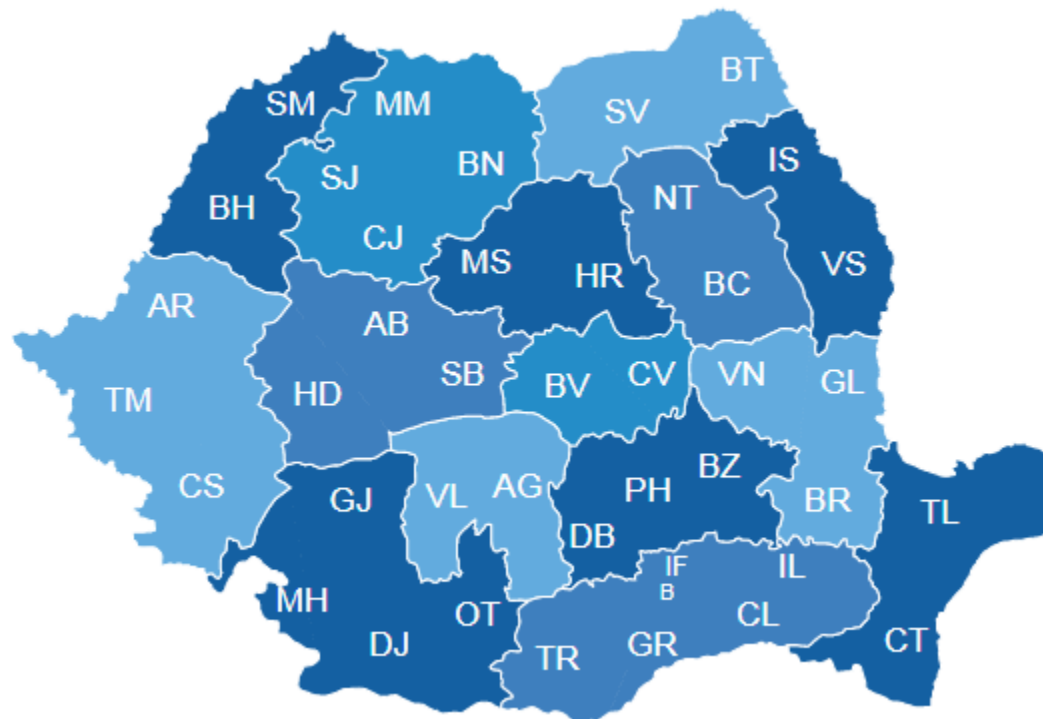
though both have remained underdeveloped. Considering that UDMR draws its support along ethnic lines, it can rely on being voted in even without delivering on economic performance.

Findings thus far indicate that power turnover is conducive to economic development and raise the question of whether disparities in the number of convictions between counties might come from differences in development, i.e. that strongholds are less developed and therefore there are fewer available spoils and less corruption. This seems unlikely however, given the significantly larger sums of money awarded to party strongholds by central authorities, as shown in Chapter 4, and the limited oversight of spending such funds. A more likely explanation is that there are fewer convictions for corruption in party strongholds because corruption networks are more consolidated. As such, officials are free to award public contracts to political clients with less fear of being denounced.

Other factors that might explain regional differences are economic and performance disparities between DNA territorial bureaus. The map below shows how Courts of Appeal are organized in Romania. DNA territorial bureaus accompany Courts of Appeal, so the territorial distribution corresponds to them also. We therefore see that counties with very few convictions border counties with some of the most, under jurisdiction of the same territorial bureau. For example, Sălaj (SJ) with 2 convictions overall and Bistrița-Năsăud (BN) with 13 border Maramureș (MM) with 183 and Cluj with 139, all sharing the same territorial bureau. The same is true of Teleorman (TR), with 32 convictions, sharing a border and territorial bureau with Giurgiu (GR) that has 84, and ranks in the top 10 in terms of cases per population. Both share the same DNA bureau with Bucharest (B), which has the most resources and ranks consistently among the top in terms of cases and convictions per population and in absolute terms. As such, the idea that lack of resources explains the difference of indictments at county level does not stand. A better explanation to the

differences in convictions between counties is the political affiliation of the county boss, whether their party is in government or not and whether the county is a party stronghold or not.

**Map 3: DNA territorial offices**



*Source: Ministry of Justice of Romania*

In the 22 counties where power turnover has occurred (marked as red and green on Map 2), there were a total of 2894 indictments leading to convictions for corruption (1792 if we exclude Bucharest) in the studied interval. This includes 1104 indictments in the public sector (809 excluding Bucharest) and representing 38% of the total number of indictments in these counties (45% excluding Bucharest). Here too, we see that indictments leading to convictions are more common in counties that are not party strongholds.

Of interest here is the difference in proportion between public and private entities indicted. The difference between 50.6% and 45% public sector indictments means that, in party strongholds, private entities are somewhat less likely to face charges for corruption than civil servants at any

level. This can be explained by the underdevelopment of party strongholds, meaning that there are fewer private entities present in the local economy, and by the disproportionate funds that strongholds receive, arguably inflating the size of the public sector. Situations where private entities are indicted without being accompanied by public sector ‘accomplices’ typically involve attempts at bribery denounced by the officials in question or attempts to fraudulently obtain some sort of public funds (such as agricultural subsidies or VAT returns). In less developed areas, such funds might be scarce or politically captured, thus discouraging attempts to obtain them illicitly.

The breakdown of indictments by office type and indictment status for counties that are not party strongholds is below:

**Table 15:** Indictments of proven corruption cases **in counties with power turnover** by office type and incumbency (2005-2017)

| <b>Including Bucharest</b> | <b>Decisionmakers</b> | <b>Lower-level<br/>servants</b> | <b>civil</b> | <b>Total</b> |
|----------------------------|-----------------------|---------------------------------|--------------|--------------|
| <b>Incumbent</b>           | 266                   | 376                             |              | 642          |
| <b>Opposition</b>          | 240                   | 222                             |              | 462          |
| <b>Total</b>               | <b>506</b>            | <b>598</b>                      |              | <b>1104</b>  |

| <b>Excluding Bucharest</b> | <b>Decisionmakers</b> | <b>Lower-level<br/>servants</b> | <b>civil</b> | <b>Total</b> |
|----------------------------|-----------------------|---------------------------------|--------------|--------------|
| <b>Incumbent</b>           | 198                   | 289                             |              | 487          |
| <b>Opposition</b>          | 163                   | 159                             |              | 322          |
| <b>Total</b>               | <b>361</b>            | <b>448</b>                      |              | <b>809</b>   |

*Source: DNA data on convictions for corruption, own calculations*

The chi-square test of independence (including Bucharest) between incumbency status and type of office found a significant relationship  $X^2$  ( $df = 1$ ,  $N = 1104$ ) = 11.9651,  $p = .000542$ . The conclusion stands even in the test excluding Bucharest:  $X^2$  ( $df = 1$ ,  $N = 809$ ) = 7.7879,  $p = .00526$ . In counties with power turnovers over the three election cycles captured in the dataset, more low lever civil servants are indicted when the party holding power at county level is also in government. In counties where elections are disputed, party networks and organizations are likely to be

comparable in size and strength, and opposition parties are likely to control a substantial number of mayors. As such, when the ruling party in the county is also in government, there is likely a crackdown on rival networks in order to weaken their standing, leading to higher numbers of indictments of both decisionmakers and lower-level civil servants. This is in line with the expectation that incumbents try to consolidate their position and rally the civil service around their political decisionmakers. Worth noting is that rival networks need not be restricted to the opposition. Local politics is such that parties who are coalition partners at central level can still try to undermine each other in the counties, knowing that alliances are usually short-lived.

When the party in power at county level is in opposition, the number of indicted decisionmakers and lower-level civil servants is roughly the same. Unfortunately, there is no way to identify the political affiliation of every decisionmaker, as such information is rarely divulged even by local media sources. Because decisionmakers are not just elected officials but also appointed offices, one would need to know who appointed each of the people convicted for corruption and what their political affiliation was. Such information is not, unfortunately, available.

Higher indictment numbers in competitive counties point to a fiercer battle for control than in strongholds where things are by and large clear, and few political rivals or civil servants have not been co-opted into the ruling party's networks. The next section goes further in-depth, looking for patterns and differences between counties based on the political parties who control them.

### Party-level analysis

#### *General model and PNL*

Based on the findings in previous sections, an aggregate model of county-level corruption can be summed up by the following table.



**Table 16: General model of corruption convictions based on type of office, incumbency, and electoral performance**

|                                       | <b>RULING PARTY IS IN GOVERNMENT</b>           | <b>RULING PARTY IS NOT IN GOVERNMENT</b>       |
|---------------------------------------|--|--|
| <b>COUNTY IS PARTY STRONGHOLD</b>     | More indictments of decisionmakers             | More indictments of lower-level civil servants |
| <b>COUNTY IS NOT PARTY STRONGHOLD</b> | More indictments of lower-level civil servants | More indictments of decisionmakers             |

According to this, parties that are in a position of power and stability in a particular county can take advantage of a favorable government to denounce decisionmakers. These might belong to the opposition but could also be internal political rivals. A friendly government and firm electoral support ensures that decisionmakers can be removed without damaging the overall network, as replacements are likely to come from the same party, so there is no better time to settle internal scores. When the government is not favorable, party strongholds are less inclined to seek replacement of rivals in decision-making positions, preferring to shield their members from prosecution if possible. Strongholds also appear more inclined to tighten their grip on the bureaucracy when in opposition. This is perhaps done in order to expand their corruption network at local level, which can somewhat compensate for the decrease in government funding they are likely to receive. Being a stronghold means that the party enjoys ample and consistent support at the ballot, so they are likely to also have a high share of the mayors in the county, who in turn expect to be rewarded for electoral performances. Having no money from the center encourages mayors to seek funding from the county level, which is less likely to alert the prosecutors if they fully control even the lower-level civil servants involved in the process of resource allocation. The fact that indictment numbers are lower in strongholds (even when Bucharest is not considered) supports the claim that networks are already established, so there are fewer decisionmakers of the opposition to denounce and fewer civil servants who ‘step out of line’, i.e. autonomously engage

in individual, disorganized corruption acts. When control over a county is tight, political rivals to the incumbent are more likely to come from within their own party.

When the county is not a stronghold, it means that elections are more competitive, and the outcome less certain. The party of the County Council president usually controls at least the plurality of mayors, if not the majority, but the margins are slim and there are many civil servants whose loyalty is not guaranteed, having served under different political administrations. As such, when the government is friendly, funding is likely to be received from the center, and distributed to mayors from the same party. Therefore, control over the civil service needs to be established to ensure that no whistleblowers alert prosecutors to potential breaches of the law, so that incumbents can enjoy the spoils undisturbed. Opposition mayors and their networks get little funding from the center or from the county, and are subject to more scrutiny, thus disincentivizing corruption. When the government is not friendly, however, as we have seen, funding from the center is likely to be given directly to opposition mayors, helping them attract more votes. With no spoils to enjoy from the center, and in a county where electoral support is not guaranteed, county incumbents thus have an incentive to focus their efforts on getting opposition decisionmakers indicted. One example of this, which also highlights how local politics often works, is a famous case in Rădăuți, Suceava county.

In September 2014, the mayor of Rădăuți, from PDL, was charged with abuse of office and placed under arrest. He was accused of threatening a local councilor to vote for an illegal measure (awarding a contract to a lawyer without a competitive procedure). He allegedly also tried to recruit that councilor to his party in the wake of OUG 55/2014. Following the arrest, the prefect of Suceava, appointed by PSD who was in government at the time, suspended the mayor's mandate, and the deputy mayor (who was from PP-DD) was poised to take over. However, the Local

Council, who was controlled by PSD, voted in their first session after the arrest to replace the deputy mayor with one of their own, thus gaining control of Rădăuți. This case became famous for what happened next, as a court ruling effectively dissolved the Local Council for failing to convene for two consecutive months in April and May, in spite of being summoned by the mayor. With the mayor suspended and being tried in detention, and the Local Council dissolved, the day-to-day running of Rădăuți was supposed to be handled by the town secretary. However, the standing secretary had retired the previous year, so an acting secretary had been delegated to fulfil the role until a contest could be organized for a permanent position. The mandate of the acting secretary expired in May 2015, and there was no Local Council to vote on a new mandate, leading to Rădăuți becoming the first ever locality in Romania to have nobody in charge of daily affairs.

Another court ruling stated that the prefect should organize elections within 45 days but the Government intervened by mandating the prefect to appoint a secretary, in spite of having no legal basis to do so, in order to avoid further delays in paying wages (which were already 2 weeks delayed). The Prime-Minister, Victor Ponta, later issued an emergency ordinance that modified administrative norms to allow prefects to intervene when such a power void occurs in a locality. The string of events in Rădăuți is now a case-study for administrative law and highlights the kind of political struggles found at local level, and how anticorruption became a tool in party politics.

The general model presented does not apply equally to all parties. Of the four major parties that have been in control of more than one county and in government in the interval studied (PSD, PNL, PDL, and UDMR), only PNL follows the exact pattern in the model. A breakdown of the model observed in each party can be seen below:

|                                | <b>RULING PARTY IS IN GOVERNMENT</b>           | <b>RULING PARTY IS NOT IN GOVERNMENT</b>       |
|--------------------------------|--|--|
| <b>PNL</b>                     |  |  |
| <b>IS PARTY STRONGHOLD</b>     | More indictments of decisionmakers             | More indictments of lower-level civil servants |
| <b>IS NOT PARTY STRONGHOLD</b> | More indictments of lower-level civil servants | More indictments of decisionmakers             |
| <b>PSD</b>                     |  |  |
| <b>IS PARTY STRONGHOLD</b>     | More indictments of decisionmakers             | More indictments of decisionmakers             |
| <b>IS NOT PARTY STRONGHOLD</b> | More indictments of lower-level civil servants | More indictments of decisionmakers             |
| <b>PDL</b>                     |  |  |
| <b>IS PARTY STRONGHOLD</b>     | More indictments of lower-level civil servants | More indictments of lower-level civil servants |
| <b>IS NOT PARTY STRONGHOLD</b> | More indictments of decisionmakers             | More indictments of lower-level civil servants |
| <b>UDMR</b>                    |  |  |
| <b>IS PARTY STRONGHOLD</b>     | More indictments of lower-level civil servants | More indictments of decisionmakers             |
| <b>IS NOT PARTY STRONGHOLD</b> | More indictments of decisionmakers             | More indictments of lower-level civil servants |

### *UDMR*

As can be seen, the general model emerges from the aggregate of different trends. Note that indictment figures are small in many counties, so a difference of one unit is sometimes enough to make a categorical difference. In case of UDMR, the party addressing the Hungarian community in Romania, the pattern is the opposite of the overall model. In the two UDMR strongholds, Harghita and Covasna, there was hardly any support for the other three parties mentioned here, their rivals being other local Hungarian parties. UDMR usually wins elections by a wide margin in its strongholds, sometimes getting more than 50% of the vote. Relying on the ethnic vote and getting consistently high electoral scores means there is little incentive for elected members of UDMR in these counties to switch parties. They also control most of the mayors so, while in government, they can protect them from denouncement easier. Considering that support from

UDMR is often required to form government coalitions, the three large parties of the time tried to be on good terms with them. It is perhaps not surprising therefore, that the only mayor convicted in UDMR strongholds was indicted in 2016, under the technocratic government, and for charges relating to European funds.

In counties where support for UDMR is lower, because they are always junior partners in a coalition when in government, they cannot exclude the mayors of their coalition partners from funding. They can, however, monitor how funding is used and make denouncements if necessary, which might explain the higher indictments of decisionmakers. This is also possible because, when negotiating government coalitions, UDMR typically requests that the prefects in their counties be from their own ranks. When not in government, UDMR might seek to consolidate its position by defending its decisionmakers in the county, and might be more successful because, as stated prior, they control most of the mayors in their counties, so there are few political rivals willing to denounce them. Also, none of the larger parties want to damage relations with UDMR to the point of putting a future coalition at risk, especially when there is no realistic chance that they would gain control of their counties in future elections.

One comment needs to be made here. While UDMR was in power in Mureș, but was not in government, two mayors were indicted and later convicted – one from PDL and one from PSD, both of which were in government at the time, and neither for deeds concerning EU funds. It is not known whether the county leadership played a role in the indictments, or whether these were due to other factors such as conflicts between the coalition members. More research is needed to find better reasons why lower-level civil servants are indicted more in UDMR counties while the party is not in government.

## PSD

The pattern in PSD counties follows the general model when the counties are not strongholds. The noticeable difference is in the strongholds themselves, when decisionmakers are indicted more while the party is not in government, which can be explained by the activity of prefects appointed by hostile parties. The fact that decisionmakers in strongholds are convicted more while PSD was in opposition may have contributed to the narrative that DNA is biased against them, and that their decisionmakers are disproportionately (and, they argued, unfairly) targeted by prosecution. Looking at the total number of mayors convicted by party affiliation, we see that indeed there are more from PSD than any other party.

| <i>Party</i>                                  | <i>PSD</i> | <i>PNL</i> | <i>PDL</i> |
|---|------------|------------|------------|
| <i>Number of mayors convicted (2010-2017)</i> | 43         | 26         | 37         |

The difference between them and the other major parties can be explained by the larger overall number of mayors that PSD had in each of the three elections in the interval, and by the fact that it controls most of the party strongholds. Unfortunately, as mentioned prior, there is no accurate public account of how many mayors PSD or PNL had in total, and thus no way to guess what percentage of mayors were found guilty of corruption from their ranks. An accurate tally of mayors from each party would require counting all of the elected officials, plus the acting mayors that were in office while the elected ones served in government positions, plus the mayors that switched parties, while ensuring to count reelected mayors only once. Such data is not publicly available.

However, because PSD has consistently controlled more mayors than the other parties, it is not surprising that most indicted mayors would come from their ranks, particularly when they are not also in government. One might even argue that having more indictments of lower-level civil servants in counties that are not strongholds, while PSD is in government, points to political

protection of decisionmakers. Indeed, the promise of political protection was used in tandem with the promise of central funding to attract locally elected officials to PSD in the wake of OUG 55/2014. Illustrative in this sense is the case of Marian Cristinel Bîgiu, president of Buzău County Council, who migrated from PNL to PSD shortly before being indicted (and later convicted) on two counts of corruption.

### *PDL*

The pattern found in PDL counties is even more puzzling. Despite the second highest number of convicted mayors and locally elected officials, PDL counties saw more convictions of lower-level civil servants in three of the four situations described by the model. In counties that were not strongholds, the model is like that of UDMR. While in government, PDL – who was also in large coalitions with both PSD and PNL – could not exclude their coalition partners from central funds, so they instead focused on monitoring and denouncing them. While in opposition, they focused on consolidation, while their own decisionmakers were left alone as the incumbents enjoyed the spoils of central funds.

In our analysis, PDL had the fewest strongholds of the big three parties (only Arad and Alba). Most indictments of lower-level civil servants in these counties (14 of 16) took place before the 2012 elections, while most indictments of decisionmakers (14 of 23) took place after. Like UDMR, the elections in PDL strongholds were landslide victories, the one exception being 2012, when the difference was less than 1% between them and USL in each county. While PDL was in government, decisionmakers in counties that they did not control were indicted more than lower-level civil servants. For a party that seemed to emphasize combatting speed money among the civil servants, this finding is remarkable, indicating an effort to consolidate their hold on power by cracking down on political rivals in counties where support was not guaranteed. The fact that even

when it was in opposition lower-level civil servants were convicted more than decisionmakers might explain why DNA was accused of acting on orders from then-President Traian Băsescu (PDL). Data in the table below does show that PDL had the smallest share of locally elected officials indicted while the party was in power, so there is some apparent merit to the claim that bias existed in favor of PDL.

**Table 17: Share of indicted officials while in government, per party**

| <i>Locally elected officials</i>               | <i>PDL</i>   | <i>PNL</i>    | <i>PSD</i>    |
|--|--------------|---------------|---------------|
| <i>Total convicted</i>                         | 53           | 39            | 63            |
| <i>Indicted while in government</i>            | 15           | 18            | 40            |
| <b><i>Indicted while in government (%)</i></b> | <b>28,3%</b> | <b>46,15%</b> | <b>64,49%</b> |

*Source: Data on DNA convictions, own calculations*

However, over the interval studied (2005-2017), PDL was in power for 4 years, while PNL and PSD were in government for 6 years each. This means that 4 PDL local officials were indicted per year while in government, compared to 3 from PNL and 7 from PSD<sup>34</sup>. Figures relating to PSD can be explained by a combination of factors, namely that most of their time in government was under the leadership of Victor Ponta, who did not interfere with the justice system, even when he was on trial for corruption himself. The fact that Ponta was later replaced as leader of PSD by Liviu Dragnea may also be relevant, given that Dragnea had built his political success up to that point on offering protection from prosecution, and had used this promise in 2014 to attract to PSD a large number of mayors and locally elected officials who had trouble with the law. As such, some of the PSD officials convicted for corruption had migrated from other parties following OUG 55/2014, the most notable being Cristi Bîgiu, former PNL president of Buzău County Council. Considering these figures, there is little evidence to suggest DNA was biased in favor of PDL.

<sup>34</sup> Figures are rounded up because one cannot indict half of a person.



Of the lower-level civil servants indicted in PDL counties, over two thirds were indicted while PDL was in government (67,76%), as compared to 35% in PNL counties and 21% in PSD counties. This strengthens the view that PDL was mostly concerned with denouncing corruption among the bureaucracy, although it remains unclear whether it was motivated by desire to clean up public administration or replace existing corruption networks with new ones.

### Drawbacks and limitations

One of the main limitations of this work is that there are too few convictions at county level to allow proper statistical tests across multiple dimensions. As seen in Annex 3, some counties had less than 20 convictions overall, and even fewer remained when only public office holders were extracted. Moreover, there are many years with no indictments at all but that are still counted as observations, thus changing mean values and affecting significance levels. This is especially true for the early years of DNA's activity but remains a constant problem throughout the interval. For example, it is hard to believe that only two corruption cases occurred in Sălaj county over a span of over 10 years, both of them involving individual acts of petty corruption.

A second caveat is that denouncement to the DNA does not necessarily lead to conviction. Although conviction rates were high, the fluctuation in number of acquittals as a result of legislative changes has reduced the accuracy of data. If denouncement was indeed used a political tool, as the work claims, then one would need to analyze overall figures of indictments or even the figures of denouncement per county, not just the indictment dates of proven corruption cases. The goal of denouncement is often to intimidate or to attack political rivals, so it is not necessarily based on reasonable suspicions of corruption. However, this data either does not exist or is not available to the public.

Thirdly, corruption data needs to be adjusted to the size of the public sector in each county. A proper analysis would require accurate figures of convictions per 1000 or 10.000 state employees and officials in order for differences between regions to be truly relevant. Unfortunately, in addition to lacking accurate data on indictments or denouncement, data on the size of the public sector is also unreliable. The National Institute of Statistics contains some data on annual figures of employment per sector, however these do not include elected officials and do not make a distinction between public and private sector workers. As such, more developed counties can have a larger private sector (i.e. more private hospitals, clinics, schools etc.) and might outsource more public services to private companies compared to poorer counties where the state might be the largest employer. As such, indictments per population employed in a sector would include large shares of people working outside of the jurisdiction of DNA, artificially lowering the measured prevalence of corruption. Official data also makes no distinction between the type of office held by public sector employees. As a result, the analyses in this chapter refer to absolute numbers of indictments and convictions, based on the assumption that the size of the public sector differs across counties more in terms of lower-level positions than in terms of decisionmakers. In other words, the public services provided are by and large the same across counties, so the number of agencies, institutions, and, thus, decisionmakers does not differ greatly (except in terms of elected officials where centralized data does not exist anyway). Rather, what differs is the number of low-level civil servants who have to deliver public services to a larger number of people. As such, the sharp decline in indictments of lower-level civil servants following the 2012 local elections is even more relevant.

Further research should address these shortcomings and attempt to gather more reliable data for comparisons.

## Chapter conclusions

The analysis of DNA indictments that lead to convictions reveals that there is some bias in favor of the incumbents. Mayors are indicted less if they are from the same party as the county boss, and decisionmakers in general are indicted less while their party is in government. Such bias does not appear to be the result of DNA favoritism or influence over the prosecution, but the outcome of protection across party lines. Officials in power tend to denounce members of other political parties while protecting or at least tolerating corruption among their own ranks. The existence of such bias points to corruption being politically organized, as the decision to denounce or not denounce rests with local or county decisionmakers. Changes in indictment patterns following local elections also indicate that local and county officials are autonomous in their decisions to become demanders of corruption and to offer protection, as opposed to waiting for instructions from figures in the central government. Political organization implies that officials are protected so long as they are part of the network, which is evidenced by lower indictments among incumbents, and are free to engage in corrupt dealings, thus negating some of the deterrent effect of DNA.

The very fact that differences in patterns of indictments for proven corruption cases are observed following turnover of power is evidence that there are at least qualitative differences between how political corruption occurs across political parties. The theoretical implication of this is that the study of corruption across different countries should consider not just institutional and legal frameworks but also the party dynamic and affiliation at regional and local level, particularly in systems where there is high executive instability and local autonomy.

This chapter has contributed to existing literature in the field of political corruption by offering an analysis across counties and parties, revealing how electoral competition and the likelihood of winning or losing elections affects the anticorruption struggle and the type of political organization

of corruption found at local level. Party strongholds appear to have more disciplined corruption networks, resulting in fewer denouncements and indictments, especially while the ruling party is also in government. Officials are more likely to be convicted for corruption in counties where elections are more competitive and there is no clear winner, signaling that the consolidation of democratic institutions and power turnover at local level might be instrumental for combatting corruption over the long run.

Secondly, this chapter offers an explanation regarding how political choices and contexts affect who is protected and who is denounced. In this sense, corruption is not viewed by political parties as just a source of income, but as a legitimate tool which can be used in political struggles, as the case of Rădăuți highlights. The choice of who is denounced and who is shielded from denouncement forms part of the political organization of corruption, as it gives local authorities especially additional power over lower-level civil servants and over political rivals. Such power need not necessarily be used to attract material benefits but defectors seeking protection from DNA and promising instead to deliver votes. While the ability to protect from prosecution is limited on account of DNA conducting activities independent of political will, the ability to denounce or refrain from denouncing was enough to attract defectors and incentivize further corruption. As such it is possible that better oversight and accountability of county officials, or an administrative reform of their positions, could reduce their autonomy to become demanders of corruption, as well as their power to draw others into the network.

The cross-party analysis of indictment patterns reveals the kind of choices that local authorities make and also the way parties framed their roles in relation to corruption. PDL framed itself as hard on corruption, yet there is no evidence that its decisionmakers were any less corrupt than those of any other party. Its crackdown on lower-level civil servants can be interpreted as either a

genuine attempt to ‘clean up’ lower-levels of public administration and eliminate ‘speed money’ or an attempt to replace existing corruption networks with new ones. PSD framed itself as the victim of unfair political persecution and accused DNA of political bias. It also used the threat of prosecution to attract defectors, signaling that it did not care about the integrity of its elected officials, given that such defectors were likely people with good reason to fear DNA. The fact that indictment of lower-level civil servants for proven corruption cases declined after PSD and PNL won the local elections indicate that both parties either tolerated or were connected to the existing networks, revealing a different type of political organization of corruption. The difference in indictment patterns noticed in counties controlled by UDMR highlights a very different dynamic than any other party. UDMR counties see the least DNA activity, suggesting that their decisionmakers and civil servants are better insulated from prosecution, and their access to central funds irrespective of government indicates that UDMR enjoys a privileged position on the political scene.

This chapter has presented a model of corruption based on incumbency and electoral performance, revealing that county-level differences in indictment patterns can be explained by political affiliation. The effectiveness of anticorruption prosecution made promises of protection from denouncement effective bargaining chips, which parties like PSD used to attract defectors and rally support both for the party, as well as for anti-DNA candidates in internal elections. The persistent bias in favor of incumbents points to widespread political protection from denouncement, which is indicative of political organization of corruption, yet not all parties are organized the same. The next chapter builds on these findings and analyzes public procurement at county level, presenting evidence of an multipolar and layered corruption model.

## Conclusions

Corruption in Romania has undergone changes since 2007. Corruption and transparency scores show great improvement over the years, yet these improvements do not coincide with an overall reduction in corruption red flags. Some of the more visible forms of corruption, such as speed money collected by lower-level civil servants acting autonomously, are less prevalent whereas other, less visible, forms of corruption have become more pervasive, such as the discretionary allocation of access to public resources, despite availability of more information.

This work has presented evidence that the paradox of improvement in some areas but not in others can be explained by increased political organization of corruption. At sub-national level, the competition between rival networks of corruption results in a system where elections change not just the incumbents but also their network of clients. Incumbent decisionmakers provide discretionary access to resources for their own clients, but this access does not extend beyond the territory under their direct control. As such, one network of corruption does not encroach upon another even if they are connected to the same political party. Corruption in Romania is thus multipolar and layered, as client companies, as a rule, receive public procurement contracts only at the administrative level where their political connections are. Companies connected to county bosses receive contracts in that county whereas large companies with extensive connections and influence are able to secure contracts across the country from both central and local authorities. As a novelty, some companies can also capture state institutions even in the absence of political corruption, by providing services that no other supplier on the market can offer for the same price. Such a situation ensures that the institution remains dependent on one company, irrespective of the political color of its leadership.

Data presented in this work suggests that county bosses are the principal driver of corruption whereas the central government acts more like an agent. As such, corruption seems to ‘flow’ outward, from county to local level as well as to the central government. The polarization of corruption at county level thus leads to differences between counties. Incumbents who manage to stay in power for consecutive electoral cycles have more consolidated corruption networks, implying that frequent power turnover may be an effective tool in controlling corruption.

Local and even national politics in Romania is shaped by the competition between rival corruption networks, who denounce political rivals or individual acts of corruption to law enforcement agencies like the DNA but refrain from reporting corruption deeds committed by their own members. Corrupt civil servants and decisionmakers are thus coerced into joining the incumbent’s network or face prosecution. As a result, anticorruption policy tools are instrumentalized in the political struggle for power, even without direct political control of prosecutors or the justice system. Such a finding may serve to design better oversight procedures, as it suggests that longer serving incumbents may need to be kept under closer scrutiny.

Overall, the present work has uncovered a more complex and dynamic picture than is captured by either cross-country comparative studies or by in-depth qualitative case studies. The findings here may serve for better policy design in the field of public integrity and may open up avenues for future research that can shed more light on how corruption evolves over time and reacts to anticorruption efforts.

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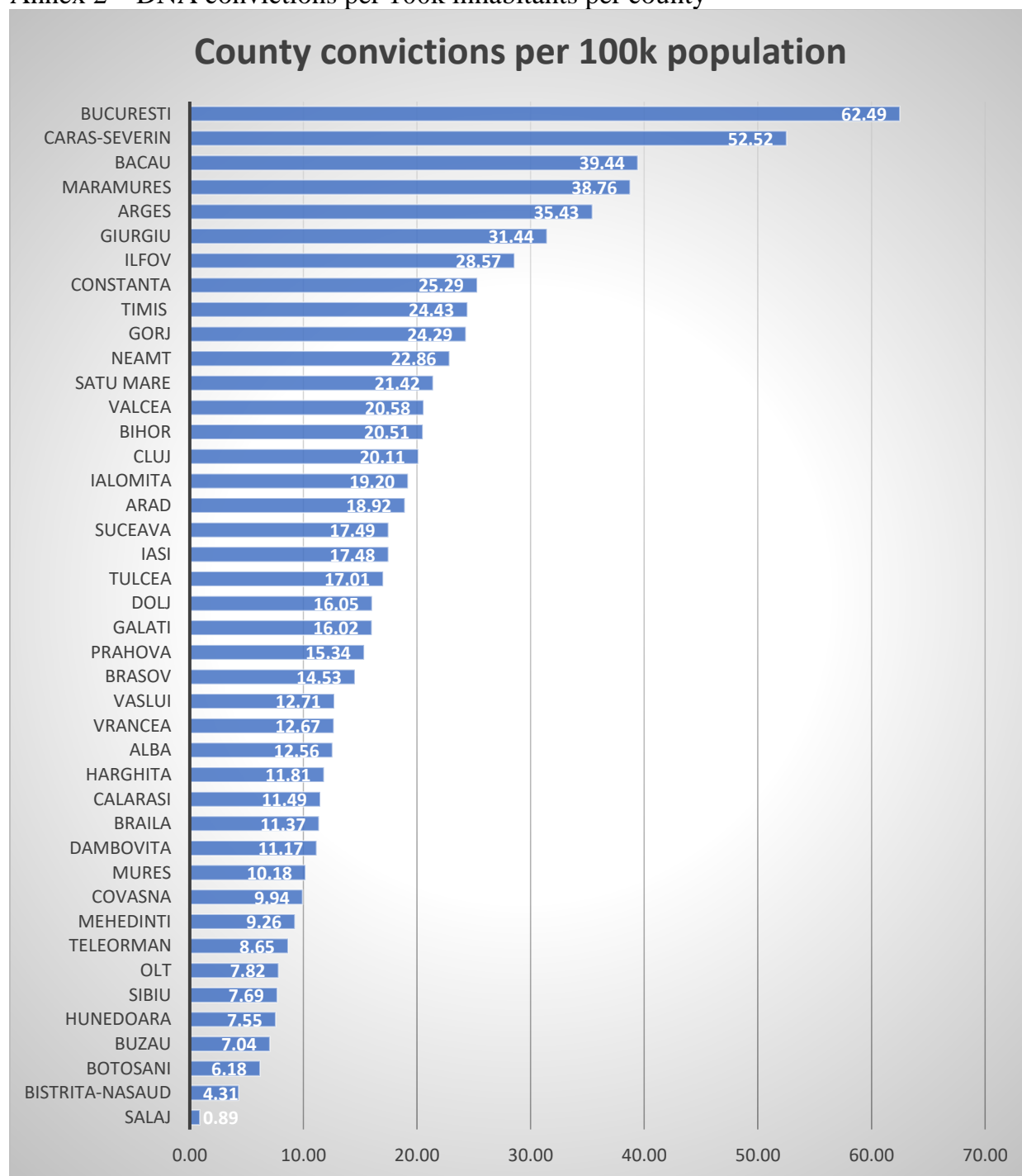
## Annexes

### Annex 1 – Public procurement indicators

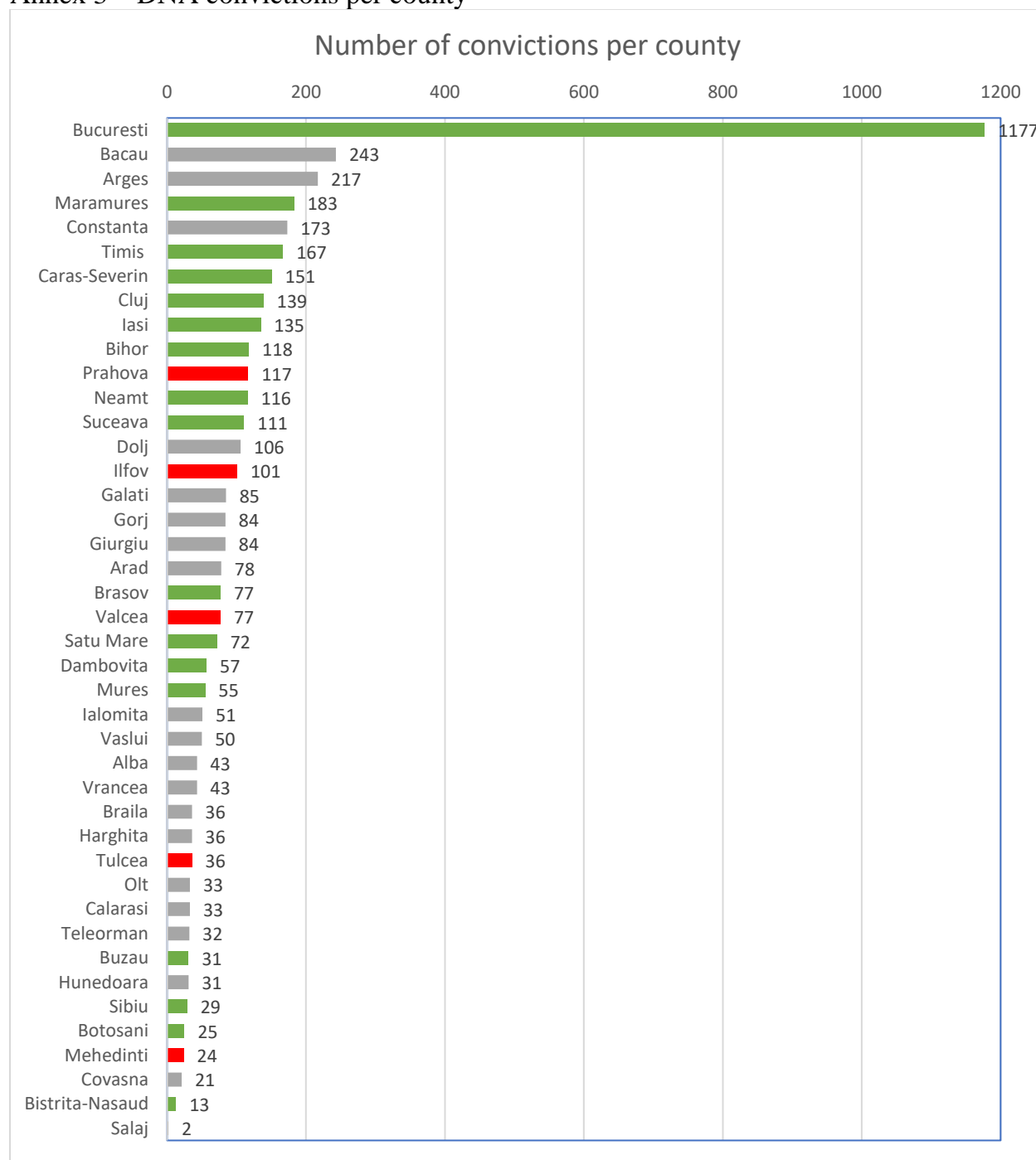
| <i>Year</i> | <i>No. of contracts</i> | <i>Missing Values</i> | <i>Share of Missing Values (%)</i> | <i>Average no. of competitors</i> | <i>Median no. of Bidders</i> | <i>No. of Single bids</i> | <i>Share of single bids (%)</i> | <i>No. of repeat winners</i> | <i>Share of repeat winners (%)</i> |
|-------------|-------------------------|-----------------------|------------------------------------|-----------------------------------|------------------------------|---------------------------|---------------------------------|------------------------------|------------------------------------|
| 2007        | 62372                   | 124186                | 5,24                               | 25,98                             | 23                           | 21327                     | 34,19                           | 16192                        | 74,04                              |
| 2008        | 114892                  | 313917                | 7,19                               | 46,60                             | 42                           | 34622                     | 30,13                           | 21461                        | 81,32                              |
| 2009        | 112604                  | 283726                | 6,63                               | 40,70                             | 31                           | 23200                     | 20,60                           | 15449                        | 86,28                              |
| 2010        | 124426                  | 135822                | 2,87                               | 30,91                             | 23                           | 22042                     | 17,71                           | 13084                        | 89,48                              |
| 2011        | 105749                  | 115351                | 2,87                               | 23,49                             | 16                           | 18080                     | 17,10                           | 11336                        | 89,28                              |
| 2012        | 108111                  | 117661                | 2,86                               | 25,67                             | 5                            | 15330                     | 14,18                           | 9226                         | 91,47                              |
| 2013        | 66684                   | 84580                 | 3,34                               | 26,03                             | 5                            | 11455                     | 17,18                           | 7983                         | 88,03                              |
| 2014        | 73881                   | 89328                 | 3,18                               | 27,57                             | 5                            | 11514                     | 15,58                           | 7483                         | 89,87                              |
| 2015        | 77171                   | 84614                 | 2,89                               | 22,41                             | 4                            | 13946                     | 18,07                           | 8292                         | 89,26                              |
| 2016        | 75374                   | 8492                  | 0,30                               | 20,35                             | 4                            | 13204                     | 17,52                           | 7049                         | 90,65                              |
| 2017        | 102050                  | 102128                | 2,63                               | 9,26                              | 3                            | 19490                     | 19,10                           | 7916                         | 92,24                              |
| 2018        | 43107                   | 157737                | 9,63                               | 3,88                              | 3                            | 12818                     | 29,74                           | 8390                         | 80,54                              |
| 2019        | 51936                   | 163649                | 8,29                               | 4,29                              | 3                            | 15158                     | 29,19                           | 8347                         | 83,93                              |
| 2020        | 47342                   | 149549                | 8,31                               | 5,01                              | 3                            | 12029                     | 25,41                           | 7927                         | 83,26                              |



## Annex 2 – DNA convictions per 100k inhabitants per county



### Annex 3 – DNA convictions per county



**Legend:** Grey – party strongholds, Green – competitive counties with changes to indictment patterns after elections, Red – competitive counties with no changes to indictment patterns after elections

## Annex 4 – Number of convictions per county by government incumbency of ruling party

### Group Statistics

|                  |                   | N   | Mean | Std. Deviation | Std. Error Mean |
|------------------|-------------------|-----|------|----------------|-----------------|
| Indicted persons | Not in government | 542 | 1.51 | 3.682          | 0.158           |
|                  | In government     | 550 | 1.62 | 3.607          | 0.154           |

### Independent Samples Test

|                  |                             | Levene's Test for Equality of Variances |       | t-test for Equality of Means |          |                 |                 |                       |  | 95% Confidence Interval of the Difference |       |
|------------------|-----------------------------|---|-------|------------------------------|----------|-----------------|-----------------|-----------------------|--|---|-------|
|                  |                             | F                                       | Sig.  | t                            | df       | Sig. (2-tailed) | Mean Difference | Std. Error Difference |  | Lower                                     | Upper |
| Indicted persons | Equal variances assumed     | 0.003                                   | 0.956 | -0.477                       | 1090     | 0.633           | -0.105          | 0.221                 |  | -0.538                                    | 0.328 |
|                  | Equal variances not assumed |   |       | -0.477                       | 1088.658 | 0.633           | -0.105          | 0.221                 |  | -0.538                                    | 0.328 |

## Annex 5 – Number of convictions per county by type of office and ruling party

### Group Statistics

| Ruling party  |                  |           | N   | Mean | Std. Deviation | Std. Error Mean |
|---------------|------------------|-----------|-----|------|----------------|-----------------|
| PDL           | Indicted persons | Low-level | 97  | 2.81 | 7.276          | 0.739           |
|               |                  | Decision  | 97  | 1.70 | 2.796          | 0.284           |
| PNL           | Indicted persons | Low-level | 104 | 1.37 | 4.215          | 0.413           |
|               |                  | Decision  | 104 | 1.36 | 2.172          | 0.213           |
| PSD           | Indicted persons | Low-level | 262 | 1.31 | 2.717          | 0.168           |
|               |                  | Decision  | 262 | 1.25 | 2.102          | 0.130           |
| Other parties | Indicted persons | Low-level | 83  | 2.05 | 4.846          | 0.532           |
|               |                  | Decision  | 83  | 1.81 | 3.657          | 0.401           |

### Independent Samples Test

| Ruling party  |                  |                             | Levene's Test for Equality of Variances |       | t-test for Equality of Means |         |                 |                 |                       |   |       |
|---------------|------------------|-----------------------------|---|-------|------------------------------|---------|-----------------|-----------------|-----------------------|---|-------|
|               |                  |                             | F                                       | Sig.  | t                            | df      | Sig. (2-tailed) | Mean Difference | Std. Error Difference | 95% Confidence Interval of the Difference |       |
| PDL           | Indicted persons | Equal variances assumed     | 4.738                                   | 0.031 | 1.407                        | 192     | 0.161           | 1.113           | 0.791                 | -0.448                                    | 2.674 |
|               |                  | Equal variances not assumed |   |       | 1.407                        | 123.740 | 0.162           | 1.113           | 0.791                 | -0.453                                    | 2.680 |
| PNL           | Indicted persons | Equal variances assumed     | 0.872                                   | 0.351 | 0.021                        | 206     | 0.984           | 0.010           | 0.465                 | -0.907                                    | 0.926 |
|               |                  | Equal variances not assumed |   |       | 0.021                        | 154.086 | 0.984           | 0.010           | 0.465                 | -0.909                                    | 0.928 |
| PSD           | Indicted persons | Equal variances assumed     | 1.353                                   | 0.245 | 0.306                        | 522     | 0.760           | 0.065           | 0.212                 | -0.352                                    | 0.482 |
|               |                  | Equal variances not assumed |   |       | 0.306                        | 491.019 | 0.760           | 0.065           | 0.212                 | -0.352                                    | 0.482 |
| Other parties | Indicted persons | Equal variances assumed     | 1.205                                   | 0.274 | 0.362                        | 164     | 0.718           | 0.241           | 0.666                 | -1.075                                    | 1.557 |
|               |                  | Equal variances not assumed |   |       | 0.362                        | 152.530 | 0.718           | 0.241           | 0.666                 | -1.076                                    | 1.558 |

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## Annex 6 – Number of convictions per county by electoral performance

### Group Statistics

|                  |                   | N   | Mean | Std. Deviation | Std. Error Mean |
|------------------|-------------------|-----|------|----------------|-----------------|
| Indicted persons | Is NOT stronghold | 572 | 1.93 | 4.223          | 0.177           |
|                  | Is stronghold     | 520 | 1.17 | 2.823          | 0.124           |

### Independent Samples Test

|                  |                             | Levene's Test for Equality of Variances |       | t-test for Equality of Means |          |                 |                 |                       |   |       |
|------------------|-----------------------------|---|-------|------------------------------|----------|-----------------|-----------------|-----------------------|---|-------|
|                  |                             | F                                       | Sig.  | t                            | df       | Sig. (2-tailed) | Mean Difference | Std. Error Difference | 95% Confidence Interval of the Difference |       |
| Indicted persons | Equal variances assumed     | 17.158                                  | 0.000 | 3.464                        | 1090     | 0.001           | 0.761           | 0.220                 | 0.330                                     | 1.192 |
|                  | Equal variances not assumed |   |       | 3.528                        | 1003.555 | 0.000           | 0.761           | 0.216                 | 0.338                                     | 1.184 |

## Annex 7 – Number of convictions per county by type of office and electoral performance

### Group Statistics

| Level of indicted person (Decision/Executive) |                  |                | N   | Mean | Std. Deviation | Std. Error Mean |
|---|------------------|----------------|-----|------|----------------|-----------------|
| Low-level                                     | Indicted persons | Not stronghold | 286 | 2.09 | 5.201          | 0.308           |
|   |                  | Stronghold     | 260 | 1.27 | 3.485          | 0.216           |
| Decision                                      | Indicted persons | Not stronghold | 286 | 1.77 | 2.938          | 0.174           |
|   |                  | Stronghold     | 260 | 1.07 | 1.951          | 0.121           |

### Independent Samples Test

|   |                         |                             | Levene's Test for Equality of Variances |       | t-test for Equality of Means |         |                 |                 |                       |   |       |
|---|-------------------------|-----------------------------|---|-------|------------------------------|---------|-----------------|-----------------|-----------------------|---|-------|
|   |                         |                             | F                                       | Sig.  | t                            | df      | Sig. (2-tailed) | Mean Difference | Std. Error Difference | 95% Confidence Interval of the Difference |       |
| Level of indicted person (Decision/Executive) |                         |                             |   |       |                              |         |                 |                 |                       | Lower                                     | Upper |
| Low-level                                     | Indicted decisionmakers | Equal variances assumed     | 7.081                                   | 0.008 | 2.137                        | 544     | 0.033           | 0.818           | 0.383                 | 0.066                                     | 1.570 |
|   |                         | Equal variances not assumed |   |       | 2.176                        | 501.436 | 0.030           | 0.818           | 0.376                 | 0.079                                     | 1.556 |
| Decision                                      | Indicted decisionmakers | Equal variances assumed     | 17.959                                  | 0.000 | 3.263                        | 544     | 0.001           | 0.704           | 0.216                 | 0.280                                     | 1.128 |
|   |                         | Equal variances not assumed |   |       | 3.324                        | 499.248 | 0.001           | 0.704           | 0.212                 | 0.288                                     | 1.120 |

## Annex 8 – Number of convictions per county by type of office, electoral performance, and incumbency

### Group Statistics

|                   |           |                  |                | N   | Mean | Std. Deviation | Std. Error Mean |
|-------------------|-----------|------------------|----------------|-----|------|----------------|-----------------|
| Not in government | Low-level | Indicted persons | Not stronghold | 130 | 1.71 | 4.480          | 0.393           |
|                   |           |                  | Stronghold     | 141 | 1.48 | 4.380          | 0.369           |
|                   | Decision  | Indicted persons | Not stronghold | 130 | 1.85 | 3.381          | 0.297           |
|                   |           |                  | Stronghold     | 141 | 1.06 | 1.957          | 0.165           |
| In government     | Low-level | Indicted persons | Not stronghold | 156 | 2.41 | 5.728          | 0.459           |
|                   |           |                  | Stronghold     | 119 | 1.03 | 1.946          | 0.178           |
|                   | Decision  | Indicted persons | Not stronghold | 156 | 1.71 | 2.520          | 0.202           |
|                   |           |                  | Stronghold     | 119 | 1.07 | 1.952          | 0.179           |

### Independent Samples Test

|                   |           |                  |                             | Levene's Test for Equality of Variances |       | t-test for Equality of Means |         |                 |                 |                       |   |       |
|-------------------|-----------|------------------|-----------------------------|---|-------|------------------------------|---------|-----------------|-----------------|-----------------------|---|-------|
|                   |           |                  |                             | F                                       | Sig.  | t                            | df      | Sig. (2-tailed) | Mean Difference | Std. Error Difference | 95% Confidence Interval of the Difference |       |
| Not in government | Low-level | Indicted persons | Equal variances assumed     | 0.055                                   | 0.814 | 0.419                        | 269     | 0.676           | 0.225           | 0.538                 | -0.835                                    | 1.285 |
|                   |           |                  | Equal variances not assumed |   |       | 0.418                        | 266.113 | 0.676           | 0.225           | 0.539                 | -0.836                                    | 1.286 |
|                   | Decision  | Indicted persons | Equal variances assumed     | 13.798                                  | 0.000 | 2.353                        | 269     | 0.019           | 0.782           | 0.332                 | 0.128                                     | 1.437 |
|                   |           |                  | Equal variances not assumed |   |       | 2.306                        | 203.160 | 0.022           | 0.782           | 0.339                 | 0.113                                     | 1.451 |
| In government     | Low-level | Indicted persons | Equal variances assumed     | 12.457                                  | 0.000 | 2.528                        | 273     | 0.012           | 1.385           | 0.548                 | 0.306                                     | 2.464 |
|                   |           |                  | Equal variances not assumed |   |       | 2.815                        | 199.460 | 0.005           | 1.385           | 0.492                 | 0.415                                     | 2.355 |
|                   | Decision  | Indicted persons | Equal variances assumed     | 5.373                                   | 0.021 | 2.287                        | 273     | 0.023           | 0.638           | 0.279                 | 0.089                                     | 1.187 |
|                   |           |                  | Equal variances not assumed |   |       | 2.365                        | 272.930 | 0.019           | 0.638           | 0.270                 | 0.107                                     | 1.169 |

## Annex 9 – Ruling parties by county-level GDP per capita, compared to other parties

### Multiple Comparisons

Dependent Variable: GDP/capita (lei)

|                  |               |               | Mean Difference (I-J) | Std. Error | Sig.  | 95% Confidence Interval |             |
|------------------|---------------|---------------|-----------------------|------------|-------|-------------------------|-------------|
| (I) Ruling party |               |               |                       |            |       | Lower Bound             | Upper Bound |
| Games-Howell     | PDL           | PNL           | -2629.561             | 997.860    | 0.043 | -5204.530               | -54.593     |
|                  |               | PSD           | 1582.326              | 725.787    | 0.131 | -291.842                | 3456.495    |
|                  |               | Other parties | 3906.916              | 796.489    | 0.000 | 1850.345                | 5963.486    |
|                  | PNL           | PDL           | 2629.561              | 997.860    | 0.043 | 54.593                  | 5204.530    |
|                  |               | PSD           | 4211.888              | 862.565    | 0.000 | 1983.440                | 6440.335    |
|                  |               | Other parties | 6536.477              | 922.847    | 0.000 | 4153.464                | 8919.490    |
|                  | PSD           | PDL           | -1582.326             | 725.787    | 0.131 | -3456.495               | 291.842     |
|                  |               | PNL           | -4211.888             | 862.565    | 0.000 | -6440.335               | -1983.440   |
|                  |               | Other parties | 2324.589              | 618.618    | 0.001 | 727.386                 | 3921.793    |
|                  | Other parties | PDL           | -3906.916             | 796.489    | 0.000 | -5963.486               | -1850.345   |
|                  |               | PNL           | -6536.477             | 922.847    | 0.000 | -8919.490               | -4153.464   |
|                  |               | PSD           | -2324.589             | 618.618    | 0.001 | -3921.793               | -727.386    |



## Annex 10 – Party strongholds by county-level GDP per capita

### Group Statistics

| Ruling party  |                  |                | N   | Mean      | Std. Deviation | Std. Error Mean |
|---------------|------------------|----------------|-----|-----------|----------------|-----------------|
| PDL           | GDP/capita (lei) | Not stronghold | 152 | 21630.702 | 9221.184       | 747.937         |
|               |                  | Stronghold     | 36  | 22022.458 | 4898.832       | 816.472         |
| PNL           | GDP/capita (lei) | Not stronghold | 116 | 27556.621 | 12186.997      | 1131.534        |
|               |                  | Stronghold     | 88  | 20088.968 | 7764.684       | 827.718         |
| PSD           | GDP/capita (lei) | Not stronghold | 190 | 21585.585 | 9686.332       | 702.720         |
|               |                  | Stronghold     | 332 | 19286.596 | 7582.672       | 416.153         |
| Other parties | GDP/capita (lei) | Not stronghold | 88  | 18284.422 | 6317.975       | 673.498         |
|               |                  | Stronghold     | 64  | 17131.078 | 5780.119       | 722.515         |

### Independent Samples Test

| Independent Samples Test |                  |                             |   |       |                              |         |                 |                 |                       |   |           |
|--------------------------|------------------|-----------------------------|---|-------|------------------------------|---------|-----------------|-----------------|-----------------------|---|-----------|
|                          |                  |                             | Levene's Test for Equality of Variances |       | t-test for Equality of Means |         |                 |                 |                       |   |           |
|                          |                  |                             | F                                       | Sig.  | t                            | df      | Sig. (2-tailed) | Mean Difference | Std. Error Difference | 95% Confidence Interval of the Difference |           |
| Ruling party             |                  |                             |   |       |                              |         |                 |                 |                       | Lower                                     | Upper     |
| PDL                      | GDP/capita (lei) | Equal variances assumed     | 13.529                                  | 0.000 | -0.246                       | 186     | 0.806           | -391.755        | 1589.589              | -3527.696                                 | 2744.185  |
|                          |                  | Equal variances not assumed |   |       | -0.354                       | 101.776 | 0.724           | -391.755        | 1107.265              | -2588.068                                 | 1804.558  |
| PNL                      | GDP/capita (lei) | Equal variances assumed     | 15.245                                  | 0.000 | 5.025                        | 202     | 0.000           | 7467.653        | 1486.170              | 4537.256                                  | 10398.050 |
|                          |                  | Equal variances not assumed |   |       | 5.327                        | 196.593 | 0.000           | 7467.653        | 1401.958              | 4702.845                                  | 10232.461 |
| PSD                      | GDP/capita (lei) | Equal variances assumed     | 10.832                                  | 0.001 | 3.006                        | 520     | 0.003           | 2298.989        | 764.895               | 796.326                                   | 3801.652  |
|                          |                  | Equal variances not assumed |   |       | 2.815                        | 322.185 | 0.005           | 2298.989        | 816.700               | 692.250                                   | 3905.728  |
| Other parties            | GDP/capita (lei) | Equal variances assumed     | 0.007                                   | 0.932 | 1.151                        | 150     | 0.251           | 1153.344        | 1001.769              | -826.057                                  | 3132.745  |
|                          |                  | Equal variances not assumed |   |       | 1.168                        | 142.267 | 0.245           | 1153.344        | 987.739               | -799.198                                  | 3105.885  |

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